



Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

BRAZIL

Revision

This report, prepared for the sixth Trade Policy Review of Brazil, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Brazil on its trade policies and practices.

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SUMMARY

1. Brazil weathered the global economic crisis well, supported by strong domestic and foreign demand and sound macroeconomic policies. Brazil has also contributed to global economic recovery by substantially increasing imports. Solid economic growth and active incomes policies have allowed Brazil to make progress towards reducing poverty, unemployment, and income inequality.

2. Further action is required to address long-standing structural shortcomings affecting the Brazilian economy's competitiveness, such as inadequate infrastructure, insufficient access to credit, and high taxes. The Government has taken measures to deal with these problems but in its quest to support sectors affected by a loss of competitiveness it has also adopted some measures that may have a restrictive impact on trade. Given the size and importance of Brazil's economy, it is important for it to continue to open its market to trade and investment flows and for its policies be conducive to growth.

Economic environment

3. The Brazilian economy recorded a strong performance during most of the 2007-12 period, with real GDP growth averaging 3.6% a year, albeit with important fluctuations. Growth benefitted from strong domestic demand and favourable external conditions, including vigorous demand and high international prices for Brazilian commodities, which boosted the country's terms of trade. Growth was supported by sound macroeconomic policies, focused on achieving a primary fiscal surplus and strict inflation targets, and a floating exchange rate regime, which contributed to consolidate macroeconomic stability. Helped by an appreciating currency, and despite strong domestic demand growth, inflation has been kept under control, generally within the band of fluctuation allowed by the inflation-targeting policy. Sustained economic growth over almost a decade and active income policies have allowed Brazil to make important progress towards reducing poverty and income inequality, while employment figures have improved.

4. Since the second half of 2011, however, growth has decelerated significantly and the average real growth rate for 2012 was just 0.9%. This loss of dynamism may be partly attributed to the appreciation of the Brazilian real and the global economic slowdown, but it also reflects long-standing structural problems affecting the Brazilian economy's competitiveness such as inadequate infrastructure, insufficient access to credit, and a very high tax burden. To address these problems, the Government has adopted measures aimed at removing infrastructure bottlenecks, expanding concessions and private-public sector partnerships, and reducing the tax burden on certain manufacturing industries. However, to support sectors affected by a loss of competitiveness, the Government has also taken some measures that have a restrictive impact on trade, including increasing tariffs temporarily, and using preferential margins for domestic goods and services in government procurement, and has increased export credits. The authorities have also taken measures to increase the availability of credit and the low level of financial intermediation. In mid-2011 the Central Bank lowered the policy interest rate (SELIC) to record-low levels by Brazilian standards. On the fiscal side, the Government was able to provide stimulus while maintaining a primary surplus throughout the review period.

5. The period under review was particularly dynamic for Brazil's foreign trade. Exports increased at an average rate of 8.6% between 2007 and 2012, reflecting strong external demand for its commodities. Mining and agricultural exports accounted for most of this growth, increasing at annual averages of 15.4% and 12.3%, respectively. Exports of manufactured products increased at an annual average rate of only 1.8%, and their share in overall merchandise exports decreased significantly, from 46.6% in 2007 to 33.8% in 2012. The share of primary products increased from 50.1% to 62.7%, due in particular to the strong performance of mining commodities.

6. Import growth outpaced exports during the period under review, expanding at an annual rate of 13.1% between 2007 and 2012 and causing the trade surplus to shrink. Brazil's trade deficit in the manufacturing sector increased sharply, with imports of manufactured products growing at an average annual rate of 16.2% during the period, and accounting for 73.1% of total imports in 2012. Brazil's structural deficit in the services trade balance also widened during the review period, largely on account of higher payments for leasing capital equipment, travel, and transportation. After years of consecutive surpluses, Brazil's current account plunged into a deficit

in 2008; the deficit has persisted, and was around 2.4% of GDP in 2012. However, large capital inflows, especially foreign direct investment (FDI), have more than offset the current account deficit. In mid-2012, Brazil was the world's sixth largest recipient of FDI.

7. The review period was marked by a strengthening of Brazilian trade ties with Asia, in particular with China. Nevertheless, the European Union remained Brazil's major trade partner, as both an export destination and a source of imports.

Trade and investment policy framework

8. Brazil attaches particular importance to its participation in the multilateral trading system, considering it fundamental to attaining its development objectives based on sustainable and socially inclusive economic growth. The *Plano Brasil Maior* enunciates and develops a number of industrial, technological, and foreign trade policies to underpin its development objectives.

9. Brazil is one of the WTO's most active participants, individually, and within the BRICS group of leading emerging economies. Brazil remains committed to strengthening the multilateral trade system and to the successful conclusion of the Doha Development Agenda (DDA), where it has presented, independently and together with other delegations, a number of proposals related to, *inter alia*, agriculture, trade in services, intellectual property rights, and trade rules. Brazil did not ratify the Fourth Protocol on telecommunications and is undertaking domestic procedures to ratify fully the Fifth Protocol on financial services. From October 2008 to October 2012, Brazil initiated three complaints under the WTO dispute settlement mechanism.

10. One of Brazil's policy aims is to strengthen regional economic integration. Brazil is a founding member of the Southern Common Market (MERCOSUR), and as such it has subscribed to preferential trade agreements with the Plurinational State of Bolivia, Chile, Colombia, Cuba, Ecuador, Mexico, Peru, and the Bolivarian Republic of Venezuela. Together with its MERCOSUR partners, Brazil also has preferential trade agreements currently in force with India and Israel, and three further agreements pending entry into force. Additionally, it has bilateral preferential agreements under LAIA with Guyana and Suriname. The European Union and MERCOSUR have re-launched negotiations in order to create a Bi-regional Free Trade Agreement.

11. Foreign investors in Brazil receive the same legal treatment as local investors in most economic sectors, following Constitutional amendments passed in 1995, which prohibit all forms of discrimination not explicitly foreseen in the law. However, foreign investment is restricted in health, mass media, and telecommunications, aerospace industry, rural property, maritime and air transport. The Federal Government seeks to promote private investment, particularly in transport infrastructure, energy, aeronautics, and other technology-intensive sectors, in order to overcome production bottlenecks, spur competitiveness, and uphold economic growth. The investment incentives offered to investors generally consist of tax exemptions and low-cost financing; normally, they do not distinguish between domestic and foreign investors.

Trade policy by measure

12. During the review period, Brazil took further steps to simplify and modernize its customs procedures. Import declarations are processed according to a risk-assessment method that provides for four channels. Over 85% of all import declarations are processed through the green channel. This percentage has increased since the last Review of Brazil.

13. Brazil's 2012 applied MFN customs tariff is entirely *ad valorem*, with rates ranging from zero to 55%. The simple average MFN tariff applied in 2012 was 11.7%, up from 11.5% in 2008. Some 8% of tariff lines were duty free in 2012, about the same percentage as in 2008. The average applied tariff for the manufacturing sector is 12%, higher than for agriculture. Brazil bound its entire tariff during the Uruguay Round at rates between 0% and 55% for agricultural products (WTO definition), and from 0% to 35% for non-agricultural products. Besides customs tariffs, imports are subject to a number of internal taxes. The application of these taxes varies depending on the product type, the competent sub-federal authority, and the importer's tax regime status, thus rendering Brazil's tax system complex.

14. Brazil maintains a system of automatic and non-automatic licences for imports of various products, regardless of their origin. Licences are non-transferrable and valid for 90 days. Non-automatic import licences are issued by some 16 agencies; the statutory timeframe for the processing of requests is 60 calendar days. The importation of some products may require licences from more than one entity. Refusals to grant a licence may be appealed before the relevant licensing agency. Some agencies may levy a fee for the import licence; according to the authorities, these fees reflect the cost of services rendered. Non-automatic licensing is also used in the administration of duty and tax concessions to benefit from such concessions, imports must undergo a "similarity exam", to ascertain that no equivalent domestic production exists.

15. Brazil is a significant user of trade remedies, particularly anti-dumping (AD) measures: during the review period, the number of new cases varied significantly from year to year, but with the exception of 2009 was above historical trends. In the first nine months of 2012, Brazil initiated 47 new investigations, exceeding the previous record of 40 in 2010. There were 83 anti-dumping measures in place in mid-2012, up from 63 reported in the last review, for October 2008. During the review period Brazil took a number of steps to strengthen trade defence. These included implementing changes to certain practices, such as anti-circumvention, and to the regulatory framework, for instance, passing new legislation providing for more stringent application of provisional measures.

16. Most technical regulations enacted in Brazil are based on international standards; whenever this is not the case, they are based on performance criteria. A period of six months is typically allowed between the publication of the measure and its entry into force. Proposed technical regulations considered to have trade effects are forwarded to the WTO for Members' comments. The recommended period for review and revision of technical regulations is four years. Brazil's sanitary and phytosanitary system is based on risk analysis that generally takes account of import origin and product characteristics. The conclusions of pest risk analyses are notified, as a draft for comments, to the pertinent authority of the country of origin and to the WTO. The importation of any product subject to sanitary and phytosanitary controls requires a non-automatic licence.

17. Brazilian law provides for the application of an export tax of 30%, which may be decreased or increased to up to 150% in order to address foreign exchange or trade policy objectives. In practice, the export tax is zero-rated, except on raw hides and skins, cigarettes, and arms and ammunition. During the review period, the rates applied on these products remained unchanged.

18. Brazil maintains a policy of export promotion through a number of programmes to enhance the competitiveness of export-oriented companies, in particular small-scale enterprises, and increase exports. Since the last Review of Brazil, several export support programmes have been modified or expanded, and some new ones have been introduced. A number of finance, insurance, and guarantee schemes offering attractive interest rates and other conditions are available to exporters. Among the main instruments are the Export Financing Programme (PROEX) and the export credit schemes under the BNDES-EXIM programme. The latter are geared to promote exports with local value added, and the stated conditions for participation often include domestic-content/production thresholds. According to the Brazilian authorities these conditions only apply for securing automatic eligibility for financing.

19. Brazil's competition legislation provides for a rule of reason approach in the consideration of all concentrations and anti-competitive practices. Brazil's competition regime was overhauled during the period under review and a new competition policy entered into force in May 2012. The main changes comprise a significant institutional restructuring, a switch from *ex post* to *ex ante* control of mergers and acquisitions, and amendments regarding the scope of prohibited conduct and sanctions. In the new Law, the non-exhaustive list of potentially anti-competitive practices has been refined and expanded with a reference to the abusive use of intellectual property rights. The compulsory licensing of intellectual property rights has been included among both the possible remedies for conditional clearance of mergers and the possible penalties for anti-competitive conduct. The existing leniency programme was strengthened. The criteria for the notification of mergers were also modified with the introduction of a cumulative criterion based on the Brazilian turnover of two of the merging parties in the previous year. This is expected to reduce the number of transactions subject to notification. Changes were also made to the basis on which fines for infractions of competition law are to be calculated; as a result, the deterrence effect of these sanctions may be reduced.

20. Incentives and government assistance are available at the federal and sub-federal levels. Incentive programmes may be regional, aimed at developing research, or targeted at specific sectors. Specific programmes are in place for the automotive, information technology, aeronautics, and petroleum industries. The range of support measures includes: loans; tax incentives; financial contributions; long-term and equity financing; accelerated depreciation; guarantees; grants; and credit insurance. Incentives granted in the context of certain programmes promoting information technology and telecommunications are linked to Basic Productive Process (PPB) criteria, which are product-specific and stipulate which stages of the respective manufacturing process must be carried out in Brazil.

21. Brazil maintains a policy of free-trade zones for imports and exports, by which fiscal and other incentives are granted to promote production in, and the development and regional integration of, border areas in the north region. Eight free-trade zones have been created. The main FTZ is the Manaus Free Trade Zone (ZFM), in the Amazon region. Companies established in the ZFM are granted tax exemptions by the federal and state governments. One of the main requirements for the concession of these benefits is observing PPB criteria; there are also a number of environmental and social requirements. All imports to the ZFM require a licence. Incentives under the ZFM programme will be in force until 2023.

22. One of the Brazilian authorities' key concerns remains the availability and cost of credit. In this respect, the authorities consider that their policy of targeting credit is necessary to correct a market failure. To this end, Brazil maintains several official credit programmes aimed at different sectors and types of producers. The national development bank BNDES is the main institution providing credit or acting as a financial intermediary and guarantor. Credit takes the form of medium and long-term loans made available at attractive interest rates. The BNDES "equalizes" interest rates, that is, covers the difference between the agreed rate and the relevant market interest rate.

23. Brazil is not a party to the Agreement on Government Procurement. Brazil's procurement system is decentralized and tendering procedures are generally used. Brazil's Tendering Law allows for preferences for goods and services produced in Brazil, or produced or supplied by Brazilian companies or by companies that invest in technology development in Brazil, in the case of equivalent offers. Small businesses may benefit from preferential measures that may include quotas, preference margins of up to 10% as well as tendering procedures restricted to small companies. A revision to the Tendering Law introduced in 2010 significantly altered Brazil's procurement legislation to make the granting of preferences a permanent feature of the regime: preferential margins of up to 25% may be granted for goods and services produced nationally and in accordance with Brazilian technical standards.

24. Brazil's intellectual property legislation covers all the major aspects mentioned in the TRIPS Agreement. In some areas, including copyright, Brazil grants rights that exceed the minimum terms laid down in the Agreement. There have been no substantial legislative modifications on intellectual property matters since 2009, except those that introduced the requirements for the registration of layout designs of integrated circuits and computer software. In April 2012, Brazil started a Pilot Programme of Priority Examination of "Green Patents", which fast-tracks patent applications filed in Brazil via the Paris Convention for the Protection of Industrial Property by either residents or non-residents, with application date starting from 2 January 2011.

Trade policy by sector

25. Brazil's agriculture sector plays an important role in its economy, particularly as a source of exports and employment. During the review period, the agri-business sector played a crucial role in sustaining Brazil's trade surplus. Agri-food exports reached a record level of US\$95.8 billion in 2012. Using the WTO definition of agriculture, the average MFN tariff in 2012 was 10.1%. Groups of products facing a tariff higher than the average include: dairy products (18.6%), sugar and confectionary (16.7%), beverages, spirits and tobacco (16.5%), and coffee and tea (13.7%), while imports of cotton (7.4%) oil seeds, fats and oils and their products (7.8%), and animals and animal products (7.9%), are subject to tariffs lower than the average.

26. Brazil's level of support to its agricultural producers is relatively low compared with other countries, but it maintains several domestic support measures, including preferential credit lines

and price support mechanisms. During the review period, new programmes were created to finance farmers, including the Medium-Scale Agricultural Producer Support Programme (PRONAMP) and the Low Carbon Agriculture Programme (Programa ABC). Official rural credit disbursements continued to rise, as well as key support programmes such as PRONAF. Brazil maintains a policy of mandatory bank reserve requirements to be allocated to finance agricultural activities. Since November 2008, the required rate of mandatory resources has been increased twice, bringing it to 34% of demand deposits from 25%. The provision of credit at fixed interest rates is the main policy instrument for the support of family farming in Brazil.

27. Brazil operates several programmes based on minimum price guarantees, which support the production of a wide range of commodities, including corn, rice, cotton, and wheat. These schemes account for more than half of transfers granted to farmers. Among them, the Policy of Guaranteed Minimum Prices (PGPM) remains an important pillar of Brazilian agricultural policy. The PGPM is aimed at supporting producers when market prices fall to levels deemed harmful to their income stability. The policy is implemented through two types of schemes: commercialization instruments, which may involve the direct purchase of products, and credit lines to finance the storage of goods covered by minimum price guarantees.

28. Brazil has a highly diversified manufacturing sector. During the review years, however, the sector lost dynamism due to an erosion of competitiveness, which translated into rising imports and slow-growing exports. Imports of manufactured products have been increasing their market share and capturing a significant part of the growth in consumption, and the manufacturing sector's trade balance registered a record deficit of US\$81.3 billion in 2012. In an effort to reverse this situation, the Government has strengthened the importance given to industrial policy, partly through two comprehensive nationwide plans, the Productive Development Policy (2008-10) and the *Plano Brasil Maior* (2011-14). The instruments used to promote the manufacturing sector under these plans include credit lines under favourable conditions, public procurement, fiscal incentives, and border measures.

29. Under the *Plano Brasil Maior*, the Government adopted significant fiscal incentives to help the domestic auto industry recover from the effects of the global crisis. Between December 2011 and December 2012, tax breaks were offered for companies producing vehicles with more than 65% of regional content. As From 1 January 2013, the automotive sector's fiscal regime was superseded by the INOVAR-AUTO programme. Companies eligible for the programme may benefit from an Industrial Products Tax reduction of up to 30%. In order to qualify for the programme, vehicle manufacturers must comply with energy-efficiency requirements and with certain domestic manufacturing or investment conditions.

30. Brazil's regulatory framework for oil and gas exploration and production (E&P) was amended in 2010 with a view to allowing for increased State participation. Exclusive rights were granted to state-controlled PETROBRAS in designated geographic blocks, and a production-sharing regime was introduced for strategic blocks and blocks located in the "pre-salt" polygon. Oil and gas E&P activities remain subject to local-content conditions. In 2009, Brazil adopted a new Gas Law introducing tendering for concessions in the downstream segment of the natural gas subsector.

31. Brazil is nearly self-sufficient in primary energy production; petroleum production has been expanding steadily, posting a 20.5% increase from 2007 to 2011. Notwithstanding the growing domestic demand, Brazil became a net exporter of crude oil for the first time in 2007 and has significantly expanded its oil trade surplus since then. Nevertheless, Brazil's dependency on imports of refined petroleum products has increased due to insufficient refining capacity. Brazil relies on substantial imports of natural gas, although domestic production increased by 41% between 2007 and 2012. PETROBRAS has maintained its dominant position in the production, refining, distribution, and retail market of petroleum and petroleum products, accounting for some 90% of the country's total oil production and 98% of total refining capacity. Brazil remains the world's second-largest producer of ethanol. In 2012, the BNDES launched two new programmes offering credit at attractive conditions to the ethanol sector.

32. Private-sector participation in the electricity market has been expanding through Government auctions and concessions, but state-owned companies still play an important role. The regulatory framework for the electricity sector was revamped in early 2013, with the passage of a new law, which now regulates the concessions of generation, transmission, and distribution of electricity. The new law extended the regime of concessions for electricity generation and the

system of quotas, only once, for a period of up to 30 years. The extension is contingent upon the generator's acceptance of certain conditions, including the remuneration tariffs to be applied, a guaranteed supply quota allocation, and quality standards. Quotas will be allocated through contracts.

33. The Brazilian financial system weathered the global economic crisis well, thanks to an adequate policy response and built-in financial buffers. Brazil is committed to implementing Basel III gradually and, since Brazilian current capital requirements exceed those set by Basel III, its adoption is not expected to imply a significant capitalization effort for the financial system. The establishment of new foreign financial institutions requires approval by Presidential Decree. In practice, the establishment of new foreign financial institutions has been allowed, and 17% of assets are in the hands of foreign banks.

34. Acknowledging that the high cost and scarce access to credits was a systemic issue of the Brazilian economy, the authorities have continued to promote an increase in the degree of financial intermediation and a reduction in interest rates spreads. They have promoted financial inclusion by, *inter alia*, improving distribution channels, increasing transparency, and adapting the regulation of financial services for low income customers. This has resulted in an increase of the degree of financial intermediation: the credit to GDP ratio rose from 25% in 2003 to more than 50% in 2012. The role of state banks in medium- and long-term financing continues to be very important, directly or through interest rate equalization initiatives. The decline in interest rate spreads has played an important role in increasing financial deepening. The average interest rate spread, considering the credit portfolio as a whole, dropped by almost 10 percentage points during the period under review. However, although average interest rate spreads were lowered, at over 24 percentage points in 2012, they remain wide.

35. Recent changes to the telecommunications legislation have allowed telecommunication operators more flexibility to offer converged services in line with the international trend and the development of new technologies. The sector regulator, ANATEL, controls the prices of fixed telephony services provided under a concession (public regime). It also sets interconnection prices for services provided under the public regime, while interconnection prices for services under the private regime are freely negotiated, but must be notified to ANATEL. There are no restrictions on foreign ownership in telecommunication companies. A cap on foreign investment in cable TV services was removed in 2011. In June 2012, ANATEL auctioned radio spectrum for commercial mobile services, requiring winning bidders to commit to purchase goods, equipment, systems, and data networks with national technology, and to ensure that, after five years, 50% of the equipment, telecommunications systems, and networks would be produced locally and 20% with technology developed in Brazil.

36. Concessions for the provision of Brazilian-based regular air transport services are granted only to Brazilian companies with headquarters in Brazil, managed exclusively by Brazilians, and in which 80% of voting rights are in Brazilian hands. Domestic public air transport services are reserved to Brazilian companies. During the review period, the Brazilian Government granted concessions for the operation of three of the main international airports, and two more are in the process of receiving such concessions. As regards maritime transport, cargos of government entities and enterprises, and goods benefitting from fiscal or credit programmes must be transported by Brazilian-flag vessels, unless a waiver is granted on a reciprocity basis. Exports of crude oil extracted in Brazil must also be transported in Brazilian-flag vessels. Cabotage is reserved for Brazilian-flag vessels operated by Brazilian shipping companies, unless this restriction is waived under certain conditions. A federal tax (AFRMM) is levied on import cargos; the resources are used to provide credits at attractive rates to Brazilian shipping companies and Brazilian shipbuilders. No public ports are operated under private concessions.

1 ECONOMIC ENVIRONMENT

1.1 Overview

1.1. During most of the review period, the Brazilian economy recorded a strong performance, with real GDP growth averaging 3.6% a year in 2007-12, albeit with important fluctuations. Growth was driven primarily by vigorous domestic demand and favorable external conditions in the form of strong demand and high international prices for Brazilian commodities, which boosted the country's terms of trade. At the same time, growth was supported by sound macroeconomic policies, focused on achieving a primary fiscal surplus and strict inflation targets, and a floating exchange rate regime, all of which contributed to consolidate macroeconomic stability. Helped by an appreciating currency, and despite strong domestic demand growth, inflation has been kept under control, within the band of fluctuation allowed by the inflation targeting-policy.

1.2. Sustained economic growth over almost a decade, aided by higher minimum wages and social programmes, allowed Brazil to make important progress towards reducing poverty and income inequality, while employment figures improved. Nevertheless, between the second half of 2011 and mid-2012, growth decelerated significantly. The loss of dynamism can be attributed partly to the appreciation of the Brazilian currency and the global economic slowdown, both of which resulted in reduced demand for Brazilian exports. But it also reflects long-standing structural problems affecting the Brazilian economy's competitiveness (inadequate infrastructure, a very high tax burden, highly regulated labour markets, and overall relatively high production costs).

1.3. In a bid to boost competitiveness, the Government adopted measures aimed at removing infrastructure bottlenecks through concessions and private-public sector partnerships, lowered energy charges, and reduced the tax burden on certain manufacturing industries. However, to support sectors affected by a loss of competitiveness, the Government also took measures that may have an impact on trade, including increasing tariffs temporarily, using preferential margins for domestic goods and services in government procurement, and increasing export credits. In mid-2011 the Central Bank initiated an easing monetary cycle that lowered the policy interest rate (SELIC) to record-low levels by Brazilian standards, aided by the disinflationary scenario in the global economy. Also, the rate and scope of the Financial Transaction Tax (IOF) was modified on several occasions to help smoothen capital flows. On the fiscal side, the Government was able to provide fiscal stimulus while maintaining a primary surplus throughout the review period.

1.4. Brazil's exports increased at an average rate of 8.6% between 2007 and 2012, reflecting strong external demand for its commodities. However, import growth outpaced exports, expanding at an annual rate of 13.1% between 2007 and 2012 and causing the trade surplus to shrink. While Brazil strengthened its position as a net exporter of agricultural and mining products during the period, its trade deficit in the manufacturing sector increased sharply, with imports of manufactured products growing at an average annual rate of 16.2%, and accounting for 73.1% of total imports in 2012. Brazil's structural deficit in the services trade balance also widened during the review period, largely on account of higher payments for leasing capital equipment, travel and transportation. After years of consecutive surpluses, Brazil's current account plunged into a deficit in 2008; the deficit has persisted, and was at around 2.4% of GDP in 2012. However, large capital inflows, especially foreign direct investment (FDI), have more than offset the current account deficit. In mid-2012, Brazil was the world's sixth largest recipient of FDI. The review period was marked by a strengthening of Brazilian trade ties with Asia, in particular with China. Nevertheless, the European Union remained Brazil's major trade partner, as both an export destination and a source of imports.

1.2 Output and Employment

1.5. The Brazilian economy continued to grow rapidly in 2007-11, at an annual average rate of 4.2% (Table 1.1). However, growth was slower than during Brazil's previous review period and was marked by strong fluctuations. In 2009, the global economic crisis led Brazil's GDP to decline by 0.3%, interrupting a long period of sustained growth. The economy recovered substantially in 2010, thanks partly to a mix of macroeconomic policies combining credit expansion and fiscal incentives. Growth has nevertheless slowed down significantly since 2011; in 2012, real GDP growth was only 0.9%, bringing the average growth for 2007-12 to 3.6%.

1.6. Brazil became the world's sixth largest economy in 2011 in terms of nominal GDP, which reached US\$2,475 billion; GDP per capita was at US\$12,696 (Table 1.1), but declined somewhat in 2012, to US\$11,462. According to the World Bank's Atlas method, Brazil's Gross National Income (GNI) per capita, in terms of purchasing power parity, rose to US\$11,500 in 2011 (an increase of 20% with respect to 2007), ranking it as an upper-middle income country.¹ Brazil's growth strategy has been accompanied by policies aimed at improving income distribution, which have resulted in significant improvements; poverty has been reduced and inequality levels (as measured by the Gini Index) dropped to a 50-year low of 0.519 in 2011.² Nonetheless, its social indicators remain relatively low; Brazil has a Human Development Index of 0.718, which is below the regional average for Latin America and the Caribbean (0.731).³ According to the World Bank, 10.8% of the Brazilian population still lived on less than US\$2 a day (at 2005 international prices) in 2009.⁴ Addressing deficiencies in the educational system remains a significant challenge for improving Brazil's development indicators and economic competitiveness.⁵

Table 1.1 Basic economic indicators, 2007-12

	2007	2008	2009	2010	2011	2012
Gross domestic product (GDP)						
Current GDP (R\$ billion)	2,661	3,032	3,239	3,770	4,143	4,403
Current GDP (US\$ billion)	1,367	1,651	1,626	2,144	2,475	2,253
GDP per capita (US\$)	7,283	8,707	8,490	11,094	12,696	11,462
Real GDP, growth rate (%)	6.1	5.2	-0.3	7.5	2.7	0.9
By type of expenditure (as percentage of current GDP)						
Total consumption	80.2	79.1	82.3	80.8	81.0	83.8
Private consumption	59.9	58.9	61.1	59.6	60.3	62.3
Public consumption	20.3	20.2	21.2	21.1	20.7	21.5
Gross fixed capital formation	17.4	19.1	18.1	19.5	19.3	18.1
Variation in inventory	0.9	1.6	-0.2	0.8	0.4	0.5
Exports of goods and services	13.4	13.7	11.0	10.9	11.9	12.6
Imports of goods and services	11.8	13.5	11.1	11.9	12.6	14.0
By type of expenditure (percentage growth, based on GDP at constant 1995 prices)						
Total consumption	5.8	5.1	4.1	6.3	3.6	3.1
Private consumption	6.1	5.7	4.4	6.9	4.1	3.1
Public consumption	5.1	3.2	3.1	4.2	1.9	3.2
Gross fixed capital formation	13.9	13.6	-6.7	21.3	4.7	-4.0
Exports of goods and services	6.2	0.5	-9.1	11.5	4.5	0.5
Imports of goods and services	19.9	15.4	-7.6	35.8	9.7	0.2
By sector of economic activity (% of current GDP)						
Agriculture	4.8	5.0	4.9	4.5	4.7	4.5
Industry	23.9	23.7	23.1	24.0	23.5	22.3
Mining and quarrying	2.0	2.8	1.6	2.5	3.5	3.6
Transformation	14.6	14.2	14.4	13.9	12.4	11.3
Construction	4.2	4.2	4.5	4.8	4.9	4.8
Electricity, gas, water, sewage and urban cleaning	3.1	2.7	2.7	2.8	2.6	2.6
Services	57.3	56.3	58.3	57.0	57.1	58.2
Distributive trade	10.4	10.7	10.8	10.7	10.8	10.8
Transportation, storage, and courier	4.1	4.3	4.1	4.3	4.4	4.5
Information services	3.3	3.2	3.1	2.8	2.6	2.4
Financial intermediation and insurance	6.6	5.8	6.2	6.4	6.3	6.0
Other services	12.2	12.0	12.7	12.3	12.4	13.2
Real estate services	7.3	6.9	7.2	6.7	6.7	6.9
Public administration, education, and public health	13.3	13.4	14.1	13.9	13.9	14.4
Tax	14.0	14.9	13.7	14.4	14.8	15.0
Other economic indicators (% of current GDP)						
Gross national savings	18.4	19.0	16.3	18.0	18.5	14.8
Private sector	15.2	17.6	17.1	18.7	18.8	..
Public sector	3.2	1.4	-0.8	-0.7	-0.3	..
Gross domestic investment	18.3	20.7	17.8	20.2	20.6	17.6
Private sector	16.6	18.5	15.7	17.9	..	..
Public sector	1.7	2.2	2.1	2.3	..	..
Employment						
Level of activity (2002=100) ^a	122.1	126.9	117.7	128.0	128.9	123.1
Urban unemployment rate (% annual) ^b	9.3	7.9	8.1	6.7	6.0	5.5

¹ World Bank online information. Viewed at: <http://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD>.

² World Bank online information. Viewed at: <http://www.worldbank.org/en/country/brazil/overview>.

³ UNDP online information. Viewed at: <http://hdrstats.undp.org/en/countries/profiles/BRA.html>.

⁴ World Bank online information. Viewed at: <http://data.worldbank.org/indicator/SI.POV.2DAY/countries/BR?display=graph>.

⁵ WEF (2012).

	2007	2008	2009	2010	2011	2012
Structure of national employment (% of occupied population)						
Agriculture	18.3	16.7	17.1	..	15.7	..
Industry	15.3	16.2	14.7	..	13.4	..
Industry of transformation activities	14.4	15.4	13.8	..	12.6	..
Other industrial activities	0.8	0.8	0.9	..	0.8	..
Construction	6.7	7.4	7.4	..	8.4	..
Services	52.2	51.4	52.9	..	53.7	..
Wholesale trade and repairation	18.0	17.3	17.7	..	17.8	..
Accommodation and alimentation supply	3.7	3.8	3.9	..	4.9	..
Transport and communication	4.8	5.1	4.8	..	5.5	..
Public administration	5.0	4.5	5.1	..	5.4	..
Education, health and social services	9.2	9.2	9.4	..	9.2	..
Domestic services	7.4	7.1	7.8	..	7.1	..
Other collective, social and personal services	4.1	4.4	4.2	..	3.8	..
Other activities	7.5	8.3	7.9	..	8.8	..
Pro memoria						
Industrial production (% change)	6.0	3.1	-7.4	10.5	0.4	-2.6
Overall real wage in the manufacturing industry (2002=100) ^c	127.1	133.7	132.2	139.5	142.2	139.3 ^a
Economically active population* / Occupied population** (million)	97.9*	99.5*	101.1*/ 92.7**	..	100.73/ 93.5**	..
Population (million)	187.6	189.6	191.5	193.3	194.9	196.5

.. Not available.

- a The level of activity indicator mainly comprises the level of capacity utilization, the number of hours worked in production by employee, and the real industrial sales on the reference and on the prior month.
- b The unemployment rate covers the metropolitan regions of Recife, Salvador, Belo Horizonte, Rio de Janeiro, São Paulo, and Porto Alegre.
- c Deflated by IPC-Fipe for São Paulo and by INPC for CNI (National Confederation of Industry).

Source: Central Bank of Brazil; IBGE; and IMF (2012), Brazil 2012 Article IV Consultation - Staff Report, Country Report No. 12/191. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2012/cr12191.pdf>.

1.7. Private consumption remained strong throughout the review period, despite the economic crisis. It grew faster than GDP, thanks to higher real wages, an increase in the working population, a decline in unemployment, and facilitated access to credit. Brazil maintains a policy of increasing minimum wage requirements periodically, with a view to raising household income, reducing inequality, and boosting domestic demand.⁶ This raised the minimum wage by 21.7% in real terms during 2007-12.⁷ Supported by falling interest rates, credit has continued to expand at a strong pace, reaching 52.6% of GDP in November 2012, although this level remains low by international standards. Consumer credit has grown particularly fast, accounting for 46% of total credit. However, this has led to a high accumulation of debt in the household sector, at over 40% of disposable income.⁸

1.8. Gross national savings accounted for 18.5% of GDP in 2011, but declined to 14.8% in 2012 (Table 1.1). The significant growth of private sector savings in 2007-11 was offset by a fall in public sector savings, which have shown negative levels since 2009. Brazil's relatively low national savings is reflected in its investment figures, which remain modest when compared to other emerging economies. As of 2012, gross domestic investment accounted for 17.6% of GDP, with the private sector contributing most of it. As highlighted by the IMF, a key policy challenge facing Brazil is rebalancing domestic demand from consumption to savings and investment to foster growth and external stability.⁹

1.9. Despite the fluctuations in the economy during the review period, employment figures improved. The unemployment rate for the six main metropolitan regions fell to 5.5% in 2012, down from 9% in 2007, although this does not provide a comprehensive picture, since rural areas and the poorest urban areas of the country are excluded from the measurement (Table 1.1). Data from the PNAD (*Pesquisa Nacional por Amostra de Domicílios*), the biennial survey conducted by the national statistical bureau IBGE, points to a decline in unemployment at the national level, from 8.2% in 2009 to 6.7% in 2011.¹⁰ Thanks to a more inclusive growth pattern and a number of

⁶ Law No. 12,282/11 defines the parameters for real minimum wage gains for 2011-15.

⁷ Ministry of Finance (2012); and information provided by the Brazilian authorities.

⁸ IMF (2012a).

⁹ IMF (2012b).

¹⁰ IBGE online information. Viewed at: http://www.ibge.gov.br/home/presidencia/noticias/noticia_visualiza.php?id_noticia=2222&id_pagina=1.

policy interventions, Brazil has made progress in the formalization of its labour force; the number of formal jobs increased by 4.5% in 2008-09, even as the crisis hit.¹¹ Nevertheless, improvements in the labour market have not been accompanied by major gains in productivity, which increased at an average of just 0.9% a year in 2000-09. Some sectors even experienced declines, such as manufacturing, where productivity fell by an average of 0.9% a year in the same period.¹²

1.10. Brazilian imports and exports of goods and services grew at annual average rates of 14% and 8.9%, respectively, during 2007-12. Although exports and imports of goods and services decreased in 2009, reflecting a general decline in global trade, they recovered substantially in 2010 (Table 1.1). Since 2009, imports of goods and services have made up an increasingly larger share of GDP than exports. Imports in the manufacturing sector have increased particularly strongly in recent years (section 1.7).

1.11. Changes in the sectoral composition of the Brazilian economy were marked by a decrease in the share of the manufacturing (transformation) sector in total GDP, which fell 3.3 percentage points between 2007 and 2012 to 11.3% (Table 1.1). The industrial sector as a whole accounts for 22.3% of GDP. The contribution of agriculture has decreased to 4.5% of GDP. Services continue to be the largest sector, accounting for 58.2% of total GDP.

1.12. Despite its good performance during most of the review period and strong resilience to the global economic crisis, the Brazilian economy faces a number of structural issues that would need to be addressed to sustain higher growth levels. Import constraints in some sectors, in particular manufacturing, have led to losses in competitiveness both domestically and abroad. Needed reforms include improving Brazil's tax regime, increasing the efficiency of public spending, reducing further the cost of credit, deepening trade liberalization, and addressing the several barriers that affect the competitiveness of the Brazilian economy (section 1.6).

1.3 Fiscal Policy

1.13. Brazil's fiscal policy has its basis in the Fiscal Responsibility Law of 2000, which establishes rules for fiscal management applicable to all levels of Government.¹³ Over the past decade, the Government has made important progress in achieving fiscal consolidation, which remains one of the pillars of its economic policy. During the period under review, Brazil continued to post primary surpluses at all government levels and to reduce its net public debt. However, there remains a need for further reforms to improve the efficiency of public spending and the tax system.

1.14. The Government pursues fiscal discipline by setting annual targets for the primary surplus at all government levels. During the review period, the Government set primary surplus targets for the consolidated non-financial public sector at an average of 3% of GDP, lower than those set in 2003-07 (averaging 4.25% of GDP).¹⁴ These surpluses are considered to be consistent with a decreasing net debt/GDP ratio. The target for 2012 was set at R\$139.8 billion, equivalent to approximately 3.1% of GDP. However, in November 2012 the Government announced that it would not meet the annual target, due to lower revenues and tax reductions, and it would hence use the option of deducting from the full target the expenses for the Growth Acceleration Programme (PAC); it added that the decrease in the primary surplus would not exceed R\$42 billion, and that public debt would continue to fall.¹⁵ The lower primary surplus targets set in recent years have been associated with the need to grant tax breaks to help stimulate the economy.

1.15. As a result of economic growth and improvements in tax collection, Central Government total revenue increased by 71.6% in nominal terms during 2007-12, reaching an all-time high of almost R\$1.1 trillion in 2012. As a share of GDP, however, it increased from 23.3% in 2007

¹¹ OECD (2011).

¹² IPEA (2012).

¹³ Supplementary Law No. 101 of 4 May 2000.

¹⁴ WTO (2009).

¹⁵ Agencia Brasil online information. Viewed at: <http://agenciabrasil.ebc.com.br/noticia/2012-11-06/governo-nao-deve-cumprir-meta-cheia-do-superavit-primario-admite-mantega>.

to 24.1% in 2012 (Table 1.2). In 2009, the Central Government lost 4.1% (in nominal terms) in tax revenues, due to slower economic activity and the adoption of tax breaks for some sectors.¹⁶

Table 1.2 Public sector fiscal balance, 2007-12

(Percentage of GDP, unless otherwise specified)

	2007	2008	2009	2010	2011	2012
A. Central Government						
Total revenue	23.3	23.6	22.8	24.4	23.9	24.1
Treasury revenue	17.9	18.2	17.1	18.7	17.9	17.8
Gross revenue	18.4	18.6	17.6	19.1	18.3	18.2
- Taxes	8.1	8.9	8.0	7.9	8.6	8.5
Income tax (IR)	6.0	6.3	5.9	5.5	6.0	6.0
Tax on Industrial Products (IPI)	1.3	1.3	0.9	1.1	1.1	1.0
Financial Transaction Tax (IOF)	0.3	0.7	0.6	0.7	0.8	0.7
Import tax (II)	0.5	0.6	0.5	0.6	0.6	0.7
Other	0.0	0.0	0.0	0.0	0.0	0.0
- Social contributions	8.2	7.1	6.6	6.6	6.9	6.9
Contribution to Social Security Financing (COFINS)	3.9	4.0	3.6	3.7	3.8	4.0
Other contributions (CSLL, PIS/Pasep)	2.3	2.5	2.3	2.3	2.4	2.4
- Other revenue	2.2	2.6	3.1	4.6	2.8	2.8
Restitutions	-0.5	-0.4	-0.5	-0.4	-0.4	-0.4
Fiscal incentives	0.0	0.0	0.0	0.0	0.0	0.0
Social security revenue	5.3	5.4	5.6	5.6	5.9	6.3
Central bank revenue	0.0	0.1	0.1	0.1	0.1	0.1
Transfers to states and municipalities	4.0	4.4	3.9	3.7	4.2	4.1
Total net revenue	19.3	19.2	18.9	20.7	19.7	20.0
Total expenditure	17.1	16.4	17.7	18.6	17.5	18.2
Payroll	4.4	4.3	4.7	4.4	4.3	4.2
Social security benefit	7.0	6.6	6.9	6.8	6.8	7.2
Current and capital expenditures	5.7	5.4	5.9	7.3	6.2	6.7
Workers' Assistance Fund (FAT)	0.7	0.7	0.8	0.8	0.8	0.9
Economic subsidies and grants ^a	0.4	0.2	0.2	0.2	0.3	0.3
Assistance benefits (LOAS/RMV) ^b	0.5	0.5	0.6	0.6	0.6	0.7
Petrobras capitalization	0.0	0.0	0.0	1.1	0.0	0.0
Other current and capital expenditures	4.1	4.0	4.3	4.5	4.5	4.9
Transfers from treasury to central bank	0.0	0.0	0.0	0.0	0.1	0.1
Central bank expenditures	0.1	0.1	0.1	0.1	0.1	0.1
Central Government primary balance	2.2	2.4	1.3	2.1	2.2	2.0
Nominal interest	-4.5	-3.2	-4.6	-3.3	-4.4	-3.3
Central government overall balance	-2.2	-0.8	-3.3	-1.2	-2.1	-1.4
B. General Government						
General Government primary balance ^c	3.4	3.4	2.0	2.7	3.1	2.5
General Government overall balance^c	-2.3	-2.4	-3.3	-2.9	-3.1	-3.0
C. Consolidated public sector						
Consolidated public sector primary balance (including public enterprises)	3.3	3.4	2.0	2.7	3.1	2.0
Consolidated public sector overall balance (including public enterprises)	-2.8	-2.0	-3.3	-2.5	-2.6	-2.5
Memorandum items						
Gross general government debt (R\$ billion)	1,543	1,741	1,973	2,012	2,244	2,583
Gross general government debt (% of GDP)	58.0	57.4	60.9	53.4	54.2	58.6
Net public debt (% of GDP)	43.2	38.5	42.1	39.1	36.4	35.1
Net general government debt (% of GDP)	44.4	38.8	42.5	39.7	37.1	35.8
Net Bacen debt (% of GDP)	0.3	-1.1	-1.2	-1.2	-1.3	-1.4

a Includes outlays on grants to regional funds and, as of 2005, spending on the restructuring of liabilities.

b Organic Social Assistance Law (LOAS) and Lifetime Monthly Income (RMV) are assistance payments paid by the Central Government.

c Does not include the operations of the Central Bank or state-owned enterprises.

Source: Central Bank of Brazil and Treasury of Brazil.

1.16. In the face of falling tax revenues and the need to provide fiscal stimulus to counter the economic crisis, the consolidated public sector's primary surplus fell to 2% of GDP in 2009, from 3.4% in 2008. The surplus has increased in recent years, but figures remain lower than in 2003-08. Nonetheless, the surpluses posted during the review period allowed a substantial reduction in the net public debt GDP ratio, which fell from 43.2% in 2007 to 35.1% in 2012 (Table 1.2).

1.17. The Central Government's total expenditure increased to 18.2% of GDP during the review period. Social security benefits and the payroll represented 7.2% and 4.2% of GDP, respectively.

¹⁶ Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/?INDECO>.

At the same time, investments by the Central Government accounted for only 1.4% of GDP in 2012.¹⁷ According to the IMF, Brazil could improve the structure of public spending by continuing with pension reform and reducing budget rigidities, which would open fiscal space for increased investments.¹⁸ In the context of this Review, the authorities noted that, in this respect, it is important to take into account the reform in the pension system of federal public servants enacted by Law No. 12,618/12.

1.18. After payment of interest on its public debt, Brazil traditionally posts a deficit in its overall public sector balance. This deficit increased to 3.3% of GDP in 2009, but fell to 2.6% in 2011 and to 2.5% in 2012. The Central Government is responsible for a significant part of this figure, with a deficit of 2.1% of GDP in 2011, and 1.4% of GDP in 2012. Public enterprises generally post an overall surplus, which helps counter the general Government's traditional deficit.

1.19. As underlined in Brazil's last Review, the authorities consider tax reform a priority and have acknowledged a number of points for improvement, including: reducing compliance costs and tax complexity; improving tax neutrality; eliminating distortions and fiscal competition among states; abolishing cumulative taxes; unifying the levels of different states' valued-added taxation (Tax on the Circulation of Goods and Services (ICMS)); and reducing excessive taxation on payrolls.

1.20. The Government has taken steps to address some tax reform issues in recent years. In 2011, it reduced taxation on payroll for some sectors by replacing a social security charge levied on payroll by a lower charge applied to corporate revenues.¹⁹ It has also announced that from 2013, the valued-added tax on imported goods applied at the interstate level will be harmonized nationally and reduced to 4%, down from a 7-12% range depending on the State of destination (Chapter 3.2.4).²⁰ Nevertheless, more comprehensive reforms are needed to streamline Brazil's highly complex tax system, which remains an important barrier to Brazilian firms' competitiveness (section 1.6).

1.21. Fiscal policy has been used as an instrument to assist sectors affected by competition from imports and the global economic crisis. During the review period, Brazil granted reductions of the Tax on Industrial Products (IPI) on a wide range of products, including automobiles, domestic appliances, and capital goods. The Government announced the extension of some IPI reductions until December 2012²¹, as well as the creation of a new fiscal regime for the automotive sector (INOVAR-AUTO), for the period January 2013 to December 2017 (Chapter 4.3).²²

1.4 Monetary and Exchange Rate Policy

1.22. Responsibility for the formulation and conduct of monetary policy lies with the National Monetary Council (CMN), which sets the inflation target and the monetary policy goal, and is responsible for coordinating monetary and fiscal policies. The Central Bank of Brazil (BCB), an autonomous federal institution under the organizational chart of the Ministry of Finance, is in charge of monetary policy implementation, executing CMN policies by publishing its Resolutions.

1.23. The BCB's Monetary Policy Committee (COPOM), created in 1996, is responsible for setting the stance of monetary policy, and establishing the target interest rate for the overnight inter-bank loans collateralized by government bonds (*Sistema Especial de Liquidação e Custódia* or SELIC), the BCB's principal monetary policy instrument.²³ The COPOM's monetary policy decisions have as their main objective the achievement of the inflation targets set by the CMN.²⁴ After each

¹⁷ Ministry of Finance (2012); and information provided by the Brazilian authorities.

¹⁸ IMF (2012a).

¹⁹ Sectors affected by these tax change include textiles, shipping, buses, capital goods, and electric materials (Ministry of Finance online information. Viewed at: <http://www.fazenda.gov.br/portugues/documentos/2012/cartilhadesoneracao.pdf>).

²⁰ Federal Senate Resolution 13 of 26 April 2012.

²¹ Federal Government online information. Viewed at: <http://www2.planalto.gov.br/imprensa/noticias-de-governo/governo-prorroga-reducao-do-ipi-para-moveis-material-de-construcao-linha-branca-e-automoveis>.

²² Decree No. 7.819 of 3 October 2012.

²³ The COPOM is composed of the members of the Central Bank's Board of Directors. The Governor of the BCB holds the deciding vote when the COPOM is evenly split on a monetary policy decision.

²⁴ If inflation breaches the target set by the CMN, the Governor of the Central Bank is required to write an open letter to the Minister of Finance explaining the reasons the target was missed, as well as the measures

meeting of the COPOM, a decision is announced with respect to the SELIC target rate, which is fixed for the period between regular COPOM meetings, and/or the monetary bias (decision to ease or tighten the monetary stance); the BCB's Governor may alter the SELIC interest rate target in the direction of the bias at any time between regular COPOM meetings. To keep the SELIC rate at or around its target, the BCB conducts liquidity management operations in the domestic money market. At the end of each quarter (March, June, September, December), the COPOM publishes the Central Bank's Inflation Report, which provides detailed information on economic conditions, as well as the COPOM's inflation projections from its most recent meeting.

1.24. Brazil continues to implement an inflation-targeting framework for monetary policy. Under this framework, established by Decree No. 3,088 of 21 June 1999, annual inflation targets for the Broad Consumer Price Index (IPCA) are set by the CMN and announced by the Minister of Finance. The targets are set more than a year in advance, in order to help influence inflationary expectations. In this respect, the target for 2013 was set by Resolution No. 3,991 of 30 June 2011, and the target for 2014 by Resolution No. 4,095 of 28 June 2012.²⁵ Monetary policy decisions are based on future inflation forecasts, conditional on alternative interest rate paths, and taking into account the state of the economy and the probable future development of exogenous variables.

1.25. During the period under review, monetary policy was used actively, mainly through changes in the SELIC target rate (see below). An initial period of tight monetary policy, in early 2008, was followed by a subsequent loosening in the wake of the global financial crisis and a new tightening in 2010. Since 2011, and in particular in 2012, monetary policy has had an expansionary bias as the risks of a resurgence of inflationary pressures are considered low. Throughout the review period IPCA annual inflation targets and the tolerance intervals remained stable, at 4.5% +/-2 percentage points. Inflation targets, including their limits of variation were met in every year of the 2007-12 period.

1.26. Annual average changes of the IPCA were in the 4.6-6.5% range between 2008 and 2012. Inflation declined between 2008 and 2009, then increased until 2011, triggered partly by strong domestic demand, higher food and oil prices, and despite the positive effects of the appreciation of the real. Annual IPCA inflation reached 6.5% in 2011, the highest in the period (Table 1.3). In 2012, the IPCA increase slowed down to 5.8%.

1.27. After being increased in 2008, the target SELIC rate was lowered sharply in 2009, and the average rate for the year was 10.1%. The SELIC rate rose in 2010, but remained below pre-crisis levels. A policy of monetary easing was put in place again in 2011 and 2012, which led to a sharp reduction in the SELIC rate, to an average of 8.5% for 2012: the SELIC rate was lowered seven times during 2012: by the end of the year, the SELIC target rate had fallen to 7.25%. All in all, SELIC levels during the period under review were considerably below those reported in Brazil's previous Review.

1.28. During the review period, broad money definition M3 expanded faster than nominal GDP (Table 1.3). The share of M3 in GDP rose from 67.6% in December 2010, to 79.7% in 2012; while the share of expanded money M4 rose from 80.6% to 93% of GDP.²⁶

1.29. Although policy interest rates were lowered considerably during the period under review, lending rates remained high by international standards as did spreads. The average interest rate spread was a whopping 27.4% in 2011, and, although it fell in 2012, it remained high at 21.1% in December and 24.3% as average for the year. The spread for corporations, at 13.7% in December 2012 was considerably lower than for individuals (27.4%). High spreads may indicate rigidities and insufficient productivity in the banking sector (Chapter 4.5.1). In the context of this Review, the authorities indicated that although spreads remain high, there has been progress on the de-indexation of the economy, especially on the elimination in 2012 of a fixed minimum interest rate on savings (*caderneta de poupança*); this resulted in a reduction of the interest rates charged by banks and an increase in the supply of credit.

required to bring inflation back to the target, and the time period over which these measures are expected to take effect (Central Bank of Brazil, 2012b).

²⁵ Central Bank of Brazil (2012a).

²⁶ Banco Central do Brasil online information. Viewed at: <http://www.bcb.gov.br/pec/Indeco/Ingl/ie2-19i.xls>.

Table 1.3 Main monetary indicators, 2007-12

	2007	2008	2009	2010	2011	2012
Money						
Monetary base (12-month rate of change)	21.1	0.6	12.6	24.6	3.6	8.9
M1 (12-month rate of change)	32.7	-3.5	12.0	12.6	1.2	13.7
M3 (12-month rate of change)	17.4	18.0	15.6	15.5	18.8	15.9
Interest rates						
Average lending rate (annual average)	36.7	39.6	37.3	34.9	38.7	32.5
Interest rate spread (annual average)	25.3	26.6	29.2	24.1	27.4	24.3
CDI rate (certificate of deposit)	11.1	13.5	8.6	10.6	10.9	6.9
SELIC rate (end of period)	11.2	13.7	8.7	10.7	10.9	7.2
Long term interest rate TJLP (fixed for 90 days)	6.3	6.3	6.0	6.0	6.0	5.5
Inflation						
Inflation target	4.5	4.5	4.5	4.5	4.5	4.5 ^a
Consumer price index (IPCA) (period average, % change)	3.6	5.7	4.9	5.0	6.6	5.4
Consumer price index (IPCA) (end of period, % change)	4.5	5.9	4.3	5.9	6.5	5.8
Wholesale price index (end of period, %) (= IPA-DI)	9.4	9.8	-4.1	13.9	4.1	9.1
General market price index (end of period, %) (= IGP-DI)	7.9	9.1	-1.4	11.3	5.0	8.1
Exchange rates						
Exchange rate (R\$ per US\$, period average) ^b	1.95	1.83	2.00	1.76	1.67	1.95
Nominal effective exchange rate (IMF index, % change) ^b	8.0	4.3	-3.6	12.0	1.9	-11.0 ^c
Real effective exchange rate (IMF index, % change) ^b	8.3	5.4	0.3	14.4	4.8	-9.0 ^c
Terms of trade (annual % change)	2.1	3.5	-3.2	17	7.8	-5.8

.. Not available.

a Inflation target for the year 2012.

b IMF, International Financial Statistics (IFS) e-Library data, consulted on 27 February 2013.

c Data for January - September 2012 only. Percentage change based on the same period of the previous year.

Source: Central Bank of Brazil; IBGE; and IMF (2012), *Brazil 2012 Article IV Consultation - Staff Report*, Country Report No. 12/191. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2012/cr12191.pdf>.

1.30. Brazil has maintained a floating exchange rate regime since 1999. As a result of the effects of the financial crisis of 2008, and despite strong macroeconomic and financial indicators, the real depreciated in nominal terms with respect to the dollar and other major currencies in late 2008. To deal with the crisis, the Government adopted a number of measures to increase liquidity in the domestic financial system, including: auctions of U.S. dollars (mainly to finance exporters affected by the credit crunch), and the reduction of reserve requirements.²⁷ In the aftermath of the crisis, the real started to appreciate *vis-à-vis* the U.S. dollar, particularly between 2009 and 2011, when it appreciated by some 20% in nominal terms (Table 1.3). The exchange rate weakened substantially in 2012, but remained above the average 2004–08 level.²⁸ The real depreciated by some 15% against the dollar in 2012. However, in the IMF Staff Report for the 2012 Article IV Consultation, the authorities agreed that the currency remained on the strong side, notwithstanding the recent depreciation. The real has been propped up by strong capital inflows.²⁹

1.31. Throughout the period under review, Brazil undertook measures to smoothen capital inflows. This was done through the adjustment of the rate of the Financial Transaction Tax (IOF). This tax, on capital entering Brazil for investment in equity and debt securities, was introduced at the rate of 2% by Decree No. 6,983 of 20 October 2009. The IOF has been used by the Government to reduce the volatility, and to correct imbalances in the foreign exchange market. The IOF on foreign investment on local bonds was increased on two occasions in 2010, to 4% and 6%, respectively; the rate on equities remained at 2%, although in December 2011 it was lowered to zero.³⁰ In March 2011, all foreign borrowing by Brazilian companies with an average maturity of up to 360 days was subject to the 6% IOF; the time-limit was raised to two years in April 2011, to three years in March 2012, and to five years later the same month.³¹ Decrees No. 7,751

²⁷ Provisional Measure No. 443 of 21 October 2008, granted the Banco do Brasil and the Caixa Econômica Federal (CEF), the two largest Brazilian state-owned financial institutions, the right to acquire shares of any financial institution, including insurance companies, with liquidity problems.

²⁸ IMF (2012b).

²⁹ IMF (2012b).

³⁰ Decrees No. 7,323 of 5 October 2010; No. 7,330 of 19 October 2010; and No. 7,632 of 1 December 2011, respectively.

³¹ Decrees No. 7,456 of 29 March 2011; No. 7,457 of 7 April 2011; No. 7,683 of 1 March 2012; and No. 7,698 of 12 March 2012, respectively.

of 14 June 2012, and No. 7,853 of 4 December 2012 lowered the period to two and one year, respectively.

1.32. Brazil has proposed dealing with the issue of currency misalignment in the WTO. In November 2012, Brazil submitted to the WTO Working Group on Trade, Debt and Finance a conceptual note on the Relationship between Exchange Rates and International Trade and the role of the WTO on the issue. In the note, Brazil reaffirmed its view that, "whatever the causes of exchange rate misalignments, the WTO should look into ways to address their effects in a systemic manner".³²

1.5 Balance of Payments

1.33. The Brazilian current account plunged into a deficit of 1.7% of GDP in 2008, marking the end of five consecutive years of surpluses (Table 1.4). The deficit widened to 2.4% of GDP in 2012, reaching US\$54.2 billion. The deterioration of Brazil's current account reflects a sharp increase in imports of goods and services, which grew faster than exports in 2007-11, as well as a highly negative income balance. In 2012, both exports and imports declined, but the fall in exports was sharper.

1.34. Brazil has a long-standing deficit in its services balance, which increased by 211% in 2007-12. It also posts a traditional deficit in the income balance, which reached a US\$47.3 billion peak in 2011, a 61% increase from 2007 levels, before declining to US\$33.5 billion in 2012. This growing income deficit is due partly to increasing profit remittances by foreign companies, which totalled US\$38.2 billion in 2011, up from US\$22.4 billion in 2007.³³ Interest payments on Brazil's public debt also contribute to the deficit.

1.35. The effect of Brazil's current account deficit on its balance of payments has been to some extent offset by improvements in its financial account. Although it registered a sharp decline in 2008 sparked by the global financial crisis, Brazil's financial account recovered rapidly in 2009-11, reaching a surplus of US\$110.8 billion in 2011, a 25% increase from 2007. Foreign direct investment has been a key driver for this growth, with inflows almost doubling between 2007 and 2011. The surplus declined to US\$72.8 billion in 2012, mainly due to a sharp decline in portfolio investment inflows.

1.36. As a result of the financial and economic crisis, Brazil's overall balance of payments deteriorated sharply in 2008, leading to a much smaller, albeit still positive gain of foreign exchange reserves. Despite a significant rebound since then, it has been unable to recover to pre-crisis levels, although it accumulated large reserves during the period (see below). In 2011, the overall balance reached almost US\$59 billion, compared to US\$87 billion registered in 2007; it declined to US\$18.9 billion in 2012.

1.37. Thanks to its financial account surplus, Brazil has managed to more than double its foreign exchange reserves since 2007, which reached US\$378.6 billion in 2012, equivalent to 14.9 months of imports of goods and services. In the IMF's evaluation, Brazil's levels of reserves are more than adequate to help it withstand eventual external shocks.³⁴

³² The Relationship Between Exchange Rates and International Trade. Exchange Rate Misalignment and Trade Remedies: A Conceptual Note by Brazil. WTO document WT/WGTDF/W/68, 5 November 2012.

³³ Central Bank of Brazil (2011) and (2007).

³⁴ IMF (2012a).

Table 1.4 Balance of payments, 2007-12

(US\$ million)

	2007	2008	2009	2010 ^a	2011 ^a	2012 ^a
Current account	1,551	-28,192	-24,302	-47,272	-52,473	-54,246
Balance on goods (f.o.b.)	40,032	24,836	25,290	20,147	29,794	19,431
Exports	160,649	197,942	152,995	201,915	256,040	242,580
Imports	-120,617	-173,107	-127,705	-181,768	-226,246	-223,149
Services and income (net)	-42,510	-57,252	-52,930	-70,322	-85,251	-76,523
Services	-13,219	-16,690	-19,245	-30,835	-37,932	-41,075
Credit	23,954	30,451	27,728	31,599	38,209	39,864
Debit	-37,173	-47,140	-46,973	-62,434	-76,141	-80,939
Income	-29,291	-40,562	-33,684	-39,486	-47,319	-35,448
Credit	11,493	12,511	8,826	7,405	10,753	10,888
Debit	-40,784	-53,073	-42,510	-46,892	-58,072	-46,335
Current unilateral transfers	4,029	4,224	3,338	2,902	2,984	2,846
Capital and financial account	89,086	29,352	71,301	99,912	112,380	72,762
Capital account ^b	756	1,055	1,129	1,119	1,573	-1,877
Financial account	88,330	28,297	70,172	98,793	110,808	74,639
Direct investment	27,518	24,601	36,033	36,919	67,689	68,093
Abroad	-7,067	-20,457	10,084	-11,588	1,029	2,821
Equity capital	-10,091	-13,859	-4,545	-26,782	-19,533	-7,555
Intercompany loans	3,025	-6,598	14,629	15,195	20,562	10,377
In the reporting country	34,585	45,058	25,949	48,506	66,660	65,272
Equity capital	26,074	30,064	19,906	40,117	54,782	52,838
Intercompany loans	8,510	14,994	6,042	8,390	11,878	12,434
Portfolio investments	48,390	1,133	50,283	63,011	35,311	8,273
Assets	286	1,900	4,125	-4,784	16,858	-8,260
Equity securities	-1,413	257	2,582	6,211	8,801	-2,275
Debt securities	1,699	1,643	1,542	-10,995	8,057	-5,986
Liabilities	48,104	-767	46,159	67,795	18,453	16,534
Equity securities	26,217	-7,565	37,071	37,671	7,174	5,600
Debt securities	21,887	6,798	9,087	30,124	11,278	10,934
Financial derivatives	-710	-312	156	-112	2	25
Assets	88	298	322	133	252	150
Liabilities	-799	-610	-166	-245	-249	-125
Other investments	13,131	2,875	-16,300	-1,024	7,804	-1,753
Assets	-18,552	-5,269	-30,376	-42,567	-39,005	-24,278
Liabilities	31,683	8,143	14,076	41,543	46,809	22,525
Errors and omissions	-3,152	1,809	-347	-3,538	-1,271	384
Overall balance	87,484	2,969	46,651	49,101	58,637	18,900
Memorandum items:						
Current account (% of GDP)	0.1	-1.7	-1.5	-2.2	-2.1	-2.4
Gross official reserves (US\$ million) ^c	180,334	206,806	239,054	288,575	352,012	378,613
Months of imports	13.7	11.3	16.4	14.2	14.0	14.9
Gross external debt (US\$ million)	193,219	198,340	198,192	256,804	298,204	309,491 ^d
Gross external debt / GDP (%)	14.1	12.0	12.2	12.0	12.1	13.4
Gross public external debt / GDP (%)	6.3	5.1	5.9	4.8	4.1	4.7

a Preliminary data.

b Includes capital unrequited transfers and granting of brands and patents.

c Includes outstanding repo lines of credit and foreign currency loans.

d Data for January - September 2012 only.

Source: Central Bank of Brazil.

1.38. Brazil's external debt increased significantly during the review period, reaching US\$309.5 billion in 2012. However, as a share of GDP, it fell from 14.1% in 2007 to 13.4% in 2012. Most of Brazil's new debt is private; the share of the public sector in foreign debt was 4.7% in 2012 (Table 1.4).

1.6 Structural Issues and Policy Responses

1.39. While Brazil's commodity exports continued to perform well during the review period, some sectors of the Brazilian economy lost competitiveness, as reflected by the growing deficit in both the manufacturing and services trade balance (section 1.7). The loss of dynamism in these sectors can be partly attributed to the appreciated real and the global economic crisis, both of which resulted in reduced demand for Brazilian goods and services. However, it also reflects long-

standing structural problems affecting Brazil's competitiveness, including: a complex and onerous tax system; infrastructure bottlenecks; highly regulated labour markets; high interest rates; and a high cost for industrial inputs.

1.40. In a recent survey conducted by the World Economic Forum, tax regulations and rates are cited among the three most problematic factors for doing business in Brazil. Not only are tax rates relatively high compared with other Latin American countries, but Brazil's tax system is also especially burdensome given its complexity and fragmentation. Brazilian companies disburse on average 67% of their profits on taxes and charges³⁵, and spend some 2,600 hours calculating and paying taxes (the average in Latin America is 392 hours).³⁶ Heavy taxation is also reflected in Brazil's energy costs for industry, which are among the highest in the world.

1.41. Brazil's inadequate infrastructure has been identified as the second most problematic factor for businesses. In the WEF's *Global Competitiveness Report*, the country's overall infrastructure is ranked 107th out of 144 in terms of quality. Port and air transport infrastructure is particularly deficient, with numerous terminals operating beyond capacity (Chapter 4.5.4 and 4.5.5). Investments in infrastructure remain limited³⁷, reflecting low public savings as well as restrictions on private sector participation.

1.42. Brazilian labour laws are perceived as overly restrictive by business, particularly in regard to wage determination and hiring and firing practices. Excessive payroll taxation is also considered as a factor affecting the competitiveness of labour-intensive industries. Moreover, there is a lack of skilled workers in some sectors, reflecting gaps in the country's educational system.³⁸

1.43. Due to high interest rates, access to financing continues to be an important barrier to growth for Brazilian companies. Despite a significant reduction in recent years, lending interest rates to commercial customers remain high, averaging 23.8% per year (as of June 2012).³⁹ This increases costs on investments and working capital for the Brazilian industry, thereby affecting its competitiveness *vis-à-vis* its main international competitors.

1.44. The high cost of inputs is also an increasingly important constraint for many Brazilian industries. According to a study that compared the competitiveness of the Brazilian capital goods industry with its key international competitors, input costs throughout the supply chain constitute the main factor behind Brazil's higher costs of production.⁴⁰ This issue can be partly attributed to taxation, inflation rates, and tariffs on imported inputs.

1.45. The Government has taken steps to address these and other structural issues under the industrial plan *Brasil Maior*, launched in 2011, which focusses on boosting competitiveness. With the aim of reducing production costs, the Government has cut taxes and reduced charges levied on payroll in key manufacturing sectors and eliminated some charges on electricity. Additionally, in order to raise investment in infrastructure, the Government has granted concessions of some airports to the private sector, and recently unveiled a major programme of concessions for building and maintaining 17,500 km of roads and railways.⁴¹ Significant steps have also been taken to reduce interest rates and expand credit, and temporary tariff reductions on a number of capital goods and industrial inputs have been applied.⁴²

³⁵ WEF (2012).

³⁶ World Bank online information. Viewed at: <http://rru.worldbank.org/besnapshots/BecpProfilePDF.aspx?economy=brazil>.

³⁷ Federal Government online information. Viewed at: <http://www.brasil.gov.br/sobre/o-brasil/o-brasil-em-numeros-1/infraestrutura>.

³⁸ The Brazilian Institute of Geography and Statistics (IBGE) online information. Viewed at: http://www.ibge.gov.br/home/presidencia/noticias/noticia_visualiza.php?id_noticia=1708.

³⁹ Ministry of Finance (2012).

⁴⁰ Abimaq (2010).

⁴¹ Federal Government online information. Viewed at: <http://www.brasil.gov.br/noticias/arquivos/2012/08/15/concessoes-de-rodovias-e-ferrovias-resultarao-em-investimentos-de-r-133-bi>.

⁴² WTO (2011); WTO (2012a).

1.46. However, in its bid to support economic sectors suffering from a loss of competitiveness, the Brazilian Government also took a number of trade restrictive measures during the review period. This has included temporary tariff increases; the Government has also altered its procurement policy and introduced preferential margins of between 8% and 25% for a limited number of domestic goods and services, mainly textiles and clothing, certain pharmaceuticals, and some transport equipment (Chapter 3.4.4). Also, under the National Development Bank (BNDES) programmes, the Government expanded the offer of credit to Brazilian exporters, granting automatic access in some cases to products with domestic value added (Chapter 3.3.5).

1.7 Developments in Trade and Investment Flows

1.47. Brazil's foreign trade (exports and imports) of goods and services accounted for 24.5% of GDP in 2012 (slightly down from 25.2% in 2007). In 2011, Brazil was the world's 16th largest exporter and 15th largest importer of goods, and ranked 31st as exporter and 17th as importer of commercial services⁴³, although it was the world's 6th largest economy.

1.7.1 Merchandise trade

1.48. Despite a decline in 2009, Brazil's total merchandise trade increased at an average annual rate of 10.3% between 2007 and 2012. Exports of goods grew significantly, reflecting strong external demand for Brazilian commodities, in particular during the first years of the review period. However, the period was also marked by vigorous domestic demand for imports, which expanded faster than exports, reducing Brazil's trade surplus by more than 50%.

1.7.1.1 Composition of trade

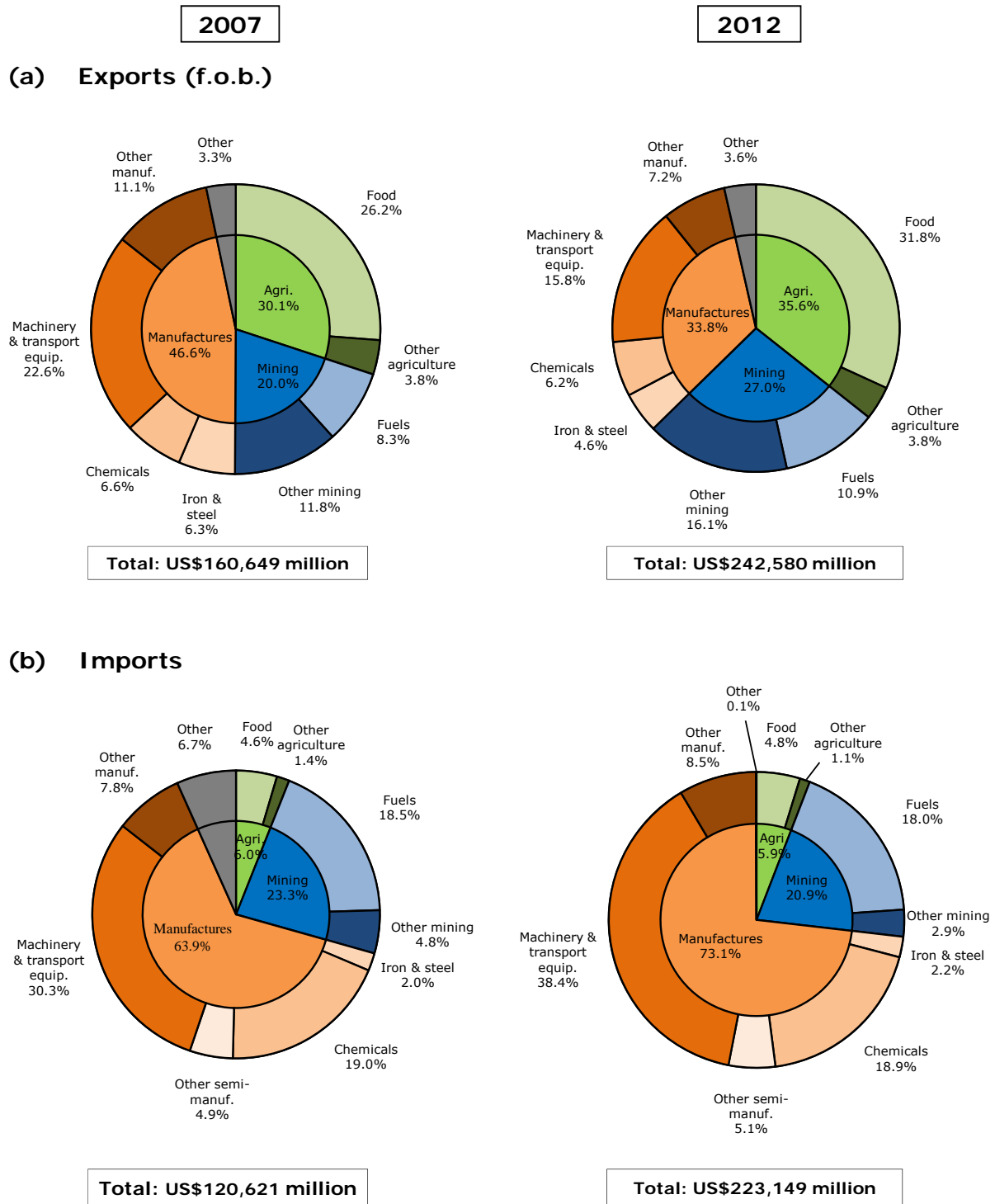
1.49. Brazilian exports grew at an average annual rate of 8.6% between 2007 and 2012, reaching US\$242.6 billion (Table AI.1). Primary products accounted for most of this growth, with mining and agricultural exports increasing by annual average rates of 15.4% and 12.3%, respectively. Exports from the manufacturing sector increased at an annual average rate of 1.8%. As a result of the faster expansion of commodity exports, the share of manufactured products in overall merchandise exports decreased significantly over the same period, from 46.6% in 2007 to 33.8% in 2012. The share of primary products increased from 50.1% to 62.6%, thanks in particular to the strong performance of mining commodities (Chart 1.1).

1.50. Imports increased at an average annual rate of 13.1% between 2007 and 2012, almost doubling their value to US\$223.1 billion. This growth was largely due to imports of manufactured products, which increased at an average annual rate of 16.2%. Imports of primary products also registered significant growth at an average annual rate of 11.1% throughout the period. Manufactured goods continue to account for the largest share of imports, representing for 73.1% of total imports in 2012. Machinery and transport equipment remains the largest import category (38.4% of total imports), followed by chemicals and fuels (Table A1.2 and Chart 1.1). Despite fast growth over 2007-11, both exports and imports declined in 2012.

1.51. While Brazil strengthened its position as a net exporter of agricultural and mining products, its trade deficit in the manufacturing sector deteriorated significantly during 2007-12 (Chart 1.2). The trade balance for machinery and transport equipment registered a particularly strong decline, reaching a deficit of US\$47.4 billion in 2012. Nevertheless, Brazil made substantial gains in its terms of trade during most of the review years, thanks in part to high commodity prices in global markets.

⁴³ WTO (2012b).

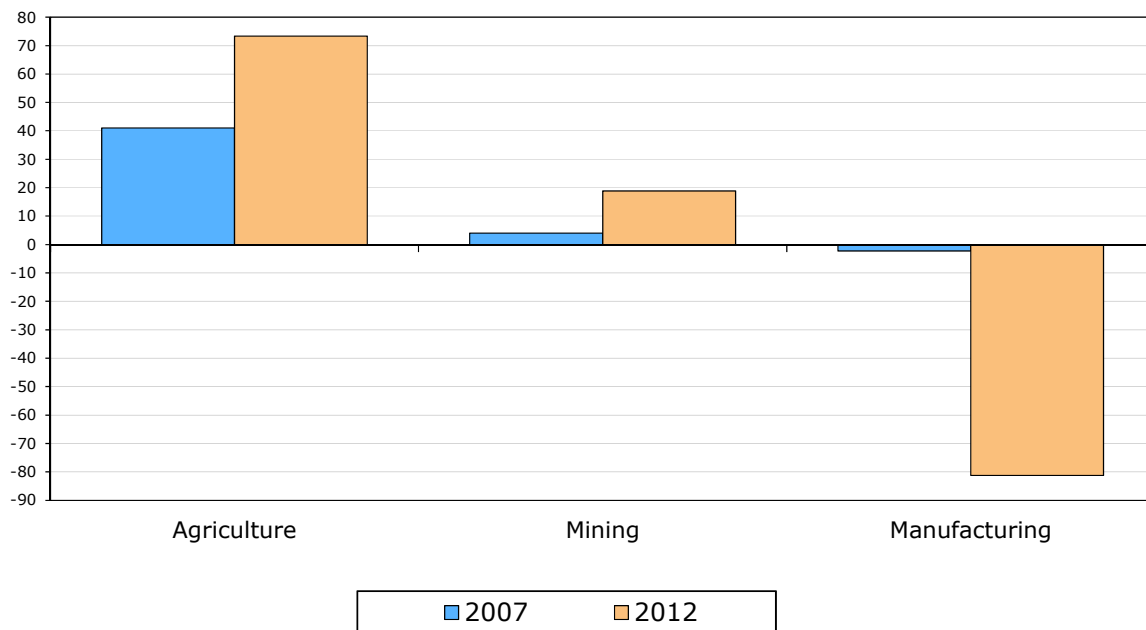
Chart 1.1 Merchandise trade, by product, 2007 and 2012



Source: UNSD, Comtrade database (SITC Rev.3).

Chart 1.2 Trade balance by sector, 2007-12

(US\$ billion)



Source: WTO Secretariat, based on UNSD, Comtrade database.

1.7.1.2 Direction of trade

1.52. The review period was marked by a strengthening of Brazilian trade ties with Asia; exports to the Asian continent increased by an annual average of 24.1% (Table A1.3). As a result, the share of Asia in Brazil's total exports increased from 16.1% in 2007 to 31.3% in 2012 (Chart 1.3). Brazilian imports from the region also grew significantly, at an annual average of 17.4% (Table A1.4). China remains by far Brazil's main trade partner in Asia; since 2009, it has overtaken the United States as the second most important destination for Brazilian exports, after the European Union. China has also increased its importance as a source of imports for Brazil, accounting for 15.3% of total imports in 2012. The vast majority (97%) of Brazil's imports from China are manufactured products; in contrast, over 85% of Brazil's exports to China are primary products.⁴⁴

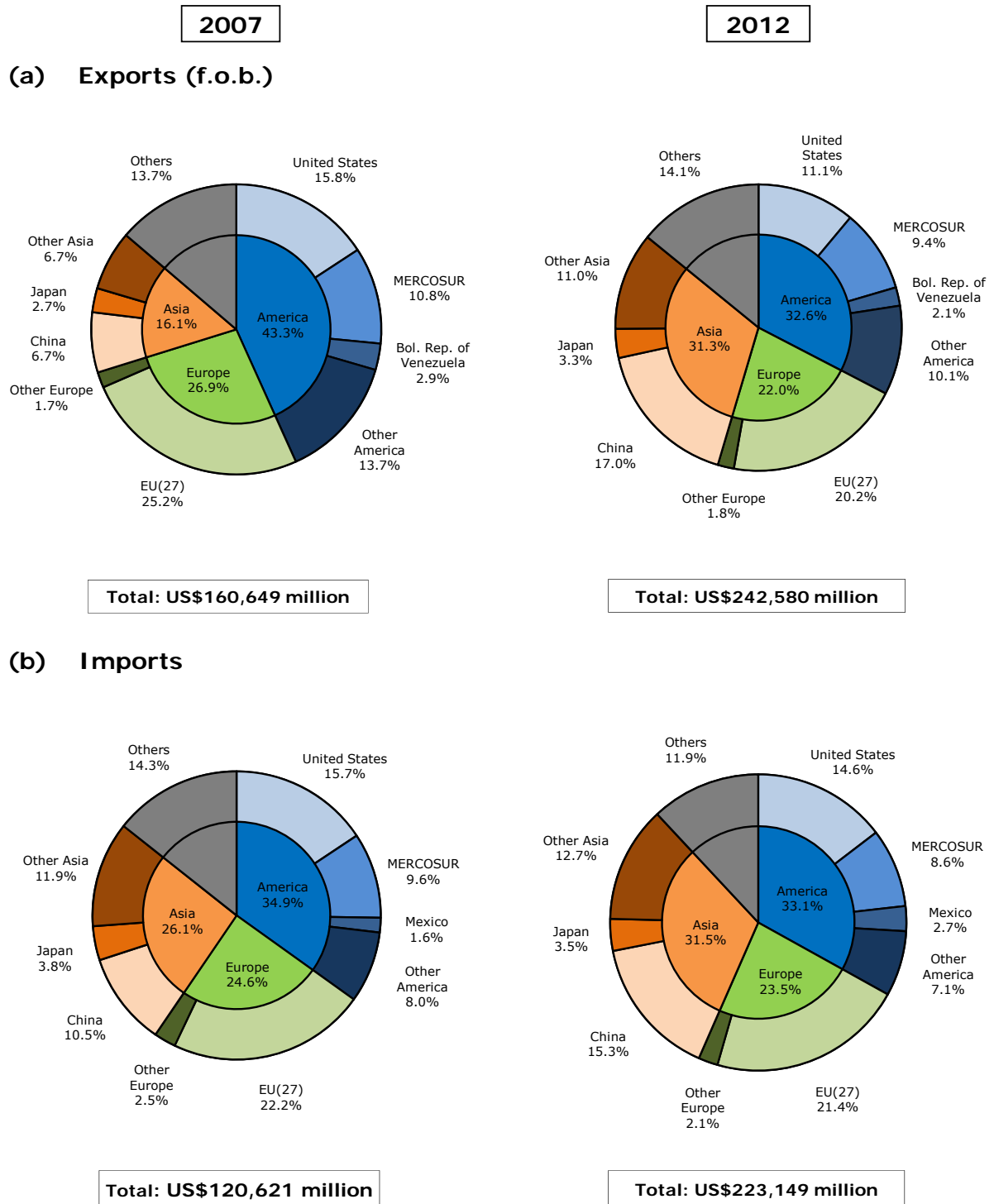
1.53. Despite the growing importance of Asian trade partners, the EU remains Brazil's main source of imports, as well as the most important destination for its exports (21.4% and 20.2%, respectively in 2012). Although imports from the EU increased at an average of 12.3% a year between 2007 and 2012, they lost some market share. Reflecting weaker economic activity in the block, Brazil's exports to the EU grew at a slower pace, at an annual average of 3.8%.

1.54. Trade with MERCOSUR members grew in nominal terms between 2007 and 2012, albeit at slower rates than Brazil's trade with key Asian partners. Imports from MERCOSUR members increased at an average of 10.5% annually, but their share declined slightly, to 8.6% in 2012. The share of MERCOSUR members in Brazil's total exports declined from 10.8% in 2007 to 9.4% in 2012.

1.55. In contrast with the trend during its last review period, the share of Brazil's exports to Africa decreased slightly between 2007 and 2012. Exports to the Middle East, however, continued to increase their share, reaching 4.8% of total Brazilian exports in 2011. Brazil's imports from Africa lost market share during 2007-12, while those from the Middle East remained relatively stable.

⁴⁴ Ministry of External Relations online information. Viewed at: <http://www.brasilglobalnet.gov.br/ARQUIVOS/IndicadoresEconomicos/INDChina.pdf>.

Chart 1.3 Merchandise trade, by main origin and destination, 2007 and 2012



Source: UNSD, Comtrade database (SITC Rev.3).

1.7.2 Trade in services

1.56. Brazil maintains a structural deficit in the services trade balance, which has increased significantly since 2007. In 2012, the deficit reached US\$41.1 billion, as imports rose to US\$80.9 billion (Table 1.5). The deficit is largely attributed to the negative balances in leasing

equipment, travel, and transportation during the review years. The increased deficit in leasing equipment is associated with a rise in the use of foreign-owned capital goods. The deficit in the travel industry has expanded more than four-fold due to the sharp increase in travel payments made by Brazilians abroad, triggered in part by the appreciation of the real. In transportation services, the deficit doubled between 2007 and 2012, consistent with the increase in international travel and foreign trade flows. During the review period, Brazil maintained a positive balance in the business, professional and technical services segment, which was associated with growing receipts in administrative services and real estate leasing, architectural and engineering services, and other professional services.

Table 1.5 Trade in services, 2007-12

(US\$ million)

	2007	2008	2009	2010	2011	2012
Balance						
Services	-13,219	-16,690	-19,245	-30,835	-37,952	-41,075
Transportation	-4,384	-4,994	-3,926	-6,407	-8,334	-8,769
Sea transport	-2,182	-2,809	-2,096	-3,554	-4,681	-4,884
Air transport	-2,177	-2,131	-1,802	-2,801	-3,594	-3,800
Other transportation ^a	-26	-53	-28	-53	-60	-85
Travel	-3,258	-5,177	-5,595	-10,718	-14,709	-15,588
Insurance	-766	-837	-1,442	-1,113	-1,212	-994
Financial services	283	93	-42	394	858	709
Computer and information services	-2,112	-2,598	-2,586	-3,296	-3,800	-3,850
Royalties and license fees	-1,940	-2,232	-2,078	-2,453	-2,710	-3,156
Operational leasing services	-5,771	-7,808	-9,393	-13,752	-16,686	-18,741
Government services	-1,134	-1,116	-1,416	-1,388	-1,411	-1,446
Communication services	180	167	186	164	116	69
Construction services	12	14	10	22	10	10
Merchandising and other trade-related services	19	435	615	247	296	119
Business, professional and technical services	6,230	8,147	7,297	8,413	10,699	11,552
Personal, cultural and recreational services	-578	-783	-878	-948	-1,068	-991
Credit						
Services	23,954	30,451	27,728	31,599	38,209	39,864
Transportation	4,119	5,411	4,040	4,931	5,819	5,422
Sea transport	3,347	4,576	3,283	4,061	4,836	4,527
Air transport	648	675	612	646	753	689
Other transportation ^a	123	160	145	225	230	205
Travel	4,953	5,785	5,305	5,702	6,555	6,645
Insurance	543	828	373	416	505	541
Financial services	1,090	1,238	1,570	2,073	2,662	2,648
Computer and information services	161	189	209	210	236	596
Royalties and license fees	319	465	434	397	591	511
Operational leasing services	31	55	50	54	69	64
Government services	1,340	1,628	1,483	1,527	1,774	1,742
Communication services	276	466	353	435	320	381
Construction services	17	23	14	29	19	24
Merchandising and other trade-related services	956	1,361	1,443	1,128	1,262	1,145
Business, professional and technical services	10,076	12,915	12,374	14,629	18,346	20,067
Personal, cultural and recreational services	73	86	80	69	54	43
Debit						
Services	-37,173	-47,140	-46,974	-62,434	-76,161	-80,939
Transportation	-8,503	-10,405	-7,966	-11,339	-14,153	-14,191
Sea transport	-5,529	-7,385	-5,379	-7,615	-9,517	-9,411
Air transport	-2,825	-2,806	-2,414	-3,447	-4,347	-4,490
Other transportation ^a	-149	-213	-173	-277	-289	-290
Travel	-8,211	-10,962	-10,898	-16,420	-21,264	-22,233
Insurance	-1,308	-1,665	-1,815	-1,529	-1,717	-1,535
Financial services	-807	-1,145	-1,612	-1,679	-1,804	-1,975
Computer and information services	-2,273	-2,787	-2,795	-3,505	-4,036	-4,447
Royalties and license fees	-2,259	-2,697	-2,512	-2,850	-3,301	-3,666
Operational leasing services	-5,802	-7,863	-9,442	-13,806	-16,755	-18,804

	2007	2008	2009	2010	2011	2012
Government services	-2,473	-2,744	-2,899	-2,915	-3,185	-3,188
Communication services	-96	-299	-166	-271	-204	-311
Construction services	-4	-9	-4	-6	-9	-14
Merchandising and other trade-related services	-938	-926	-828	-881	-965	-1,026
Business, professional and technical services	-3,846	-4,768	-5,077	-6,216	-7,647	-8,505
Personal, cultural and recreational services	-651	-869	-958	-1,017	-1,121	-1,034

a Includes road transportation.

Source: Central Bank of Brazil, *Annual Report*, several issues; data provided by the authorities; and IMF, BOPs database for 2010 and 2011 transportation data.

1.7.3 Foreign direct investment

1.57. Brazil's expanding domestic market, abundant natural resources, and economic growth contributed to a sharp increase of foreign direct investment (FDI) flows into the country over the review period. FDI inflows amounted to US\$60.5 billion in 2012, almost twice as much as in 2007, and were equivalent to 2.7% of GDP (Table 1.6). Overall, during the 2008-12 period, FDI flows to Brazil totalled US\$258.8 billion (up from US\$112.8 billion in 2003-07). Although FDI inflows declined by 13% in 2012, compared with 2011, they remained high, suggesting that, despite recent concerns over the dynamism of its economy, Brazil is still attractive for long-term investors. As of mid-2012, Brazil was the world's sixth largest recipient of FDI and the leading FDI destination in Latin America.⁴⁵ Brazil's stock of FDI represents some 30.7% of GDP.

Table 1.6 Foreign direct investment (equity) inflows by country, 2007-12

(US\$ million and %)

	2007	2008	2009	2010	2011	2012	2007-12	(%)
Total	34,335	44,457	31,679	52,583	69,530	60,543	293,127	100.0
Netherlands	8,129	4,639	6,515	6,702	17,582	12,213	55,780	19.0
United States	6,073	7,047	4,902	6,144	8,910	12,310	45,386	15.5
Luxembourg	2,857	5,937	537	8,819	1,867	5,965	25,982	8.9
Spain	2,202	3,851	3,424	1,524	8,593	2,523	22,117	7.5
Japan	501	4,099	1,673	2,502	7,536	1,471	17,782	6.1
France	1,233	2,880	2,141	3,479	3,086	2,155	14,974	5.1
Switzerland	905	803	380	6,445	1,194	4,333	14,060	4.8
United Kingdom	1,053	693	1,032	1,030	2,749	1,978	8,535	2.9
Canada	819	1,442	1,372	751	1,789	1,950	8,123	2.8
Germany	1,801	1,086	2,473	538	1,125	826	7,850	2.7
Cayman Islands	1,604	1,556	1,092	406	612	619	5,889	2.0
Chile	717	264	1,027	941	830	2,013	5,792	2.0
Austria	116	93	48	3,420	1,508	108	5,293	1.8
British Virgin Islands	371	1,048	403	1,059	1,138	857	4,875	1.7
Bermuda	1,497	1,038	380	854	800	151	4,720	1.6
Norway	284	207	671	1,540	1,073	936	4,711	1.6
Australia	494	1,154	707	556	1,079	518	4,508	1.5
Portugal	517	1,051	384	1,203	491	551	4,197	1.4
South Korea	265	628	132	1,045	1,075	875	4,021	1.4
Hong Kong, China	13	35	34	83	2,077	508	2,751	0.9
Italy	313	385	232	300	457	986	2,674	0.9
Bahamas	603	1,101	52	109	96	138	2,098	0.7
Uruguay	212	424	198	275	301	567	1,977	0.7
Sweden	64	55	214	387	467	476	1,662	0.6
Mexico	409	220	167	143	297	386	1,623	0.6
Singapore	24	91	91	38	252	999	1,496	0.5
Belgium	91	78	93	75	420	656	1,412	0.5
Denmark	122	171	47	295	151	483	1,269	0.4
Netherlands Antilles	29	477	6	11	4	580	1,107	0.4
Panama	141	96	132	132	248	228	978	0.3
China	24	36	83	395	179	185	905	0.3
Peru	1	429	45	89	141	115	820	0.3
Ireland	64	75	8	15	184	426	773	0.3
Colombia	167	54	152	188	47	156	763	0.3
Argentina	70	127	80	100	97	262	736	0.3
Mauritius	2	5	9	336	120	22	494	0.2

⁴⁵ UNCTAD (2012).

	2007	2008	2009	2010	2011	2012	2007-12	(%)
Finland	88	185	56	42	56	19	446	0.2
Cyprus	5	45	70	41	134	120	415	0.1
Hungary	0	106	61	183	13	40	405	0.1
Others	456	743	558	386	750	837	3,730	1.3

Source: WTO Secretariat, based on information provided by the Central Bank of Brazil.

1.58. The Netherlands remains Brazil's main source of foreign direct investment, accounting for 19% of total FDI inflows during the period 2007-12, followed by the United States, Luxembourg, Spain, and Japan. With the exception of the United States, the shares of these countries in total FDI inflows increased during the review period, in particular those of Spain and Japan. With a share of 0.7% of all FDI inflows in 2007-12, Uruguay was the only MERCOSUR country among the top 30 sources of FDI into Brazil.

1.59. The services sector remains the preferred destination for FDI inflows, having received US\$94.2 billion during 2007-12 (Table 1.7). However, the sector's share in total FDI declined from 51% in 2003-07 to 42.7% in 2007-12. Within the services sector, financial services, commerce, and telecommunications attracted the highest values of FDI. The telecommunications market was particularly dynamic during 2007-11, its share in total FDI inflows increasing from 1.6% to 9.6%, and then declining to 0.6% in 2012; the share of financial services decreased over the same period. The industrial sector attracted 38% of total FDI during the review period, almost the same proportion as in 2003-07. Investments in industry were directed mainly to basic metallurgy and beverages. Foreign investment in primary activities accounted for 18.9% of total FDI. The bulk of investments were in oil and gas and metallic minerals, reflecting the increased interest of foreign investors in Brazil's natural resources, and recent oil discoveries.

Table 1.7 Foreign direct investment (equity) inflows by sector, 2007-12

(US\$ million and %)

	2007	2008	2009	2010	2011	2012	2007-12	2007-12 (%)
Total	34,335	44,457	31,679	52,583	69,530	60,543	293,127	100.0
Crop, livestock and mineral extraction	4,751	12,995	4,597	16,261	10,297	6,528	55,429	18.9
Oil and gas extraction	797	1,339	2,656	9,905	5,976	3,679	24,352	8.3
Metallic mineral extraction	3,073	10,645	1,303	4,804	2,389	1,652	23,866	8.1
Mining support service activities	272	231	209	840	964	597	3,112	1.1
Crop, livestock and related services	303	498	255	354	541	386	2,336	0.8
Forestry production	260	118	165	348	359	80	1,330	0.5
Non-metallic mineral extraction	41	162	7	10	68	132	420	0.1
Others	6	3	2	0	0	2	12	0.0
Industry	13,481	14,013	13,481	21,273	26,837	22,206	111,291	38.0
Basic metallurgy	4,699	4,984	3,754	5,549	7,215	5,311	31,511	10.8
Beverages	69	12	116	366	4,265	511	5,339	1.8
Foodstuff	1,752	2,226	451	1,716	3,064	5,076	14,284	4.9
Chemical products	1,378	859	1,557	7,181	2,226	1,871	15,072	5.1
Coke, oil derivatives and biofuels	1,644	1,568	1,344	1,681	1,801	384	8,422	2.9
Non-metallic mineral products	454	651	225	1,197	1,551	625	4,703	1.6
Motor vehicles, trailers, semi-trailers and related parts	861	964	2,163	533	1,395	1,256	7,172	2.4
Plastic and rubber products	494	671	437	213	1,102	670	3,586	1.2
Computer equipment, electronic and optical products	159	145	325	766	975	713	3,083	1.1
Machinery and equipment	428	506	390	348	616	959	3,248	1.1
Electrical machines, devices and apparatuses	385	335	357	80	607	781	2,546	0.9
Pulp, paper and paper products	477	200	770	78	387	747	2,660	0.9
Pharmaceuticals	160	290	688	659	303	1,575	3,675	1.3
Wood products, except furniture	39	104	211	48	295	151	848	0.3
Metal products, except machinery and equipment	51	144	128	391	178	353	1,245	0.4
Publishing activities	58	5	204	28	158	49	503	0.2
Other transportation equipment	17	55	73	103	125	250	624	0.2
Other manufacturing	124	107	79	93	79	584	1,066	0.4
Tobacco products	6	7	8	14	66	7	108	0.0
Textile products	90	51	70	69	42	85	408	0.1
Repair of computers and personal and household goods	5	3	1	14	17	11	50	0.0

	2007	2008	2009	2010	2011	2012	2007-12	2007-12 (%)
Other industries	131	126	128	146	371	237	1,138	0.4
Services	16,103	17,449	13,601	14,702	31,987	31,444	125,287	42.7
Telecommunications	551	447	310	659	6,670	345	8,982	3.1
Commerce, except vehicles	2,759	2,564	2,326	2,619	5,701	5,700	21,670	7.4
Electricity and gas	1,055	909	970	1,165	3,341	2,061	9,502	3.2
Financial and auxiliary services	4,524	5,109	2,891	1,852	3,184	4,900	22,460	7.7
Insurance, reinsurance, complementary social security and health assistance	516	474	1,320	229	2,403	4,640	9,581	3.3
Real estate activities	822	1,721	593	1,590	2,195	3,649	10,571	3.6
Buildings and specialized construction activities	1,240	1,386	717	664	1,164	955	6,125	2.1
Non financial holdings	376	640	389	857	851	815	3,929	1.3
Infrastructure works	121	337	426	209	785	689	2,566	0.9
Information technology services	191	390	858	577	676	704	3,396	1.2
Transportation	387	652	511	735	532	1,088	3,906	1.3
Non real estate lease and intangible assets	77	79	190	221	479	687	1,734	0.6
Storage and transportation auxiliary activities	121	413	317	446	466	595	2,358	0.8
Headquarter consulting and management activities	1,607	176	183	189	462	336	2,952	1.0
Architectural and engineering services	132	186	92	263	456	726	1,855	0.6
Food and beverage service activities	76	55	20	119	442	124	837	0.3
Office services and other services rendered to corporations	164	373	255	265	377	1,229	2,663	0.9
Scientific research and development	22	17	20	54	363	25	502	0.2
Advertising and market research	94	97	55	175	303	322	1,046	0.4
Mail services	..	..	..	178	117	541	836	0.3
Lodging	108	113	262	211	116	88	897	0.3
Commerce and maintenance of vehicles	81	96	73	112	108	127	596	0.2
Education	49	179	57	478	62	47	871	0.3
Travel agencies and tour operators	27	6	7	17	33	51	140	0.0
Auxiliary radio and television activities	0	0	0	410	6	23	439	0.1
Collection, treatment and distribution of water	3	123	..	11	1	1	139	0.0
Other services	1,000	908	761	395	692	977	4,733	1.6
Acquisition and sale of property	..	..	..	347	409	364	1,120	0.4

.. Not available.

Source: WTO Secretariat, based on information provided by the Central Bank of Brazil.

2 TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

2.1 Introduction

2.1. Brazil considers the multilateral trading system fundamental to attaining its development goals based on sustainable and socially inclusive economic growth. Brazil aims to strengthen regional economic integration and is one of the WTO's most active participants. Brazil did not ratify the Fourth Protocol on telecommunications and is undertaking domestic procedures to ratify fully the Fifth Protocol on financial services. From October 2008 to October 2012, Brazil initiated three complaints under the WTO dispute settlement mechanism.

2.2. Brazil is a founding member of the Southern Common market (MERCOSUR), and as such it has preferential trade agreements with the Plurinational State of Bolivia, Chile, Colombia, Cuba, Ecuador, Mexico, Peru, and the Bolivarian Republic of Venezuela. Additionally, it has bilateral preferential agreements under LAIA with Guyana and Suriname. Together with its MERCOSUR partners, Brazil has preferential trade agreements currently in force with India and Israel, and three further agreements pending entry into force. The European Union and MERCOSUR have re-launched negotiations in order to create a Bi-regional Free Trade Agreement.

2.3. The Brazilian foreign investment regime was largely unmodified during the period under review. Foreign investors in Brazil receive the same legal treatment as local investors in most economic sectors. Foreign investment is restricted in activities such as health, mass media and telecommunications, aerospace industry, rural property, and maritime and air transport. Foreign investment continues to be promoted mostly through tax deductions and low-cost financing, although these incentives apply equally to local and foreign investors.

2.4. Brazil remains committed to providing South-South trade-related cooperation within the WTO Aid-for-Trade (AFT) initiative, particularly in Africa, Latin America, and the Caribbean. Brazil's AFT strategy is focused on the biofuels, agriculture, and energy sectors. Brazil is also a recipient of AFT support. As member of the WTO Aid-for-Trade Task Force, Brazil participated actively in the development of technical support and capacity-building activities.

2.2 General Legal and Institutional Framework

2.5. The Federative Republic of Brazil is formed by the Union, the states, municipalities, and the Federal District. The Government is composed of the Executive, Legislative, and Judiciary branches. The President, assisted by the appointed Cabinet of Ministers, exercises Executive power. Presidential terms are four-years long, with one re-election possible. The last election took place in October 2011.

2.6. Legislative bodies at the federal, state, and municipal levels are in charge of drafting and issuing legislation. Federal legislative powers are vested in and exercised by the bicameral National Congress, which comprises the Chamber of Deputies and the Federal Senate. Members of the former are proportional to each jurisdiction's population and are elected for a period of four years. Three Senators are elected to represent each State and the Federal District in the Federal Senate for a period of eight years. One third of the senators are replaced in the first four-year period and two thirds in the second four-year period.

2.7. The Constitution establishes that legislation for certain matters may be passed exclusively by the National Congress; such is the case for foreign trade, telecommunications, monetary policy, maritime and air transport, insurance, and utilities. In addition, Congress has responsibility for legislating on all matters within the competence of the Union, including international treaties. Legislation for education, social security, and health may be issued concurrently by the federal and state legislatures, whilst municipalities may only issue laws on areas of local interest and to supplement federal and state legislation where pertinent.¹

2.8. The legislative process includes the preparation and enactment of ordinary, supplementary, and delegated laws, as well as amendments to the Constitution, legislative decrees, and

¹ Articles 22, 24 and 30 of the Federal Constitution; and Federal Constitution, Title IV (Chapter I, Section II).

resolutions. The 1988 Constitution of the Republic is the fundamental law of the State. There have been 70 amendments to the Constitution since its promulgation; 12 occurred between 2009 and October 2012.² Supplementary laws are legally superior to ordinary laws, and may be voted only under circumstances specified in the Constitution. Unlike ordinary laws, their approval requires an absolute majority in both chambers. The President may draft laws upon delegation from the Congress; this has only taken place twice since 1988.

2.9. The judiciary is composed of the Supreme Federal Court, the Superior Court of Justice, the federal regional courts and federal judges, and other special courts and judges.

2.10. The President may resort to provisional measures on issues considered to be of particular importance and urgency, under the provisions of Article 62 of the Constitution. Provisional measures become effective upon publication, and should be analysed by Congress upon enactment and voted on within 60 days. Given that they have the same legal status, many of Brazil's ordinary laws originate as provisional measures. In the case of tax issues, provisional measures dictated before the end of the fiscal year may only be applied on the following year's Budget, except for customs duties on imports, export taxes, Tax on Industrial Products (IPI) and financial operations (IOF), or extraordinary taxes created in case of war. Legislative decrees are administrative in nature and require a simple majority in Congress.

2.11. International treaties and conventions must be approved by Congress to enter into force domestically. After enactment, through a legislative decree and a Presidential decree, international treaties have the same legal status as ordinary laws; the Supreme Federal Court may deem them incompatible with the Federal Constitution and hence revoke them.

2.3 Trade Policy Formulation and Implementation and Objectives

2.12. The Chamber of Foreign Trade (CAMEX) is in charge of formulating, adopting, coordinating, and implementing trade policy on goods and services (since its creation in 1995).³ It is part of the Government Council of the Presidency of the Republic. CAMEX's main decision body is the Council of Ministers, chaired by the Minister of Development, Industry and Foreign Trade, and comprising the ministers of Civil House, Foreign Affairs, Finance, Agriculture and Supply, and Agrarian Development.

2.13. Given that several public bodies have competence for designing and implementing measures related to foreign trade, CAMEX provides guidelines and coordinates these activities. Public bodies other than the aforementioned ministries must consult CAMEX on issues related to trade policy, with the exception of financial market issues which are governed by the National Monetary Council and the Central Bank. The Ministry of Development, Industry and Foreign Trade implements trade policy following the guidelines provided by CAMEX through the Secretariat of Foreign Trade (SECEX) and its five departments: Foreign Trade Operations (DECEX); Trade Remedies (DECOM); International Trade Negotiations (DEINT); Planning and Development of Foreign Trade Policies (DEPLA); and Rules and Competitiveness in Foreign Trade (DENOC), and through the Secretariat of Commerce and Services Policies (DECOS).

2.14. The Ministry of External Relations is the representative to the WTO in Geneva and assists CAMEX with regard to regional integration and trade, amongst other issues. The Ministry of Finance formulates and implements economic policy, and is in charge of customs and tax policy and revenue collection. The private sector may participate in trade policy formulation through the CAMEX Private Sector Advisory Council (CONEX).

2.15. Brazil's current foreign policy framework is consistent with the framework described in its last Trade Policy Review.⁴ One of the country's main foreign policy goals is to seek opportunities

² Brazilian Government online information. Viewed at: http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/quadro_emc.htm. There is a link to each one of these amendments (in Portuguese).

³ Functions defined in Decree No. 4,732 of 10 June 2003.

⁴ Speech by Minister of State and External Relations Ambassador Antonio de Aguiar Patriota upon beginning his tenure, Brasilia, 2 January 2011. Viewed at: <http://www.itamaraty.gov.br/sala-de-imprensa/discursos-artigos-entrevistas-e-outras-comunicacoes/ministro-estado-relacoes-exteriores/discurso-do-ministro->

and create conditions for international trade to underpin its development scheme, based on sustainable and socially inclusive economic growth. As a result of the economic crisis and the protracted multilateral trade negotiations, Brazil has focused its efforts on strengthening regional economic integration through MERCOSUR and ALADI. In addition, it has initiated public consultations through CAMEX to examine how Brazilian economic agents perceive potential free-trade agreements with the EU and Canada.⁵ Notwithstanding these priorities, Brazil remains fully committed to the successful conclusion of the Doha Development Agenda negotiations and to the multilateral trading system in general.⁶ In particular, it pursues comprehensive reforms that lower the barriers for its agricultural products, whilst promoting more democratic international decision-making bodies and advocating for the rightful use of trade defence initiatives by developing countries.⁷

2.16. The incumbent Government has formulated the *Plano Brasil Maior* (Greater Brazil Plan), encompassing its industrial, technological, and foreign trade policies. The Plan is meant to uphold sustainable economic growth in an adverse economic environment, and to guarantee that Brazil emerges after the economic crisis in a better position than before it.⁸

2.4 Foreign Investment Regime

2.17. The legal framework for foreign investment in Brazil remains generally unmodified since its last Review. Foreign investment is regulated by Law No. 4,131 of 3 September 1962 (Foreign Capital Law)⁹ and its subsequent modifications in 1964 (Law No. 4,390 of 29 August 1964), and further amendments. Foreign and national capital in Brazil receive the same legal treatment under equal circumstances following Constitutional amendments passed in 1995, which prohibit all forms of discrimination not explicitly foreseen in the law.

2.18. The Federal Government aims to continue promoting direct investment, particularly in transport infrastructure, energy, aeronautics, and other technology-intensive sectors, in order to overcome production bottlenecks, spur competitiveness, and hence support economic growth. The incentives offered to investors consist generally of tax exemptions and low-cost financing, but do not usually include cash grants for initial outlays¹⁰; they normally do not distinguish between domestic and foreign investors. Investment from all sources is expected to increase to 23.2% of GDP by 2015 partly as a result of the second phase of the Growth Acceleration Programme (PAC), the exploration of oil and gas deposits in the pre-salt area, and the organization of the 2014 FIFA World Cup and the 2016 Olympic Games.¹¹

2.19. Investment in all forms must be registered with the Central Bank through the Electronic Statement of Registration - Foreign Direct Investment Module (RDE-IED), on the Central Bank's Information System (SISBACEN). Foreign capital must be registered within 30 days of the date it enters Brazil or after customs clearance in the case of goods. Remittances abroad, reinvestment of profits, dividends, and other resources, and repatriation of invested capital must also be registered with the Central Bank. Foreign capital does not require Central Bank authorization provided it is

antonio-de-aguiar-patriota-na-cerimonia-de-transmissao-do-cargo-de-ministro-de-estado-das-relacoes-exteriores-1/.

⁵ Statement by Minister of State and External Relations Ambassador Antonio de Aguiar Patriota at the Opening Ceremony of the Forum "The BRICS and the WTO Dispute Settlement System", Brasilia, 10 October 2012. Viewed at: <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/pronunciamento-do-senhor-ministro-de-estado-das-relacoes-exteriores-embaixador-antonio-de-aguiar-patriota-na-cerimonia-de-abertura-do-seminario-os-brics-e-o-sistema-de-solucao-de-controversias-da-omc-2013-brasilia-10-de-outubro-de-2012/>.

⁶ *Valor Econômico*, "Diplomacy and Trade", article by Minister of State and External Relations Ambassador Antonio de Aguiar Patriota, 10 October 2012. Viewed at: <http://www.itamaraty.gov.br/sala-de-imprensa/discursos-artigos-entrevistas-e-outras-comunicacoes/ministro-estado-relacoes-exteriores/diplomacia-e-comercio-artigo-do-ministro-antonio-de-aguiar-patriota-valor-economico-de-10-10-2012>.

⁷ Statement by President Dilma Rousseff at the opening of the general debate of the 67th session of the United Nations General Assembly. Viewed at: <http://www.itamaraty.gov.br/sala-de-imprensa/discursos-artigos-entrevistas-e-outras-comunicacoes/presidente-da-republica-federativa-do-brasil/statement-by-h.-e.-d-dilma-rousseff-president-of-the-federative-republic-of-brazil-at-the-opening-of-the-general-debate-of-the-67th-session-of-the-united-nations-general-assembly-new-york-25-september-2012>.

⁸ *Brasil Maior*. Viewed at: <http://www.brasilmaior.mdic.gov.br/conteudo/128>.

⁹ As further regulated and put into effect by Decree No. 55,762 of 17 February 1965, as amended.

¹⁰ KPMG (2011).

¹¹ Ministry of Planning, Budget and Administration (2012).

registered.¹² The invested sum must be registered in the currency in which the investment was made.¹³

2.20. There are no restrictions on remittance of dividends or profits abroad, other than their adequate registration in the RDE-IED module. Remittances paid to foreign shareholders or partners are not taxed. The same conditions apply for reinvestment. The capitalization of profits, dividends, interest on equity capital and profit reserves in the receiving company in which they were produced are registered under the reinvestment item of the DFI module of the RDE. The registration of reinvestment is made in the currency of the country to which income could have been remitted, or in local currency. Repatriation of capital is also exempt from income tax, unless it exceeds the original investment (capital gains), in which case a 15% income tax is withheld.

2.21. Until 2010, intangible assets imported without coverage of an exchange contract required prior approval from the Department of Financial Compliance and Financial Information Treatment (DECIC) of the Central Bank.¹⁴ This requirement was removed by Resolution CMN No. 3,844/2010.

2.22. Foreign investors may participate in Brazilian financial institutions insofar as there are international or reciprocity agreements or agreements of interest to the Brazilian Government. An Executive Branch Decree is necessary for the establishment of foreign financial institutions in Brazil. Registration in the RDE-IED should be preceded by authorization to invest in capital by the Central Bank's Financial Organization Department (DEORF).¹⁵

2.23. In order to invest in the Brazilian financial and capital markets, non-resident individuals and collective entities must register with the Brazilian Securities Exchange Commission (CVM) and appoint a local representative to register their transactions in the RDE-Portfolio Module of the SISBACEN. Upon registration, investors may participate freely in the fixed- and variable-income markets.¹⁶ Financial assets and securities as well as other types of investments must be registered, and maintained under custody or in deposit accounts in institutions authorized for such purposes or in registration, settlement or custody systems recognized or authorized by the CVM or the Central Bank.

2.24. Resident as well as non-resident acquirers of assets located in Brazil (or their attorney-in-fact in the case of non-residents) are responsible for withholding and paying income tax applicable to capital gains. There are no differences between residents and non-residents with regard to taxation of capital gains obtained in Brazil. The foreign purchaser of an investment registered with the Central Bank of Brazil is entitled to register the capital under his name in the same amount (number of shares) previously held by the selling part, regardless of the price paid for the investment.¹⁷

2.25. Foreign investment is restricted in activities involving health services (except health insurance).¹⁸ Nuclear energy and postal services activities are under Federal Government monopoly. Courier services may be provided by enterprises legally constituted in Brazil.¹⁹ Foreign investors may not manage newspapers, magazines, and other publications, or television and radio networks, or hold more than 30% of their capital, except for naturalized citizens settled in Brazil for more than ten years. Under the provisions of Law No. 12,485, cable TV services are completely open to foreign investment (Chapter 4.5.2).

2.26. Brazilian nationals, foreigners that reside permanently in Brazil, and companies established in the country (regardless of the origin of their capital) may participate in fishing activities in Brazilian territorial waters provided they are authorized by the Special Secretariat for Aquaculture

¹² Central Bank of Brazil (2012e).

¹³ Ministry of External Relations (2012).

¹⁴ Ministry of External Relations (2012).

¹⁵ The information requirements that must be submitted when filing for application to operate are listed in Central Bank Circular No. 3,317 of 29 March 2006.

¹⁶ In 2005, the two foreign exchange markets (i.e. free and floating) were unified through the enactment of the Regulation of Foreign Exchange Market and International Capital (RMCCI).

¹⁷ Law No. 10,833 of 29 December 2003, and Ministry of External Relations (2012).

¹⁸ Aerospace activities banned to foreigners include the launching and orbital positioning of satellites, spacecraft, aircraft and related activities, but not the manufacture or marketing of these items or accessories.

¹⁹ Law No. 6,538 of 22 June 1978.

and Fisheries. A similar authorization and further specific requirements are necessary to operate in the mining and hydrocarbons sectors.

2.27. Regular public air transportation services require a concession from the Government. Foreign management and stock ownership are restricted, although the restrictions have been reduced recently by the Brazilian Senate (Chapter 4.5.3).²⁰

2.28. Foreign investor participation in companies carrying out domestic highway freight transport services is currently unlimited.²¹ International road transport is reserved to companies that have at least 50% of capital with voting rights held by citizens of the seven member countries of the International Land Transport Agreement of the Southern Cone.²² Maritime transport is open to vessels of all countries that provide reciprocal treatment to Brazilian vessels, but only Brazilian individuals or corporations established in the country may bear the Brazilian flag (Chapter 4.5.4).²³

2.29. Brazil has signed 14 bilateral investment agreements (BITs).²⁴ Brazil has negotiated two MERCOSUR protocols on investment: the Buenos Aires Protocol (extra-MERCOSUR), and the Colonia Protocol (intra-MERCOSUR).²⁵ However, none of these agreements or protocols is in force, either because the Executive did not submit the agreement to Congress (e.g. Colonia Protocol) or because it withdrew the agreement before Congress had voted (e.g. Buenos Aires Protocol and the BIT with France). This reflects the concerns held in Congress about the constitutionality of the agreements with respect to issues such as upholding the principle of full equality for investors under the law. The authorities note that concerns raised by Congress with respect to the BITs signed by Brazil included: (i) the preferential treatment accorded to foreign investors as a result of the BITs dispute settlement mechanisms; (ii) the broad definition of investment contained in the BITs; (iii) the requirement in the BITs for prompt payment of expropriations in freely convertible currencies, which was considered incompatible with the Federal Constitution, which specifies that expropriations for reasons of agrarian reform are to be compensated by Agrarian Reform Bonds, for example; and (iv) the ambiguity caused by the concept of indirect expropriation.

2.30. Brazil signed a new double taxation agreement with Peru in 2009, adding to a list of 29 countries. Germany dismissed its tax treaty with Brazil in 2006.²⁶

2.31. Brazil adhered to the Multilateral Investment Guarantee Agency (MIGA) convention in 1992, and joined the OECD Investment Committee in 1998 as an observer. It has not joined the International Centre for Settlement of Investment Disputes (as of October 2012). Prior to becoming an OECD observer, Brazil subscribed to its 1976 Declaration and Decisions on International Investment and Multinational Enterprises.

2.5 International Relations

2.5.1 World Trade Organization

2.32. Brazil joined the WTO upon its creation and grants MFN treatment to all its trading partners. Brazil has specific commitments on financial services under the GATS. The Fifth Protocol passed a second hearing in the Brazilian Congress in 2008, but full approval remains pending. Successive

²⁰ Ministry of External Relations (2012).

²¹ Law No. 11,442 of 5 January 2007, last updated on 15 June 2012. Viewed at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/lei/l11442.htm.

²² The ATIT (ALADI/AAP/A14TM/3) is a partial scope agreement subscribed under the framework of the Treaty of Montevideo of 1980 of the Latin America Integration Association (LAIA).

²³ Law No. 9,342 last updated on 2 March 2012. Viewed at: http://www.planalto.gov.br/ccivil_03/leis/l9432.htm.

²⁴ Belgium-Luxembourg, Chile, Cuba, Denmark, Finland, France, Germany, Italy, the Republic of Korea, the Netherlands, Portugal, Switzerland, the United Kingdom, and Venezuela. (ICSID Database of Bilateral Investment Treaties. Viewed at: <http://icsid.worldbank.org/ICSID/ FrontServlet?requestType=ICSID PublicationsRH&actionVal=ViewBilateral&reqFrom=Main>).

²⁵ Respectively, MERCOSUR Decision No. 11/94, Protocol on Promotion and Protection of Investment Proceeding from Non-Member Countries of the MERCOSUR, viewed at: <http://www.cvm.gov.br/port/relinter/ingles/mercosul/buenos-e.asp>; and MERCOSUR Decision No. 11/93, Protocol of Colonia for the Promotion and Reciprocal Protection Of Investments in MERCOSUR (investment within member countries), viewed at: <http://www.cvm.gov.br/ingl/inter/mercosul/coloni-e.asp>.

²⁶ Executive Decree DEC No. 5,654/2005 of 29 December 2005.

notifications at the Committee on Trade in Financial Services have indicated that it is undergoing domestic procedures and that it is not possible to indicate a precise timetable for completion.²⁷ Brazil has not ratified the Fourth Protocol or made specific commitments on basic telecommunications.

2.33. Brazil considers the WTO to be the main arena where the most pressing issues in international trade should be discussed. Therefore, it remains committed to strengthening the existing multilateral trade system and to the successful conclusion of the Doha Development Agenda (DDA).²⁸ It participates actively in the WTO individually, as a prominent voice for developing countries, and within the BRICS group of leading emerging economies.²⁹ For instance, in 2011, Brazil submitted a proposal to discuss the link between currency exchange rates and international trade in order to examine possible tools or remedies to deal with currency fluctuations (see also Chapter 1).³⁰ Brazil participates in the Friends of Anti-Dumping Negotiations (FANs) and in the Coalition of Agricultural Exporting Nations Lobbying for Agricultural Trade Liberalization. In the DDA, Brazil has presented independently and together with other delegations a number of proposals related to, *inter alia*, agriculture, trade in services, intellectual property rights and rules.³¹

2.34. Brazil has submitted the majority of its required notifications to the WTO during the period under review (Table A2.1).

2.35. Brazil was a respondent in two cases under the WTO Dispute Settlement Mechanism in the period under review. Both disputes were initiated before 2008, and had been concluded as of October 2012 (Table 2.1). In addition, Brazil has initiated three complaints since its last Review, related to anti-dumping duties on frozen meat of fowls, seizure of generic drugs, and anti-dumping administrative reviews and other measures related to orange juice imports. With regard to the case against the United States on subsidies on upland cotton, initiated in 2002, Brazil was authorized to adopt retaliatory measures by the Appellate Body. Since the establishment of the WTO, Brazil has been a defendant in 14 cases, a complainant in 26 cases and a third party to 73 cases.

Table 2.1 WTO dispute settlement cases involving Brazil, January 2009-December 2012

Subject of dispute	Respondent/ complainant	Status	WTO document
Brazil as respondent			
Measures on retreaded tyres from the EC	Brazil/European Communities	Panel Report circulated: 12 June 2007. Appellate Body report circulated: 3 December 2007. Article 21.3(c) Arbitration Report circulated: 29 August 2008. Implementation notified by respondent on 25 September 2009.	series WT/DS332
Anti-dumping measures on certain polyethylene terephthalate resins	Brazil/Argentina	The DSB established a panel in July 2007. On 4 February 2008, the Chairman of the Panel informed the DSB that Argentina had indicated that the Foreign Trade Chamber of Brazil had adopted a decision on 29 January 2008, to suspend the application of anti-dumping duties on imports of PET resin from Argentina. Therefore, Argentina asked the Panel to suspend its work. Panel proceedings were suspended and its authority lapsed on 5 February 2009.	series WT/DS355
Brazil as complainant			
Anti-dumping duties on frozen meat of fowls	South Africa/Brazil	Complainant requested consultations on 21 June 2012. No panel established and no withdrawal or mutually agreed solution has been notified.	series WT/DS439
Seizure of generic drugs in transit	European Union and a Member State/Brazil	Complainant requested consultations on 21 June 2012. No panel established and no withdrawal or mutually agreed solution has been notified.	series WT/DS409

²⁷ WTO document S/FIN/M/56, 16 June 2008, and S/FIN/M/73, 30 July 2012.

²⁸ Statement by Minister of State and External Relations Ambassador Antonio de Aguiar Patriota at the Opening Ceremony of the Forum "The BRICS and the WTO Dispute Settlement System", Brasilia, 10 October 2012. Viewed at: <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/pronunciamento-do-senhor-ministro-de-estado-das-relacoes-exteriores-embaixador-antonio-de-aguiar-patriota-na-cerimonia-de-abertura-do-seminario-os-brics-e-o-sistema-de-solucao-de-controversias-da-omc-2013-brasilia-10-de-outubro-de-2012>.

²⁹ WTO document WT/MIN(11)/18, 16 December 2011.

³⁰ WTO document WT/WGTDF/W/56, 20 September 2011.

³¹ The main proposals are indicated in WTO (2009), p. 19.

Subject of dispute	Respondent/ complainant	Status	WTO document
Anti-Dumping administrative reviews & other measures related to imports of certain orange juice	United States/Brazil	Panel Report circulated: 25 March 2011. Report adopted with recommendation to bring measures into conformity: 17 June 2011.	series WT/DS382
Subsidies on upland cotton	United States/Brazil	Panel Report circulated: 8 September 2004. Appellate Body Report circulated: 3 March 2005. Article 21.5 Panel Report circulated: 18 December 2007. Article 21.5 Appellate Body Report circulated: 2 June 2008. Authorization to retaliate granted on 19 November 2009.	series WT/DS267

Source: WTO Secretariat.

2.5.2 Preferential agreements

2.5.2.1 General features

2.36. Brazil is a founding member of the Southern Common Market (MERCOSUR), together with Argentina, Paraguay, and Uruguay. In accordance with MERCOSUR document CMC/27-12, the Bolivarian Republic of Venezuela was ratified as a full member of MERCOSUR in 2012. As part of MERCOSUR, Brazil has preferential trade agreements (Economic Complementarity Agreements) with Chile, Bolivia, Mexico, Peru, Colombia, Ecuador, Venezuela, and Cuba. In the period under review, two further MERCOSUR agreements entered into force with India and Israel. In addition, Brazil has preferential agreements with Guyana and Suriname within the framework of the Latin American Integration Association. The scope of the different preferential agreements varies widely (Table 2.2).

Table 2.2 Scope of selected preferential agreements

Agreement	Nomenclature	Number of lines	Average reduction (%)	Reduction range (%)	Preferential rates (%)	Number of lines subject to preferential quota
AAP25TM38 Brazil/Guyana	HS96	127	100.0	100	100	8
ACE35 MERCOSUR/Chile	HS96	6,508	97.5	0-100	0, 17, 28, 30, 33, 34, 91, 100	52
ACE53 Brazil/Mexico	HS96	792	66.9	0-100	0, 20, 25, 30, 40, 45, 50, 60, 70, 75, 80, 100	8
ACE55 MERCOSUR/Mexico	HS02	244	100.0	100	100	12
ACE58 MERCOSUR/Peru	HS96	6,515	100.0	0-100	0, 100	
ACE36 MERCOSUR/Bolivia	HS96	6,524	98.4	30-100	30, 50, 100	2
ACE59 MERCOSUR/Colombia	HS96	6,524	93.0	0-100	0, 30, 40, 44, 50, 55, 60, 1, 63, 70, 72, 73, 77, 80, 81, 87, 88, 95, 100	39
ACE59 MERCOSUR/Venezuela	HS96	6,522	96.4	0-100	0, 50, 55, 61, 65, 66, 70, 77, 81, 83, 87, 90, 100	6
ACE59 MERCOSUR/Ecuador	HS96	6,524	97.6	0-100	0, 50, 55, 61, 69, 77, 81, 90, 100	171
ACE62 MERCOSUR/Cuba	HS02	2,132	96.8	33-100	33, 50, 60, 70, 75, 80, 90, 100	
ACE MERCOSUR/India	HS02	452	13.6	10-100	10, 20, 100	2
ACE MERCOSUR/Israel	HS02	9,423	55.0	30-100	30, 37.5, 75, 100	
AAP25TM41 Brazil/Suriname	HS02	3 (rice)	100.0	100	100	3

.. Not available.

Source: WTO Secretariat, based on data provided by the authorities.

2.5.2.2 MERCOSUR

2.37. MERCOSUR is Brazil's main preferential agreement in terms of value of trade, comprising some 10% of its merchandise trade.³² The bloc was established in 1991 by the Treaty of Asunción³³, and its institutional structure was defined in the 1994 Protocol of Ouro Preto.

2.38. The Common Market Group (GMC) and the Council for the Common Market (CMC) are the main executive and decision-making bodies of MERCOSUR. The purpose of the CMC is to formulate policy and promote actions that help to configure the Common Market; it is composed of the Ministers of External Relations and Economy of the member countries.³⁴ The GMC oversees the application of the Treaty of Asunción, and its protocols and agreements, and it may make recommendations to the Council. Consequently, it is entitled to issue mandatory Resolutions that apply to all member countries. It is also in charge of negotiations with third countries, groups of countries, and international organizations. The Trade Commission is responsible for the application of common trade policy instruments.

2.39. MERCOSUR member states share a common external tariff (CET), which entered into force on 1 January 1995. Various exceptions have been allowed through Decisions by the CMC. All MERCOSUR member states are currently authorized to have an exception list, although there are different provisions for each country. Decision CMC 56/10 established the creation of an *ad hoc* group to examine the current CET structure and submit a proposal for the Common Market Group's consideration in 2014. Brazil is allowed to establish special tariffs for informatics and telecommunications goods (BIT)³⁵ until the end of 2015 and for capital goods (BK) until the end of 2013. In the context of the global economic crisis, MERCOSUR member states were also authorized by Decision CMC 25/12 to increase their tariffs for up to 200 tariff lines until the end of 2014, within WTO bound rates (Chapter 3.2.3).

2.40. The Agreement on the Elimination of Double Collection of CET and the Distribution of Customs Revenue in MERCOSUR, approved by Decision 54/04, grants local MERCOSUR status to imported products that conform to the Common Tariff Policy (PAC). Its implementation consists of three phases.³⁶ The first phase entails granting 0% CET to all merchandise imported by a member country with 100% preferential tariffs under MERCOSUR agreements with third parties. The second stage would cover the remaining goods.³⁷ The third stage will require implementing a customs revenue distribution mechanism and the unification of customs systems in all member states. Since 2010, MERCOSUR member states have been negotiating the implementation of these three phases, according to Decisions CMC 10/10 and 56/10. In the context of the global economic crisis, MERCOSUR member States were also authorized by Decision CMC 25/12 to increase their tariffs for up to 200 tariff lines until the end of 2014, within WTO bound rates.

2.41. The sugar and automotive sectors are the only exclusions to free circulation within MERCOSUR. There is no schedule for the inclusion of sugar in the free-trade-regime. Trade in the automotive sector between Brazil and MERCOSUR members is still largely regulated by bilateral agreements, which were renegotiated in the period under review.³⁸ The regional agreement on automotive policy ratified by member states in 2000 and 2001 did not enter fully in force as originally planned. In 2010, Decision CMC 56/10 called for the establishment of a working group to draft a new common automotive policy.³⁹ At end 2012, the working group had not yet been convened.

³² As of August 2012, available information on MERCOSUR trade includes its four original members (Argentina, Brazil, Paraguay, and Uruguay) but does not include Venezuela.

³³ MERCOSUR is incorporated in the LAIA legal regime as Economic Complementarity Agreement No. 18. LAIA economic complementarity agreements must be open for accession by any LAIA country.

³⁴ MERCOSUR online information. Viewed at: http://www.mercosur.int/t_generic.jsp?contentid=3862&site=1&channel=secretaria&seccion=2.

³⁵ Decisions CMC 39/05, 13/06, 27/06, 61/07, 58/08 and 57/10.

³⁶ MERCOSUR CMC/DEC 10/10.

³⁷ This stage is subject to the ratification and entry into force of the Customs Code. MERCOSUR CMC/DEC 27/10 and MERCOSUR CMC/DEC 34/11.

³⁸ Brazil/Argentina: 39th Additional Protocol to the ACE-14; Brazil/Uruguay: 68th Additional Protocol to the ACE-02; Argentina/Uruguay: Partial Agreement No. 57.

³⁹ MERCOSUR Decision CMC 56/10. Viewed at: http://www.mercosur.int/innovaportal/v/2376/1/secretaria/decisiones_2010.

2.42. Dispute settlement in MERCOSUR is regulated by the Protocol of Olivos, signed in February 2002 and in force since January 2004. Under the Protocol of Olivos, member states may choose to file disputes either within MERCOSUR or at the WTO. Upon agreement by the parties, the Common Market Group may provide mediation. Cases are handled by an Ad Hoc Court of Arbitration (TAHM) and/or by the Permanent Review Court (PRC), composed of five arbitrators. During the period under review, Brazil did not participate in any disputes within MERCOSUR.⁴⁰

2.43. The 19th Additional Protocol of MERCOSUR modified by the 49th Additional Protocol establishes and regulates the application of safeguard measures on imports from third parties. It was ratified internally by Brazil, but is pending approval in other member states for entry into force. The Protocol of Montevideo on Trade in Services entered into force on 7 December 2005 between Argentina, Brazil, and Uruguay. It establishes a schedule for services liberalization within MERCOSUR, to be completed by December 2015. The Protocol on Government Procurement, negotiated in 2006, has not entered into force, and member states are currently committed to concluding its revision.⁴¹

2.5.2.3 Other trade arrangements and agreements

2.44. In the period under review, two preferential trade agreements entered into force between MERCOSUR and extra-bloc partners: a partial-scope agreement with India, which was signed in January 2004 and entered in force in June 2009, and a free-trade agreement with Israel, which was signed in September 2007 and entered in force in September 2011.⁴² Additionally, MERCOSUR has negotiated and signed a preferential agreement that has yet to enter into force with the Southern African Customs Union (SACU), as well as free-trade agreements with Egypt and the State of Palestine (Table 2.3), which are likewise not yet in force).⁴³ The Republic of Syria and MERCOSUR signed a Framework Agreement to start formal negotiations to create a free-trade area in December 2010, which have not yet been initiated.⁴⁴

Table 2.3 Preferential agreements, 2008-12

Trade Agreements that entered in force after October 2008	
Preferential trade agreement between MERCOSUR and India	
Signature date / Entry into force	25 January 2004 / 1 June 2009 (For all MERCOSUR members)
Provisions	
Goods	Yes
Services	No
Transition for full implementation	n.a.
Excluded goods (number of lines)	9,378
Duty-free tariff lines	
2012	4.6%
After transition period	n.a.
Notification to WTO	WT/COMTD/N/31
Free trade agreement between MERCOSUR and Israel	
Signature date / Entry into force	18 December 2007 / 3 April 2010 (For Brazil)
Provisions	
Goods	Yes
Services	No
Transition for full implementation	2019
Excluded goods (number of lines)	408
Duty-free tariff lines	
2012	95.8%
After transition period	95.8%
Notification to WTO	Not notified

⁴⁰ MERCOSUR online information. Viewed at: http://www.mercosur.int/t_generic.jsp?contentid=374&site=1&channel=secretaria&seccion=5.

⁴¹ MERCOSUR - Joint Communiqué of the Presidents of the Member States, 29 June 2012. Viewed at: http://www.mercosur.int/innovaportal/file/4488/1/comunicado_conjunto_presidentes_ep.pdf.

⁴² For a full list of MERCOSUR agreements, see: http://www.mercosur.int/t_ligaenmarco.jsp?contentid=4823&site=1&channel=secretaria.

⁴³ MERCOSUR Decisions CMC 54/08, CMC 26/10, and CMC 35/11, respectively.

⁴⁴ MERCOSUR Decision CMC 34/10.

Trade Agreements that entered in force after October 2008	
Preferential trade agreement between MERCOSUR and Southern African Customs Union	
Signature date / Entry into force	15 December 2008 / Pending
Provisions	
Goods	Yes
Services	No
Transition for full implementation	n.a.
Excluded goods (number of lines)	8,780
Duty-free tariff lines	
2012	10.7%
After transition period	'Fixed preferences' agreement
Notification to WTO	Not notified
Free trade agreement between MERCOSUR and Egypt	
Signature date / Entry into force	2 August 2010 / Pending
Provisions	
Goods	Yes
Services	No
Transition for full implementation	10 years after entry into force
Excluded goods (number of lines)	197
Duty-free tariff lines	
2012	98%
After transition period	98%
Notification to WTO	Not notified
Free trade agreement between MERCOSUR and the State of Palestine	
Signature date / Entry into force	20 December 2011 / Pending
Provisions	
Goods	Yes
Services	No
Transition for full implementation	10 years after entry into force
Excluded goods (number of lines)	408
Duty-free tariff lines	
2012	95.8%
After transition period	95.8%
Notification to WTO	Not notified

n.a. Not applicable.

Source: Ministry of Development, Industry and Foreign Trade, Online information. Viewed at: <http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=405>; MERCOSUR Secretariat Online Information. Viewed at: http://www.mercosur.int/t_generic.jsp?contentid=2639&site=1&channel=secretaria; WTO (2012), *Trade Policy Review: Uruguay*, Geneva. WTO Document WT/TPR/S/263.

2.45. Negotiations with the European Union on a free-trade agreement with MERCOSUR were re-launched in 2010, after being stalled for six years.⁴⁵ The Bi-Regional Negotiations Committee (CNB) is currently holding regular meetings; the most recent was in Brasilia in October 2012. Negotiations are concentrated on creating a regulatory framework for trade in goods and services, market access, dispute settlement, investment, competition, technical barriers, and other issues.⁴⁶ Brazil and the EU have a strategic partnership; their last summit was held in Brussels in October 2011.⁴⁷

2.46. Brazil participates in the Global System of Trade Preferences among Developing Countries (GSTP), and grants preferences to participating countries on some 98 HS96 tariff headings. The preferences range from 10% to 50% and include agricultural products, fuels, chemical products, hides and skins, ferrous and steel products.⁴⁸

⁴⁵ Viewed at: <http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=2635&refr=1893>.

⁴⁶ Viewed at: http://eeas.europa.eu/delegations/brazil/press_corner/all_news/news/2012/20121101_01_en.htm.

⁴⁷ Viewed at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/124878.pdf, and <http://www.itamaraty.gov.br>.

⁴⁸ For the complete list, see: http://www.unctadxi.org/Secured/GSTP/Concessions/mercosur_en.pdf.

2.6 Aid for Trade

2.47. Brazil participates actively in the Aid-for-Trade (AFT) initiative, both providing South-South cooperation and as a middle-upper income Official Development Assistance (ODA) recipient.

2.48. As a South-South partner, Brazil remains committed to providing trade-related Cooperation to developing countries.⁴⁹ Together with the G20 countries, Brazil pledged in 2010 to maintain support for AFT at levels that reflect the average for the period 2006 to 2008, as well as to monitor those commitments and evaluate their impact on low income countries (LICs).⁵⁰

2.49. The Brazilian Agency for Co-Operation (ABC) is part of the Ministry of External Relations' and is in charge of negotiating, coordinating, and implementing technical cooperation programmes. According to a WTO-OECD report, by 2011, Brazil had carried out some 300 technical assistance initiatives in Africa, with a total disbursement of US\$60 million; the Cotton-4 project, initiated in 2008 in Benin, Burkina Faso, Chad, and Mali is among the most successful.⁵¹ Brazil's current cooperation strategy is focused on climate change and green growth. The majority of its resources will be directed towards biofuels and agriculture in Africa, Latin America, and the Caribbean. Other activities that Brazil has carried out include simplified export procedures through postal and courier services, the WTO dispute settlement system, trade policy and trade negotiations. The ABC has committed to invest US\$36 million between 2013 and 2016 in development projects in Africa, and another US\$40 million in Latin America and the Caribbean.⁵²

2.50. During the development of the AFT framework, Brazil proposed that it should not be conceived as a substitute for the development gains that result from negotiations on market access and the elaboration of balanced trade rules. Additionally, it proposed that AFT should be provided without imposing conditionality, and that "ownership" of cooperation initiatives should remain with the recipient rather than the donor or partner.⁵³ Brazil contributed to the development of technical support and capacity-building activities eligible under AFT schemes such as supply-side constraints, trade and poverty reduction frameworks, and social infrastructure programmes.⁵⁴

2.51. As a recipient, Brazil received approximately US\$470 million in AFT flows in 2010, a seven-fold increase from 2008.⁵⁵ In the 2005-10 period, AFT flows to Brazil averaged US\$154 million, primarily directed to the forestry, agriculture, and energy sectors.

⁴⁹ Ministerial Declaration by BRICS Trade Ministers, Press Release 489, 14 December 2011. Viewed at: <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/declaracao-dos-ministros-de-comercio-dobrics-genebra-14-de-dezembro-de-2011/>.

⁵⁰ OECD-WTO (2011).

⁵¹ OECD-WTO (2011).

⁵² Brazilian Cooperation Agency online information. Viewed at: http://www.abc.gov.br/abc_por/webforms/interna.aspx?campo=457.

⁵³ WTO document WT/AFT/W/10/Rev.1, 7 June 2006.

⁵⁴ WTO document WT/AFT/W/10/Rev.1, 7 June 2006.

⁵⁵ Amounts expressed in constant 2010 U.S. dollars. Aid-for-Trade measures comprise technical assistance for trade policy and regulations, trade-related infrastructure, productive capacity building, including trade development, trade-related adjustment, and other trade-related needs. Viewed at: OECD Stats: <http://www.oecd.org/dac/aidfortrade/aid-for-tradestatisticalqueries.htm>.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Introduction

3.1. Brazil's 2012 applied MFN customs tariff is entirely *ad valorem*, with rates ranging from zero to 55%. The simple average MFN tariff applied in 2012 was 11.7%, up from 11.5% in 2008. The increase is due to both the change in classification and temporary derogations from the MERCOSUR Common External Tariff. Some 8% of tariff lines are duty free. The average applied tariff for the manufacturing sector is 12%. Brazil bound its entire tariff during the Uruguay Round. Tariffs on agricultural products (WTO definition) are bound at rates between 0% and 55%, while bound rates for non-agricultural products range from 0% to 35%.

3.2. Besides customs tariffs, imports are subject to a number of internal taxes, including the Tax on Industrial Products (IPI); Tax on the Circulation of Goods and Services (ICMS); contributions to the social integration programme (PIS) and to finance social security (COFINS); and Tax on Services (ISS). The application of these taxes may vary depending on the product type, the competent sub-federal authority, and the importer's tax regime status, thus rendering Brazil's tax system complex.

3.3. Brazil continues to be a user of anti-dumping measures: during the review period the number of new cases varied significantly from year to year, but with the exception of 2009 was above historical trends. In the first nine months of 2012, Brazil initiated 47 new investigations, exceeding the previous record of 40 investigations in 2010. There were 83 anti-dumping measures in place in mid-2012, compared with 63 reported in the last Review for October 2008. New legislation allows for the application of provisional measures, which was not previously the practice in Brazil.

3.4. Technical regulations may be established through laws, decrees or resolutions, and must be published in the *Official Journal*. Six months are typically allowed between the publication of the measure and its entry into force. Proposed technical regulations considered to have trade effects, are notified to the WTO for Members' comments. Although the drafting of technical regulations is not centralized, most competent agencies follow the guidelines of the *Good Regulatory Practice Guide*, which contains recommendations for their elaboration, dissemination, periodic review, and elimination. Most technical regulations enacted in Brazil are based on international standards; when this is not the case, they are based on performance criteria. The recommended period for review and revision of technical regulations is four years.

3.5. Brazilian law provides for the application of an export tax of 30%, which may be decreased or increased to up to 150% in order to address foreign-exchange or trade-policy objectives. In practice, the export tax is zero-rated, with the exception of a few products. The basis for assessing the export tax is the f.o.b. value or the price of the good in the international market at the time of exportation, which must not be lower than the cost of acquisition or production of the good, increased by taxes and other contributions and a profit margin of 15% on the sum of costs and taxes.

3.6. Brazil maintains a number of programmes designed to promote the competitiveness of export-oriented companies, in particular small-scale enterprises, and to increase exports. The authorities consider that ensuring tax neutrality for exports is a key element in this regard, and that this objective is served through the exemption of indirect taxes on exports, and the implementation of schemes such as the drawback system, export-processing zones, and other export-related duty and tax concessions. Since the last Review of Brazil, several export support programmes have been modified or expanded, and some have been introduced.

3.7. Brazil's competition regime has been overhauled and a new competition policy entered into force in May 2012. The main changes comprise significant institutional restructuring, a switch from *ex post* to *ex ante* control of mergers and acquisitions, and amendments regarding the scope of prohibited conduct and sanctions.

3.8. Incentives and government assistance are available at both the federal and sub-federal levels. Incentive programmes may be regional, aimed at developing research, or target specific sectors. Most initiatives tend to promote entrepreneurship, innovation, exports, and regional development. Specific programmes are in place for the automotive, information technology,

aeronautics, and petroleum industries. Support measures include: loans; tax incentives; financial contributions; long-term and equity financing; accelerated depreciation; guarantees; grants; and credit insurance.

3.9. One of the Brazilian authorities' key concerns continues to be the availability and cost of credit. In this respect, the authorities consider that their policy of targeting credit is necessary to correct a market failure. To this end, Brazil has several official credit programmes aimed at different sectors and types of producers. The National Development Bank BNDES is the main institution providing credit or acting as a financial intermediary and guarantor. Credit takes the form of medium and long-term loans made available at attractive interest rates. The BNDES "equalizes" interest rates, that is, covers the difference between the agreed rate and the relevant market interest rate.

3.10. Brazil has not joined the WTO Agreement on Government Procurement. Its procurement system is decentralized and, according to the Constitution, the procurement of goods, services, and public works must be conducted through tendering procedures, unless otherwise specified in the law. Brazil's Tendering Law allows for preferences for goods and services produced in Brazil, or produced or supplied by Brazilian companies or by companies that invest in technology development in Brazil, in the case of equivalent offers. Small businesses may benefit from preferential measures that may include quotas, preference margins of up to 10%, as well as tendering procedures restricted to small companies. A revision to the Tendering Law introduced in 2010 significantly altered Brazil's procurement legislation, to make the granting of preferences a permanent feature of the regime and setting a new objective for Brazil's procurement policy: national sustainable development, in addition to seeking the most advantageous offer and ensuring equality under the Law. In order to achieve this goal, preferential margins of up to 25% may be granted for goods and services produced nationally and in accordance with Brazilian technical standards. The preference margins for particular products, services or sectors are determined by the newly created Interministerial Commission for Public Procurement.

3.11. Brazil's legislation covers all the major aspects mentioned in the TRIPS Agreement. In some areas, including copyright, Brazil grants rights that exceed the minimum terms laid down in the Agreement. There has been no substantial legislative modification on intellectual property matters since 2009, except those that introduced the requirements for the registration of layout designs of integrated circuits and computer software. In April 2012, Brazil started a Pilot Programme of Priority Examination of "Green Patents", which fast-tracks patent applications filed in Brazil via the Paris Convention for the Protection of Industrial Property by either residents or non-residents, with application date from 2 January 2011.

3.2 Measures Directly Affecting Imports

3.2.1 Procedures

3.12. Commercial imports must be registered in Brazil's Integrated Foreign Trade System (SISCOMEX), while importers must register in the Registry of Exporters and Importers (REI) maintained by the Secretariat of Foreign Trade (SECEX) at the Ministry of Development, Industry and Foreign Trade (MDIC). Inscription in the REI is free of charge and is done automatically, through the tax number (CUIT), at the time of the first transaction in SISCOMEX. Although it may not be revoked, the inscription may be suspended for up to 2 years as a sanction for import-related fraud. Import transactions with payment terms exceeding 360 days are subject to registration with the Central Bank; transfers abroad as payment for imports are only permitted if the respective import declaration is registered in SISCOMEX with planned payment details (*cobertura cambial*).¹

3.13. All services and intangible transactions between Brazilian and foreign residents must be registered in the Integrated System of Trade in Foreign Services, Intangible Assets and Other Operations (SISCOSERV), which became operational on 1 August 2012.² This applies to the Brazilian party (resident) involved in the transaction; exemptions may be granted for transactions

¹ Central Bank of Brazil, RMCCI-International Capital and Foreign Exchange Market Regulation, Circular No. 3,401 of 15 August 2008. Viewed at: <http://www.bcb.gov.br/htms/normativ/CIRCULAR3401.pdf>.

² Law No. 12,546 of 14 December 2011.

valued at less than US\$20,000 per month, if undertaken by natural persons, as well as for legal entities under the Simplified Tax Regime and individual micro-entrepreneurs.

3.14. SISCOMEX operations may be performed by a customs broker or directly by the importer; prior accreditation (habilitação) from the Secretariat of Federal Revenue of Brazil (RFB) is required in both cases, except for goods declared with a simplified import declaration (see below). The accreditation is free of charge and is valid indefinitely. Depending on the applicant's estimated financial capacity, accreditations may be limited (c.i.f. value of imports capped at US\$150,000 per semester) or unlimited; certain legal entities are eligible for an express accreditation, freeing them from financial capacity evaluation. Effective October 2012, estimates of financial capacity (valid for 6 months) are based on the applicant's tax payments or employee-related social security contributions, whichever is greater, over the previous five years.³ According to the authorities, the import cap has a risk-mitigation purpose; importers may apply for an unlimited accreditation, provided that they are able to demonstrate their actual financial capacity. No fees are charged for the accreditation. Individuals may only import goods in quantities that non-commercial practices would justify; SECEX is competent to determine on a case-by-case basis what constitutes a commercial practice.⁴

3.15. Customs brokers may import goods on behalf of third parties only after the actual acquirer of the goods (e.g. legal representative of the purchasing company) has been accredited to use SISCOMEX and has designated his representative (customs broker). Customs brokers must be registered in the Customs Register; they are free to operate throughout Brazil's customs territory and to set the fees for their services independently. Only Brazilian citizens may act as customs brokers in Brazil. There are no restrictions to competition among brokers. A digital certificate, issued by an accredited certification authority is needed to access SISCOMEX and SISCOSEV. As of August 2012, the SISCOMEX may be accessed via the Internet, as an alternative to the traditional dedicated network.⁵

3.16. Clearance of commercial imports is based on an import declaration (ID); the requisite supporting documentation⁶ must be produced only if the import declaration has been selected for documentary or physical examination. The dutiable value of all imports is the sum of the purchase cost and all expenses incurred for insurance and freight up to the point of entry into Brazil.⁷ Eligibility for preferential tariff treatment must be attested by a certificate of origin for each shipment of the merchandise in question. Certain goods imported directly from abroad, such as animals, plants, flammables, and goods transported by land, river/lake, or in bulk, may be declared prior to their arrival; as from July 2009, prior authorization from the relevant customs clearance unit is no longer required.⁸ Brazil has also put in place a mechanism for the provision of advance rulings on tariff classification; the rulings' duration of validity is not limited.⁹

3.17. Importers are responsible for all customs formalities and duties. Import duties are payable upon registration of the ID in the SISCOMEX and the amount due is withdrawn automatically from a registered bank account.¹⁰ Should there be a need to delay the final determination of their customs value, imported goods may be released under a guarantee. Each ID registered in SISCOMEX is subject to a fee of R\$185; additional fees, ranging from R\$29.5 (first two items) to R\$2.95 (item 51 and beyond), are payable for each item listed on the ID.¹¹

3.18. Import declarations are processed according to a risk assessment method that provides for four channels: green (automatic clearance), yellow (document inspection), red (document and physical inspection), and grey (document, physical and fraud-related inspection). The risk analysis

³ Normative Instruction RFB No. 1,288 of 31 August 2012 and Executive Declaratory Act No. 33 of 28 September 2012.

⁴ Ordinance No. 23 of 14 July 2011.

⁵ RFB online information. Viewed at: <http://www.receita.fazenda.gov.br/aduana/siscomex/ImportacaoWEB/texto.htm>.

⁶ For the documents that should accompany the ID, see WTO (2005), Secretariat Report, Chapter III (2)(i).

⁷ According to the authorities, import insurance is not compulsory.

⁸ Normative Instruction SRF No. 680 of 2 October 2006, as amended by Normative Instruction RFB No. 957 of 15 July 2009.

⁹ RFB Ordinance No. 740 of 2 May 2007.

¹⁰ Importers may arrange to use their customs broker's account for that purpose.

¹¹ Normative Instruction RFB No. 1,158 of 24 May 2011.

factors are regularly updated and include: the importer's fiscal compliance record; operational and financial capacity; frequency of use of the system; the nature, volume, and value of imports; taxation value; country of origin; and the import regime. The share of import declarations processed through the green channel increased during 2010-12 (Table 3.1). A "blue line" express clearance facility remains in place for authorized companies with regular foreign trade operations.¹²

Table 3.1 Distribution of ID by fiscal examination channel, 2010-12

Channel	2010	2011	2012
Green	83.16	87.45	87.81
Yellow	7.25	6.87	7.11
Red	9.55	5.63	5.07
Grey	0.04	0.05	0.01

Source: Secretariat of Federal Revenue of Brazil.

3.19. Efforts to better combat fraudulent imports have seen the RFB's risk management division evolve into the National Centre for Customs Risk Management (CERAD), an inter-ministerial body which became operational in August 2012.¹³ Investigations of tax avoidance practices, including false declarations of origin, have been intensified.¹⁴ Brazil has also increased the number of goods subject to compulsory certification (section 3.2.8) and taken steps to strengthen conformity assessment upon importation. A register of goods requiring conformity assessment, containing 1,829 products, was created in 2011. In April 2012, the RFB and the National Institute of Metrology, Quality and Technology (INMETRO) signed a technical cooperation agreement aimed at reinforcing the control of imported goods' compliance with Brazilian technical regulations.¹⁵ The agreement stipulates that the RFB may call upon INMETRO to perform conformity assessments during customs clearance of imports; the two entities will also collaborate to better assess the value of imports and improve the selection mechanism for physical inspections.¹⁶

3.20. A simplified import declaration (SID) may be used for certain shipments whose value does not exceed US\$3,000 and for some non-commercial imports.¹⁷ The SID may be processed through SISCOEX or submitted in hard copy to the relevant customs unit; submission is free of charge.

3.21. Airborne expedited shipments (documents and goods whose value does not exceed US\$3,000) transported by door-to-door delivery companies require a DIRE express shipment declaration (*Declaração de Importação de Remessas Expressas*), which must be registered in the system for Computerized Control of Expedited Shipments (REMESSA). The courier company, rather than the importer, is responsible for customs procedures. Commercial imports declared with a DIRE are subject to a Simplified Tax Regime (*Regime de Tributação Simplificada*) and are taxed at 60% of their customs value, regardless of the tariff line under which they are classified; books, newspapers, and magazines are tax-exempt.

3.22. In February 2012, Brazil implemented a unified taxation regime (RTU) allowing for the simplified customs clearance of certain goods imported from Paraguay by Brazilian micro-companies (with annual revenues up to R\$120,000) and transported by authorized vehicles and drivers.¹⁸ The regime requires both the importer and the Paraguayan seller to be authorized and

¹² WTO document WT/TPR/S/212/Rev.1 of 11 May 2009.

¹³ CERAD's mission is to facilitate legitimate trade through coordination of risk analysis techniques in customs control.

¹⁴ *Plano Brasil Maior* online information. Viewed at: <http://www.brasilmaior.mdic.gov.br/images/data/201208/ad9d7ee47c236ba9ee8fda7bb27501d7.pdf>.

¹⁵ RFB online information. Viewed at: http://www.receita.fazenda.gov.br/automaticoSRFSinot/2012/04/11/2012_04_11_18_03_43_691163988.html.

¹⁶ *Plano Brasil Maior* online information. Viewed at: <http://www.brasilmaior.mdic.gov.br/images/data/201211/2f197bbf4dfd7e05c57703fd75673ec2.pdf>.

¹⁷ Eligible goods include: samples with no commercial value; books and publications imported for non-commercial purposes; goods (valued up to US\$500) and prescription medicines imported by an individual for non-commercial purposes; temporarily admitted vehicles of foreign residents; imports by diplomatic missions; human organs and tissues for transplantation; domestic animals imported for non-commercial purposes; donations and goods admitted temporarily for humanitarian aid purposes; goods of a cultural nature; goods (valued up to US\$500) imported by a public administration entity; and goods returned to Brazil.

¹⁸ Law No. 11,898 of 8 January 2009 and Decree No. 6,956 of 9 September 2009.

registered in a computerized system (*Sistema RTU*) maintained by the RFB.¹⁹ Eligible imports comprise mainly consumer electronics (some 250 items under NCM tariff chapters 84, 85, and 90), subject to annual and quarterly value limits.²⁰ Under the RTU, the cumulative rate of the import duty, the excise duty (*imposto sobre produtos industrializados*), and PIS and COFINS contributions is 25%; it is applied on the goods' purchase price, as per the commercial invoice. The authorities indicate that only 45 import declarations were made under the RTU in its first year of operation.

3.23. The 2013 World Bank *Doing Business* survey reports that the overall time to import merchandise into Brazil (17 days) has not changed over the past three years, after having decreased from 19 days in 2009 to 16 days in 2010. However, the corresponding cost per container was estimated to have almost doubled over 2009-13, reaching US\$2,275.²¹ According to the authorities, the average time for customs clearance was 41 hours in 2011 and 53.5 hours in 2012; the increase is partly attributable to Brazil's congested sea ports, and strikes by public sector workers. In 2012, 87.8% of goods cleared through customs went through the green channel, 7.1% through the yellow channel, and 5.1% through the red channel; less than 0.1% of the goods went through the grey channel.

3.24. Customs administration decisions may be appealed in the first instance to the Federal Revenue Courts of the Ministry of Finance, and to the Taxpayers' Council in the second instance. The authorities noted that dispute settlement procedures have not changed since Brazil's last Review and may now be carried out entirely by electronic means.

3.25. Brazil has customs cooperation agreements with Angola, Argentina, Bolivia, Cape Verde, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, East Timor, Ecuador, El Salvador, Guinea-Bissau, Haiti, Honduras, Mexico, Mozambique, Nicaragua, Panama, Paraguay, Peru, Portugal, São Tomé and Príncipe, Spain, Uruguay, the United States, and Venezuela. Additionally, Brazil has bilateral agreements on customs issues with France, India, Israel, the Netherlands, Russia, South Africa, the United Kingdom, and the United States of America.

3.2.2 Customs valuation and rules of origin

3.26. Brazil applies the WTO Customs Valuation Agreement (CVA), with reservations on: (i) the inversion of the order of application of the methods stipulated in Articles 5 and 6; and (ii) the use of the unit price of the greatest aggregate quantity sold, foreseen in Article 5, paragraph 2. In such cases, procedures set out in the respective interpretative note prevail, regardless of the importer's request. Brazil has applied the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods and the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment since 1 March 1998.²²

3.27. The transaction value of the imported goods was used for valuation for some 99.8% of all imports cleared during 2009-12. When necessary, recourse to alternative methods follows the hierarchy set out in the CVA. The authorities affirm that Brazil does not use minimum or reference prices to determine the customs value of imported goods.

3.28. Brazil enacted legal provisions establishing non-preferential rules of origin in December 2011.²³ To be considered as originating, products must be wholly obtained or have undergone substantial transformation (becoming classifiable under a different four-digit tariff heading) in the declared country of origin. Verifications of non-preferential origin are carried out by the SECEX at the import licensing stage, as well as by the RFB during customs clearance and post-clearance audits. False declarations of origin may trigger rejection of an import licence application and refusal to grant such licences for similar goods traced to the same exporter. At the point of entry, non-originating goods are liable to a fine of 30% of their c.i.f. value; those subject to a

¹⁹ The authorization requirements are set out in RFB Ordinance No. 1,245 of 30 January 2012.

²⁰ The value of imports under the RTU may not exceed R\$110,000 per year; quarterly maximum thresholds of R\$18,000 (1st and 2nd) and R\$37,000 (3rd and 4th) also apply. For the list of eligible goods, see: http://www.receita.fazenda.gov.br/publico/Aduana/RTU/AnexoUnicoDecreto6956_2009.doc.

²¹ Data in *Doing Business 2013* are current as of 1 June 2012. For Brazil's country profile, as well as notes on the methodology and its limitations, see: <http://doingbusiness.org/~media/giawb/doing-business/documents/profiles/country/BRA.pdf>.

²² WTO document G/VAL/N/3/BRA/1 of 23 October 2002.

²³ WTO document G/RO/N/78 of 16 April 2012.

quantitative restriction will not be admitted into the customs territory and will be liable to a fine of R\$5,000 per day, counted from the date of registration of the import declaration until the date of their effective return abroad.

3.29. Brazil applies preferential rules of origin in the context of its trade agreements (Chapter 2). Not all of these agreements have been notified to the WTO.²⁴ Brazil's preferential agreements with Andean countries have rules for cross-cumulation.

3.30. Most changes made to MERCOSUR rules of origin during the review period were adjustments for new versions of the Harmonized System. In general, MERCOSUR origin is conferred on products that: (i) are wholly obtained or produced in MERCOSUR; (ii) have become classifiable under a different four-digit tariff heading; or (iii) have minimum regional content of 60% of their f.o.b. value. Specific rules apply to, *inter alia*, foodstuffs, pharmaceuticals, textiles, steel, telecommunications, and informatics products. MERCOSUR rules of origin may be applied to all intra-MERCOSUR trade up to 31 December 2016.²⁵

3.31. LAIA agreements also stipulate general and specific rules of origin.²⁶ Under general LAIA rules, origin is conferred to products that either: (i) are wholly obtained or produced in the territory of one of the signatory parties; (ii) have become classifiable under a different tariff heading; or (iii) contain third-country inputs whose c.i.f. value does not exceed 50% (60% for relatively less developed countries) of the f.o.b. value of the final product.²⁷

3.32. In Brazil, certificates of compliance with preferential rules of origin are issued by private institutions accredited by the SECEX.²⁸ As from 30 November 2011, all such institutions must have a computerized system for processing documentation online, in compliance with the parameters established by LAIA's Digital Certification of Origin Project (COD).²⁹ In March 2013, some 57 entities had SECEX authorization to issue certificates of origin. Certificates of origin for imports are valid for 180 days, and must be issued within 60 days of issuance of the commercial invoice in the case of LAIA and MERCOSUR countries. The request for a certificate of origin must be accompanied by the commercial invoice and a declaration by the producer. Brazil is working with its LAIA partners towards establishing an electronic interface linking customs declarations with certificates of origin.

3.2.3 Tariffs

3.2.3.1 Applied MFN tariff

3.33. Brazil applies the MERCOSUR Common External Tariff (CET) expressed in the Common MERCOSUR Nomenclature (NCM), which is based on the Harmonized System (HS). Changes to the CET and an update of the NCM to HS 2012 entered into effect on 1 January 2012.³⁰ Brazil grants at least most-favoured-nation (MFN) status to all its trading partners.

3.34. Brazil's 2012 applied MFN customs tariff is entirely *ad valorem* and comprises 10,031 lines at the eight-digit level (Table 3.2); it contains no seasonal or variable import duties. The simple average applied MFN tariff was 11.7% in 2012, up from 11.5% in 2008; for dutiable lines, the corresponding averages were 12.7% and 12.5%. The increase is due to both the change in classification and temporary derogations from the CET (see below). The coefficient of variation of 0.7 indicates moderate tariff dispersion (Table 3.3), with *ad valorem* rates ranging from zero to 55%. Some 8% of tariff lines are duty free (down from 8.3% in 2008), the modal tariff range is 10-15%, and 8.4% of the total lines carry rates of over 25% (Chart 3.1). The manufacturing sector (ISIC definition) benefits from the highest tariff protection, with an average applied tariff

²⁴ The list of trade agreements notified to the WTO can be viewed at: http://www.wto.org/english/tratop_e/region_e/rta_participation_map_e.htm.

²⁵ Common Market Council Decision No. 44/10 of 16 December 2010.

²⁶ For the rules of origin for LAIA agreements to which Brazil is a party, see LAIA online information. Viewed at: <http://www.aladi.org/nsfaladi/r%C3%A9gorigtext.nsf/vpaíses/brasil>.

²⁷ LAIA Resolution No. 252 of 4 August 1999. Viewed at: <http://www.aladi.org/nsfaladi/juridica.nsf/vres252web/res252>.

²⁸ These private institutions are not authorized to issue certificates of origin for poultry meat and sugar exported to the EU and for products under GSP treatment.

²⁹ SECEX Ordinance No. 23 of 14 July 2011.

³⁰ CAMEX Resolution No. 94 of 8 December 2011.

of 12% (up from 11.8% in 2008) and the highest frequency of duties in the 10-55% range (Chart 3.2).

Table 3.2 Structure of the MFN tariff schedule, 2008 and 2012

	2008	2012
Total number of tariff lines	9,765	10,031
Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.0	0.0
Lines subject to tariff quotas (% of all tariff lines)	0.1	0.3
Duty-free tariff lines (% of all tariff lines)	8.3	8.0
Average tariff on dutiable lines (%)	12.5	12.7
Simple average tariff (%)	11.5	11.7
WTO agriculture	10.1	10.2
WTO non-agriculture (incl. petroleum)	11.6	11.9
Agriculture, hunting, forestry and fishing (ISIC 1)	7.1	7.2
Mining and quarrying (ISIC 2)	3.1	3.1
Manufacturing (ISIC 3)	11.8	12.0
First stage of processing	6.9	7.0
Semi-processed products	9.3	9.6
Fully processed products	13.9	14.1
Domestic tariff "peaks" (% of all tariff lines) ^a	4.3	0.0
International tariff "peaks" (% of all tariff lines) ^b	26.3	27.7
Overall standard deviation	8.0	8.5
Bound tariff lines (% of all tariff lines)	100.0	100.0

a Domestic tariff peaks are defined as those exceeding three times the overall average applied rate. There were only two such peaks in 2012, as temporary rate increases on some 100 lines raised the overall average.

b International tariff peaks are defined as those exceeding 15%.

Source: WTO Secretariat calculations, based on data provided by the Brazilian authorities.

Table 3.3 Summary analysis of Brazil's MFN tariff, 2012

Description	MFN				Final bound average ^a (%)
	No. of Lines	Average (%)	Range (%)	Variation (CV)	
Total	10,031	11.7	0 - 55	0.7	30.1
HS 01-24	1,252	10.3	0 - 55	0.5	35.7
HS 25-97	8,779	11.9	0 - 35	0.7	29.3
By WTO category					
WTO Agriculture	1,030	10.2	0 - 55	0.6	35.3
- Animals and products thereof	133	7.9	0 - 16	0.6	37.4
- Dairy products	37	18.6	12 - 28	0.3	48.6
- Fruit, vegetables and plants	271	9.6	0 - 55	0.6	34.3
- Coffee and tea	30	13.7	10 - 20	0.3	33.6
- Cereals and preparations	138	11.6	0 - 20	0.5	40.4
- Oil seeds, fats and oils and their products	125	7.8	0 - 30	0.5	34.7
- Sugars and confectionary	23	16.7	16 - 20	0.1	34.6
- Beverages, spirits and tobacco	67	16.5	0 - 27	0.3	37.6
- Cotton	7	7.4	6 - 10	0.2	55.0
- Other agricultural products n.e.s.	199	8.0	0 - 20	0.6	28.7
WTO Non-agriculture (including petroleum)	9,001	11.9	0 - 35	0.7	29.4
- WTO non-agriculture (excluding petroleum)	8,974	11.9	0 - 35	0.7	29.4
-- Fish and fishery products	331	10.1	0 - 32	0.3	33.3
-- Minerals and metals	1,217	10.2	0 - 35	0.6	32.4
-- Chemicals and photographic supplies	3,145	7.2	0 - 25	0.8	23.8
-- Wood, pulp, paper and furniture	375	10.9	0 - 25	0.5	28.2
-- Textiles	790	22.7	2 - 35	0.3	34.6
-- Clothing	251	35.0	35 - 35	0.0	35.0
-- Leather, rubber, footwear and travel goods	242	15.2	0 - 35	0.6	34.4
-- Non-electric machinery	1,132	11.7	0 - 35	0.5	31.7
-- Electric machinery	609	12.2	0 - 25	0.6	30.8
-- Transport equipment	202	18.8	0 - 35	0.6	32.6
-- Non-agriculture articles n.e.s.	680	13.9	0 - 35	0.5	31.4

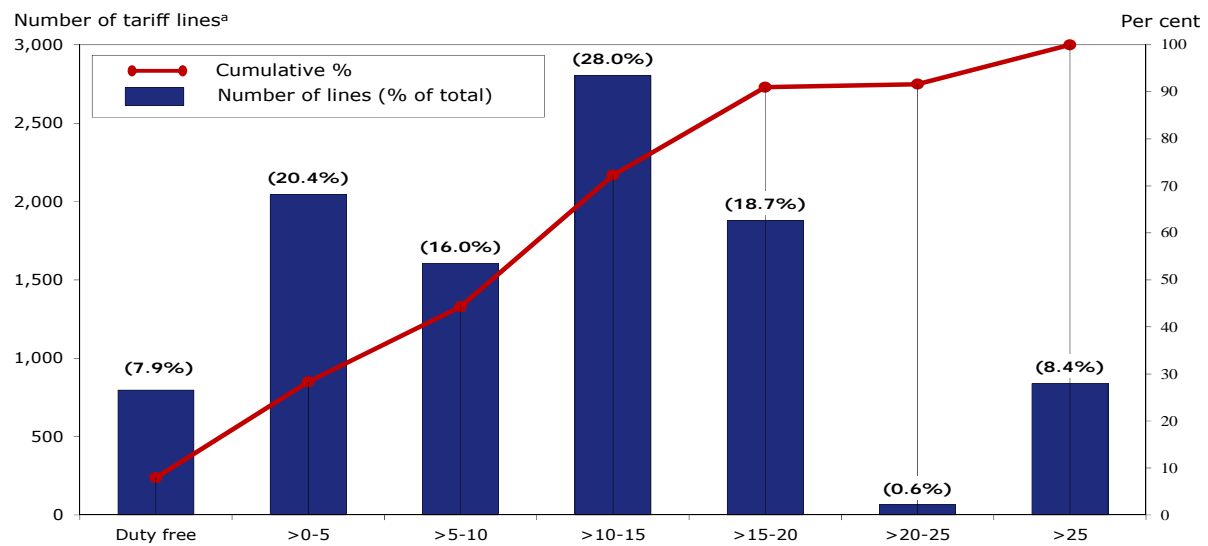
Description	MFN			Final bound average ^a (%)	
	No. of Lines	Average (%)	Range (%)		
- Petroleum	27	1.1	0 - 25	4.2	35.0
By ISIC sector^b					
Agriculture and fisheries	498	7.2	0 - 35	0.6	33.3
Mining	126	3.1	0 - 10	0.6	33.7
Manufacturing	9,406	12.0	0 - 55	0.7	29.8
By HS section					
01 Live animals and products	481	9.3	0 - 28	0.5	35.5
02 Vegetable products	399	7.9	0 - 35	0.6	35.5
03 Fats and oils	74	9.8	4 - 30	0.3	34.5
04 Prepared food, etc.	298	15.2	0 - 55	0.4	36.7
05 Minerals	206	2.5	0 - 25	1.0	34.1
06 Chemical and prod.	2,961	6.8	0 - 20	0.8	23.8
07 Plastics and rubber	425	11.7	0 - 35	0.6	25.5
08 Hides and skins	113	11.5	2 - 35	0.6	34.5
09 Wood and articles	130	8.3	2 - 14	0.5	20.6
10 Pulp, paper etc.	221	11.5	0 - 25	0.5	31.0
11 Textile and articles	1,013	25.6	2 - 35	0.3	34.8
12 Footwear, headgear	70	25.6	16 - 35	0.3	35.0
13 Articles of stone	216	11.2	0 - 35	0.5	34.7
14 Precious stones, etc.	64	9.5	0 - 18	0.7	35.0
15 Base metals and products	739	12.2	0 - 25	0.4	32.6
16 Machinery	1,769	11.9	0 - 35	0.5	31.4
17 Transport equipment	215	18.3	0 - 35	0.6	32.4
18 Precision equipment	451	12.4	0 - 20	0.6	30.4
19 Arms and ammunition	18	20.0	20 - 20	0.0	34.1
20 Miscellaneous manufactures	161	19.2	0 - 35	0.3	33.8
21 Works of art, etc.	7	4.0	4 - 4	0.0	35.0
By stage of processing					
First stage of processing	1,012	7.0	0 - 35	0.7	33.6
Semi-processed products	3,776	9.6	0 - 35	0.8	26.1
Fully-processed products	5,243	14.1	0 - 55	0.6	32.1

a Bound and applied rates are expressed in HS2002 and HS2012, respectively; therefore there may be a difference between the number of lines included in the calculation.

b ISIC (Rev.2) classification, excluding electricity (1 line).

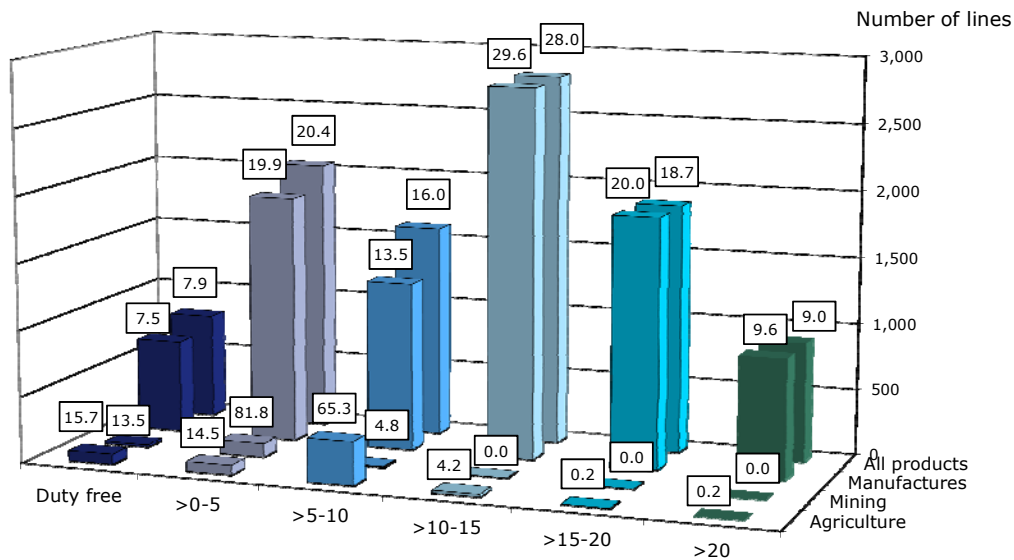
Source: WTO Secretariat estimates, based on data provided by the Brazilian authorities.

Chart 3.1 Frequency distribution of MFN tariff rates, 2012



a The total number of *ad valorem* lines is 10,031.

Source: WTO Secretariat calculations, based on data provided by the authorities of Brazil.

Chart 3.2 Distribution of the MFN tariff by ISIC sector^a, 2012

a Labels correspond to the share of total number of tariff lines by ISIC sector.

Source: WTO Secretariat estimates, based on data provided by the authorities of Brazil.

3.35. In aggregate, the tariff continues to depict positive escalation: fully processed products attract the highest average applied rate, followed by semi-processed goods and raw materials. This pattern of escalation tends to act as a disincentive to improve international competitiveness at the higher stages of value addition.

3.36. In line with MERCOSUR rules, Brazil maintains a range of temporary, unilateral exemptions to the CET; the scope for such derogations was increased with the adoption of a new MERCOSUR mechanism, providing for temporary tariff increases on non-originating goods, in December 2011.³¹ The derogation's stated intent is to address trade imbalances due to the international economic environment. Member states must file a request with MERCOSUR's Secretariat, justifying each proposed tariff hike; in case of an objection from another member State, the matter is settled by MERCOSUR's Commerce Commission. The mechanism, which entered into force on 6 September 2012, caps the applicable time-frame to 12 months (renewable for up to 12 additional months) and the number of admissible (8-digit) tariff lines to 100 per member State. Taking advantage of this mechanism, Brazil raised the rates applied on 100 tariff lines (the authorized maximum) for a 12-month period, effective 1 October 2012.³² As a result of these hikes, which range from 6 to 23 percentage points, the simple average rate on these lines increased from 13.5% to 22.2%. As at March 2013, a MERCOSUR Decision to increase the number of tariff lines to 200 was pending incorporation into the national legislation of member states, a prerequisite for its entry into force.³³

3.37. Brazil has also continued to derogate from the CET under the three MERCOSUR mechanisms already in place at the time of its previous Review.³⁴ The deadline for elimination of its basic list of national exemptions, allowing individually applied tariffs on up to 100 lines to be higher or lower than the CET, has been extended until 31 December 2015.³⁵ Up to 20% of the lines on that list may be altered within a six-month period.

³¹ Common Market Council Decision No. 39/11 of 20 December 2012.

³² CAMEX Resolution No. 70/12 of 28 September 2012.

³³ Common Market Council Decision No. 25/12 of 29 June 2012.

³⁴ These instruments are: the basic list of national exemptions, the quotas for lower tariffs, and the *Ex Tarifário* mechanism (WTO document WT/TPR/S/212/Rev.1 of 11 May 2009).

³⁵ Common Market Council Decision No. 58/10 of 16 December 2010.

3.38. Under the *Ex Tarifário* mechanism, Brazil has been authorized to maintain its lists of capital goods (BK list) and IT and telecommunications equipment (BIT list) until end-2013 and end-2015, respectively.³⁶ This mechanism allows MERCOSUR members to individually reduce import duties, for up to two years, on pre-determined BK and BIT lists of goods without a domestically produced equivalent; rates are normally reduced to 2%, or 0% in a few cases.³⁷ In August 2011, Brazil redefined the eligibility criteria for goods on its BK and BIT lists to exclude used items.³⁸ In April 2012, a new CAMEX Resolution also excluded re-manufactured or refurbished items and integrated systems; besides the lack of equivalent domestic production, decisions on the granting of import duty reductions are linked to considerations, such as adoption of new technologies, investment in infrastructure improvements, and domestic equipment content in the overall project.³⁹

3.39. Brazil has also applied temporary tariff reductions coupled with import quotas under the mechanism aimed at addressing shortages within MERCOSUR.⁴⁰ MERCOSUR members are allowed, individually, to lower the CET rate to 2% (exceptionally, to 0%) on up to 30 tariff lines at a time; the reduction may last for up to 24 months (renewable for up to 12 additional months).⁴¹ The lower applied rate, its duration and associated quantitative restriction are determined by MERCOSUR's Commerce Commission after consultation with all member states. In 2011, Brazil applied lower-than-CET rates, mostly at 2%, in the form of tariff quotas on 25 tariff lines; all quotas were filled.

3.2.3.2 Bindings

3.40. Brazil bound its entire tariff during the Uruguay Round. Tariffs on agricultural products (WTO definition) are bound at rates between 0% and 55%, with dairy products, grains, and tobacco at the upper end of that range. Bound rates for non-agricultural products range from 0% to 35%. The average bound tariff rate is 30.1%, whereas the average applied MFN rate is 11.7%.⁴² Brazil has bound "other duties and charges" for only one line, covering certain navigational instruments (HS 9014.80.0400 at 15%)⁴³; this duty is not applied in practice.

3.41. The WTO process of certifying Brazil's bound tariff schedule in order to incorporate the changes resulting from the introduction of HS version 2012 has not been completed. Some 120 CET lines exceed, sometimes partially (due to differences in aggregation levels), Brazil's bindings; the authorities note that in all such cases importers may request application of the bound rate.

3.2.3.3 Preferences

3.42. Brazil grants tariff preferences in the context of its bilateral and regional trade agreements (Chapter 2.5); no correspondence tables to HS version 2012 have been formally adopted. Some of these agreements overlap in terms of trading partners, but differ in terms of product coverage and rules of origin. Product coverage is also quite limited under certain agreements. The authorities noted that importers are usually aware of their products' tariff classification and preference eligibility, and claim the appropriate treatment. While the simple average MFN tariff rate is 11.7%, simple average rates for Brazil's preferential partners range from 6.8% (Peru) to 11.6% (Guyana and India) (Table 3.4).

³⁶ After the respective deadlines, the national lists should be replaced by a uniform MERCOSUR regime for the importation of these goods (Common Market Council Decision No. 57/10 of 16 December 2010).

³⁷ In March 2013, Brazil's BK and BIT lists contained 1,205 and 401 tariff lines, respectively.

³⁸ CAMEX Resolution No. 55 of 9 August 2011.

³⁹ CAMEX Resolution No. 17 of 3 April 2012.

⁴⁰ MERCOSUR Resolution GMC No. 08/08 of 20 June 2008, replacing Resolution GMC No. 69 of 12 July 2000.

⁴¹ In cases where it is impossible to ensure normal regional supply, the maximum number of tariff lines is set at 15 and the maximum period at 12 months (renewable for up to 12 additional months).

⁴² Tariff bindings are provided in HS2002 classification, whereas the MFN 2012 tariff schedule is expressed in the HS2012. Therefore, these two averages are not strictly comparable.

⁴³ The authorities noted that the former HS code 9014.80.0400 corresponds to HS codes 9014.80.10 and 9014.80.90 in the current MERCOSUR nomenclature.

Table 3.4 Summary analysis of tariffs according to preferential agreements, 2012

	No. of lines	MFN	GUY	CHI	BOL	Mexico		PER	COL	ECU	VEN	CUB	IND	ISR
Total	10,031	11.7	11.6	7.1	6.9	11.4	11.5	6.8	7.6	6.9	7.3	9.6	11.6	8.1
HS 01-24	1,252	10.3	10.0	6.3	6.1	9.8	10.3	6.2	6.4	6.4	6.3	8.6	10.3	7.0
HS 25-97	8,779	11.9	11.9	7.2	7.0	11.6	11.7	6.9	7.8	7.0	7.4	9.7	11.8	8.3
By WTO category														
WTO Agriculture	1,030	10.2	9.8	5.3	5.2	9.6	10.2	5.2	5.4	5.4	5.3	8.4	10.1	6.0
- Animals & products hereof	133	7.9	7.7	3.8	3.8	7.9	7.9	3.8	4.2	4.4	4.1	7.0	7.9	5.4
- Dairy products	37	18.6	18.6	11.4	11.4	18.6	18.6	11.4	12.5	14.0	12.5	18.6	18.5	8.9
- Fruit, vegetables & plants	271	9.6	8.8	4.4	4.1	8.9	9.6	4.1	4.1	4.1	4.1	8.9	9.6	6.7
- Coffee & tea	30	13.7	13.3	5.0	4.7	13.7	13.7	4.7	5.6	4.7	4.7	6.1	13.6	6.7
- Cereals & preparations	138	11.6	11.4	7.0	6.7	10.0	11.6	6.7	6.9	6.7	6.7	7.6	11.5	5.9
- Oil seeds, fats & oils & their Products	125	7.8	7.7	4.3	4.3	7.8	7.8	4.3	4.3	4.3	4.3	7.6	7.8	4.3
- Sugars & confectionary	23	16.7	16.7	5.9	4.7	15.0	16.7	7.0	11.5	9.7	7.7	12.2	16.7	7.3
- Beverages, spirits & tobacco	67	16.5	16.2	11.0	10.6	15.4	16.5	10.6	10.6	10.6	10.6	9.8	16.5	9.9
- Cotton	7	7.4	7.4	4.3	3.7	7.4	7.4	3.7	3.7	3.7	3.7	7.4	7.4	2.4
- Other agricultural products n.e.s.	199	8.0	7.8	4.1	4.1	7.6	8.0	4.1	4.2	4.1	4.1	7.4	8.0	4.7
WTO Non-agriculture (incl. petroleum)	9,001	11.8	11.8	7.3	7.1	11.6	11.7	7.0	7.9	7.1	7.5	9.7	11.8	8.4
- WTO Non-agriculture (excl. petroleum)	8,974	11.9	11.9	7.3	7.1	11.7	11.7	7.0	7.9	7.1	7.5	9.7	11.9	8.4
- - Fish and fishery products	331	10.1	10.1	8.4	8.4	10.1	10.1	8.4	8.4	8.4	8.4	8.7	10.1	9.0
- - Minerals and metals	1,217	10.2	10.1	4.4	4.4	10.0	10.0	4.4	4.7	4.8	4.4	7.9	10.1	6.6
- - Chemicals and photographic supplies	3,145	7.1	7.1	5.6	5.6	6.9	7.1	5.6	5.6	5.6	5.6	5.9	7.1	4.4
- - Wood, pulp, paper and furniture	375	10.9	10.6	7.0	6.6	10.9	10.8	6.5	6.5	6.5	6.5	7.6	10.9	7.5
- - Textiles	790	22.7	22.7	10.1	9.6	22.6	22.7	9.4	14.5	9.4	10.3	20.0	22.7	17.2
- - Clothing	251	35.0	35.0	14.9	10.0	34.6	35.0	9.5	21.6	9.5	22.2	29.2	35.0	28.8
- - Leather, rubber, footwear and travel goods	242	15.2	15.2	9.8	9.8	15.2	14.9	9.2	9.2	9.3	9.2	14.3	15.1	11.0
- - Non-electric machinery	1,132	11.7	11.7	8.3	8.3	11.3	11.4	8.2	8.2	8.2	8.2	8.7	11.7	8.0
- - Electric machinery	609	12.2	12.2	9.5	9.9	12.0	11.5	9.4	9.5	9.5	9.4	10.8	12.2	9.0
- - Transport equipment	202	18.8	18.8	12.9	13.4	18.3	17.7	12.0	13.2	13.5	13.2	17.5	18.8	15.8
- - Non-agriculture articles n.e.s.	680	13.9	13.9	8.3	8.3	13.6	13.7	8.3	8.3	8.3	8.3	10.3	13.9	9.2
- Petroleum	27	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	0.3
By ISIC sector^a														
Agriculture and fisheries	498	7.2	6.7	4.6	4.6	7.1	7.2	4.6	4.6	4.6	4.6	6.4	7.2	5.4
Mining	126	3.1	3.1	1.2	1.2	2.8	3.1	1.2	1.2	1.2	1.2	2.7	3.1	0.9
Manufacturing	9,406	12.0	12.0	7.3	7.1	11.8	11.9	7.0	7.9	7.2	7.5	9.8	12.0	8.4
By HS section														
01 Live animals and prod.	481	9.3	9.3	6.8	6.8	9.3	9.3	6.8	7.0	7.1	6.9	8.5	9.3	7.2
02 Vegetable products	399	7.9	7.1	4.1	4.0	7.5	7.9	4.0	4.0	4.0	4.0	7.5	7.8	5.4
03 Fats and oils	74	9.7	9.7	5.7	5.7	9.6	9.7	5.7	5.7	5.7	5.7	9.5	9.7	6.0

	No. of lines	MFN	GUY	CHI	BOL	Mexico		PER	COL	ECU	VEN	CUB	IND	ISR
04 Prepared food etc.	298	15.2	15.2	8.5	8.0	13.9	15.2	8.1	8.7	8.4	8.3	9.8	15.2	8.8
05 Minerals	206	2.5	2.4	1.1	1.1	2.3	2.5	1.1	1.1	1.1	1.1	2.0	2.5	0.7
06 Chemical and prod.	2,961	6.8	6.8	5.2	5.2	6.5	6.8	5.2	5.2	5.2	5.2	5.4	6.7	4.1
07 Plastics and rubber	425	11.7	11.7	7.9	7.9	11.4	11.5	7.8	7.8	8.1	8.0	11.1	11.7	7.8
08 Hides and skins	113	11.5	11.5	7.4	7.4	11.5	11.5	7.4	7.4	7.5	7.5	11.1	11.5	7.5
09 Wood and articles	130	8.3	7.6	5.7	5.5	8.3	8.3	5.5	5.5	5.5	5.5	7.6	8.3	6.1
10 Pulp, paper etc.	221	11.5	11.3	7.9	7.5	11.4	11.4	7.3	7.3	7.4	7.4	7.4	11.4	7.7
11 Textile and articles	1,013	25.6	25.6	11.0	9.4	25.4	25.6	9.1	16.1	9.1	13.0	22.1	25.6	19.9
12 Footwear, headgear	70	25.6	25.6	16.2	16.0	25.6	25.6	14.2	14.2	14.2	14.2	22.5	25.6	22.0
13 Articles of stone	216	11.2	11.2	6.4	6.4	10.8	11.0	6.4	6.4	6.4	6.4	9.2	11.2	7.4
14 Precious stones, etc.	64	9.5	9.5	2.8	2.8	9.3	9.5	2.8	2.8	2.8	2.8	6.8	9.4	5.7
15 Base metals and prod.	739	12.2	12.1	4.8	4.8	12.1	12.0	4.8	5.3	5.5	4.9	9.4	12.2	8.3
16 Machinery	1,769	11.9	11.9	8.9	9.0	11.6	11.5	8.8	8.8	8.8	8.8	9.5	11.9	8.4
17 Transport equipment	215	18.3	18.3	12.3	12.8	17.8	17.1	11.5	12.6	12.9	12.6	17.0	18.3	15.2
18 Precision equipment	451	12.4	12.4	8.4	8.4	12.2	12.2	8.4	8.4	8.4	8.4	8.8	12.4	7.2
19 Arms and ammunition	18	20.0	20.0	6.7	6.7	20.0	20.0	6.7	6.7	6.7	6.7	20.0	20.0	11.8
20 Miscellaneous manufacturing	161	19.2	19.2	8.0	7.6	18.1	18.6	7.5	7.5	7.6	7.5	12.8	19.2	14.2
21 Works of art, etc.	7	4.0	4.0	0.0	0.0	4.0	4.0	0.0	0.0	0.0	0.0	0.9	4.0	1.0
By stage of processing														
First stage of processing	1,012	7.0	6.7	4.3	4.3	6.8	7.0	4.3	4.4	4.3	4.3	6.3	7.0	5.0
Semi-processed products	3,776	9.6	9.5	5.9	5.8	9.4	9.6	5.8	6.6	5.9	5.8	8.4	9.5	6.3
Fully-processed products	5,243	14.1	14.1	8.5	8.3	13.8	13.8	8.1	9.0	8.2	8.9	11.0	14.1	10.0

a ISIC (Rev.2) classification, excluding electricity (1 line).

Source: WTO Secretariat estimates, based on data provided by the Brazilian authorities.

3.43. Some of Brazil's free-trade agreements envisage preferential quotas. In 2012, ten such quotas were in place under two economic complementarity agreements: MERCOSUR-Andean Countries (ACE No. 59)⁴⁴ and Brazil-Mexico (ACE No. 53). The Brazil-Mexico agreement covering the automotive industry (ACE No. 55) was revised in 2012 to implement quotas, which may be applied for up to three years.

3.2.4 Other charges affecting imports

3.44. Imports are subject to various internal taxes: Tax on Industrial Products (IPI); Tax on the Circulation of Goods and Services (ICMS); contributions to the social integration programme (PIS) and to finance social security (COFINS); and Tax on Services (ISS). The application of these taxes may vary depending on the product type, the competent sub-federal authority, and the importer's tax regime status, thus rendering Brazil's tax system very complex.

3.45. A non-*ad valorem* Contribution for Intervention in the Economic Domain (CIDE) is levied on the importation and commercialization of petroleum and natural gas, their derivatives, and ethanol (Chapter 4). Other charges related to import transactions include the Additional Freight Charge for the Renovation of the Merchant Navy (AFRMM), the Additional Airport Tax (ATAERO) (see Chapter 4), and the Financial Transaction Tax (IOF) (Chapter 1).

⁴⁴ Brazilian imports under preferential quotas under the Economic Complementarity Agreement No. 59 MERCOSUR/Andean Countries include trousers, bib and brace overalls, breeches and shorts of cotton (HS codes 6203.42.00 and 6204.62.00), and women's or girls' blouses, shirts and shirt-blouses of cotton (HS 6206.30.00). The in-quota rate is 1.75% and the out-of-quota rate is 35%.

3.46. The IPI is a federal tax levied on domestically produced and imported manufactured goods, following the value-added principle.⁴⁵ For domestic transactions, the tax is imposed when the product leaves the facility where it was manufactured⁴⁶; typically, based on the ex-factory value. The IPI on imports is levied upon customs clearance and is based on the c.i.f. value plus the import duty and other applicable fees and foreign exchange charges. Most IPI rates are in the 0% to 20% range, but may be higher for certain products, such as perfumes (42%), alcoholic beverages (60%), or cigarettes (300%); in some cases, IPI rates are specific. In principle, the same rates apply on domestically produced and imported goods. However, certain IPI reductions or suspensions, such as on automotive products (Chapter 4.3), have been granted only to products originating in some of Brazil's preferential trading partners (e.g., MERCOSUR and Mexico).⁴⁷

3.47. The ICMS is a value-added tax⁴⁸ levied by Brazil's federative states on imports (including of electricity), as well as on intrastate and interstate transactions involving merchandise, inter-municipal and interstate transportation services, and communication services. Taxable merchandise transactions are those involving a change of ownership, as well as transfers between a company's affiliates/branches, and importation (even for own use or consumption). The taxable base and the applicable ICMS rate depend on several factors, including the ship-from and ship-to tax jurisdiction, the purchaser's tax status, and the product's type and intended use. Some companies, including those under federal and sub-federal (including municipal) ownership/control, are exempted from the ICMS. In addition, product-specific (permanent or temporary) exemptions may apply for all states or within a single State; reductions to the ICMS rate and/or tax base may be granted within a State (section 3.4.2).

3.48. In general, the ICMS is levied on the value of the transaction net of unconditional discounts. For merchandise this value includes the cost of insurance and freight and, in the case of imports, the import duties, the IOF and any other customs-related charges.⁴⁹ Moreover, for imports and goods for own use/consumption the taxable base is augmented by the IPI and the ICMS itself.⁵⁰ Typically, ICMS rates on interstate transactions are either 7% or 12%, the former rate being applied when the purchaser is located in a poor state (those in the north, north-east and center-west regions, and the state of Espírito Santo).⁵¹ Intrastate transactions and imports are subject to ICMS rates at 19% (Rio de Janeiro), 18% (São Paulo, Paraná, and Minas Gerais), or 17% (all remaining states); for imports, the applicable jurisdiction is determined by the location of the importing establishment/customs clearance. While states set ICMS rates independently, certain product groups are generally subject to rates of 7% (raw materials; parts and components for the data processing industry), 12% (processed edible goods from poultry and cattle; machinery, appliances and industrial equipment; agricultural tractors and implements; etc.), or 25% (automobiles; cosmetics, alcohol and tobacco; communications services; electricity; etc.).

3.49. The PIS and COFINS are charged on a non-cumulative (value-added) basis for companies subject to the actual profit method of computing corporate income taxes.⁵² In general, domestic and imported goods and services are subject to a combined rate of 9.25% (1.65% for PIS and 7.6% for COFINS). Higher cumulative rates apply to imports of machinery, motor vehicles and

⁴⁵ For IPI tax purposes, "manufacture" is defined as any process that modifies the nature, functioning, finishing, presentation or purpose of a product, or improves it for consumption. The IPI tax paid on inputs used in manufacturing may be claimed as tax credit; this credit may be offset against IPI due on subsequent transactions or against other federal taxes.

⁴⁶ Each individual facility of a company is considered a separate taxpayer.

⁴⁷ The latest update of the IPI tax rates table dates from 23 December 2011 (Decree No. 7,660). RFB online information. Viewed at: <http://www.receita.fazenda.gov.br/Aliquotas/TabIncidIPITUPI.htm>.

⁴⁸ If the purchaser is not an ICMS taxpayer and subsequent sales are not subject to this tax, the ICMS paid on inputs is not recoverable as a credit.

⁴⁹ Depending on the State, these charges may or may not include: charges on air or maritime transportation, SISCOMEX usage fees, eventual anti-dumping duties, and fees for port handling services.

⁵⁰ ICMS effective rate = (published ICMS rates) times (nominal value of the good + nominal value of the tax) divided by (nominal value of the good).

⁵¹ Subsequent compensation reflects ICMS rate differences between the ship-from and ship-to tax jurisdiction.

⁵² Financial institutions, companies under the presumed profit tax regime, and certain revenues deriving from telecommunications, transport, and software development services are not eligible for tax credits for the PIS and COFINS paid on inputs. Companies with revenues subject to the cumulative system and other revenues subject to the non-cumulative system must keep separate records of their contributions under each system.

their parts, rubber tyres and air chambers, pharmaceuticals, and cosmetic products. In addition, non-*ad valorem* rates are levied on importation of soft drink and beer containers, and fuels. Provisions for zero-rating or exemption are in place for a wide range of goods. In the case of imported merchandise, the tax base is the c.i.f. value augmented by the ICMS, and the PIS and COFINS; for services, the base is the amount (before income tax) paid or remitted abroad plus the ISS and the PIS and COFINS.⁵³ For domestic goods and services transactions, these taxes are levied on the company's gross revenues. As part of tax reforms under the *Plano Brasil Maior* (section 3.4.2), the COFINS rate on imported goods falling under some 3,300 tariff lines has been increased by 1 to 2 percentage points.

3.50. The ISS is a municipal tax levied on revenues derived from the provision of certain services (including from abroad). The relevant list of services and the maximum tax rate (5% of the transaction value) are fixed by a federal law⁵⁴; a minimum tax rate of 2% is stipulated in the Constitution.⁵⁵ In general, services subject to the ISS are exempted from the ICMS even if the service transaction also involves the sale of goods; in some cases, the legislation specifically provides for ICMS applicability on the value of the products sold. In principle, the service provider is liable for the ISS; however, municipal tax legislation may impose a withholding responsibility on the contracting entity that receives the service.

3.2.5 Duty and tax exemptions and concessions

3.51. Brazil grants duty and tax reductions and exemptions under a variety of provisions aimed at promoting investment and innovation or achieving social objectives. Temporary derogations from the CET are applied on a range of capital goods, computer and telecommunications equipment, and goods in short supply on the domestic market (section 3.2.2.1).⁵⁶ In addition, certain capital and consumer goods are eligible for temporary IPI reductions⁵⁷; tax rebates, including on imported goods, may also be granted at the sub-federal level (section 3.4.1). Companies established in export processing zones (section 3.3.4) and the Manaus Free Trade Zone (section 3.4.2) may be exempted from IPI, ICMS, PIS and COFINS, and ISS on a range of imported goods and services. Furthermore, goods imported under the RTU system are subject to special tax treatment (section 3.2.1). Revenue forgone due to tariff concessions reached an estimated R\$10.9 billion (US\$5.45 billion) over the 2009-12 period. In 2012 alone, it was estimated at R\$3.4 billion, or some 0.8% of the value of imports.

3.52. Provisions for total or partial tariff exemptions remain in place under several customs regimes, such as the Special System of Industrial Depots subject to Standardized Control (RECOF) and the Drawback (section 3.3.4). In August 2011, Brazil ratified the Convention on Temporary Admission (Istanbul Convention) maintaining a reservation on the possibility of refusal to accept the ATA Carnet for postal traffic.⁵⁸ In general, imports may only be granted an exemption or a reduction of the customs duty if no similar domestic product is available; eligibility is assessed through a "similarity test", conducted by SECEX (section 3.2.5).

3.2.6 Import prohibitions, restrictions, and licensing

3.53. By and large, Brazil maintains import prohibitions on health and moral grounds, and to comply with international conventions to which it is a party (Table 3.5). An exception to Brazil's import ban on remoulded tyres, in favour of such imports from MERCOSUR, has been challenged under the WTO dispute settlement mechanism; in September 2009, Brazil reported its full

⁵³ The tax base for the calculation of PIS and COFINS is reduced by 30.2% for certain trucks, and by 48.1% for selected machinery and vehicles, provided they are imported for resale. Reinsurance premiums contracted abroad are taxed at 15% of the amount paid or remitted abroad. The calculation methodology for PIS and COFINS on imports is described in Normative Instruction SRF No. 572 of 22 November 2005. Viewed at: <http://www.receita.fazenda.gov.br/legislacao/ins/2005/in5722005.htm>.

⁵⁴ Complementary Law No. 116 of 31 July 2003.

⁵⁵ Constitutional Amendment No. 37 of 13 June 2002.

⁵⁶ The authorities estimate the revenue forgone as a result of customs tariff concessions at R\$2.2 billion in 2009 and R\$3 billion in 2012.

⁵⁷ Recent amendments to the list of eligible goods are contained in Decrees No. 7,705 (25 March 2012), No. 7,725 (21 May 2012), No. 7,742 (30 May 2012), No. 7,770 (28 June 2012), No. 7,792 (17 August 2012), No. 7,796 (30 August 2012), No. 7,834 (31 October 2012), and No. 7,879 (27 December 2012).

⁵⁸ Decree No. 7,545 of 2 August 2011.

compliance with the recommendations and rulings of the Dispute Settlement Body.⁵⁹ Implementation of the panel recommendations was done by means of SECEX/MDIC Directive No. 24/09 of 26 August 2009⁶⁰ in compliance with judgment ADPF No. 101 of the Federal Supreme Court (STF) of Brazil (24 June 2009). The authorities indicated that the import ban on remolded tyres was aimed at protecting public health and preserving the environment. Imports of used consumer goods are prohibited for environmental, safety, and consumer rights reasons.

Table 3.5 Import prohibitions, 2012

Product	Description	Legal basis
Toys that replicate firearms	Imports and domestic production	Article 26 of Law No. 10,826 of 22 December 2003
Weapons and ammunition	Private imports of goods intended for exclusive use by military or police forces	Decree No. 2,998 of 23 March 1999
Programmed electronic machines for gambling	Prohibited on moral grounds	Law No. 37 of 18 November 1966
Used and retreaded tyres	Used/retreaded tyres under HS heading 4012, even if the intended use is as raw material; re-imports after outward processing of tyres used in aeronautics (HS 4012.13.00) are exempted	CONAMA Resolution No. 452 of 2 July 2012
Used consumer goods ^a	May only be imported by the State or educational and scientific institutions	Article 27 of MDIC Ordinance No. 235 of 7 December 2006
Substances that deplete the ozone layer	Prohibited substances in accordance with the Montreal Protocol	CONAMA Resolution No. 267 of 11 December 2000
Hazardous waste	Import ban; other movements must follow Basel Convention procedures	CONAMA Resolution No. 452 of 2 July 2012
Illicit drugs	Substances and plants that may cause physical or psychological dependence	SVS/MS Ordinance No. 344 of 12 May 1998
Endangered animals and plants	Animals and plants listed as endangered by CITES	Decree No. 3,607 of 21 September 2001
Wines	Prohibited if transported in containers of more than 5 litres	Article 26 of Law No. 7,678 of 8 November 1988
Hormone-treated meat and poultry	The importation, production, commercialization and use of natural or artificial substances with anabolic hormonal properties, for the purpose of promoting growth and weigh, are prohibited	MAPA Normative Instruction No. 17 of 18 June 2004

a Imports of used non-consumer goods (except aeronautic goods and packaging materials in temporary admission or re-importation) are subject to non-automatic licensing.

Source: Information provided by the Brazilian authorities.

3.54. Brazil's most recent notification on import licensing procedures dates from 2011.⁶¹ During the review period Brazil has replied to questions by Canada, China, Mexico, Thailand, and the United States, regarding its non-automatic import licensing procedures⁶²; questions on the same topic have also been submitted by Switzerland.⁶³

3.55. Brazil maintains a system of automatic and non-automatic licences for imports of various products, regardless of their origin.⁶⁴ Requests for both types of licences, made either directly by the importer or by an authorized representative, are processed through SISCOMEX to ensure a centralized flow of computerized information; all licences are non-transferrable and valid for 90 days.⁶⁵ Non-automatic import licences are issued and registered directly in SISCOMEX by

⁵⁹ Dispute DS332. Viewed at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm.

⁶⁰ Altered by SECEX Directives No. 10/10 (24 May 2010) and No. 23/11 (14 July 2011).

⁶¹ WTO document G/LIC/N/3/BRA/9 of 16 September 2011.

⁶² WTO documents G/LIC/Q/BRA/15 (27/04/2010), G/LIC/Q/BRA/14 (14/01/2010), G/LIC/Q/BRA/13 (21/10/2009), G/LIC/Q/BRA/12 (08/05/2009), and G/LIC/Q/BRA/9 (16/01/2009).

⁶³ WTO document G/LIC/Q/BRA/16 of 17 April 2012.

⁶⁴ A compilation of import licensing regulations is available in Chapter II of SECEX Ordinance No. 23 (14 July 2011) and its subsequent amendments (MDIC online information. Viewed at: <http://www.mdic.gov.br/sitio/interna/interna.php?area=1&menu=3113&refr=1695>).

⁶⁵ Import licences must be obtained prior to customs clearance; in some cases, the import licence may have to be obtained before the goods are shipped.

16 agencies⁶⁶; the statutory timeframe for processing requests is 60 calendar days. The authorities noted that, although there are no overlaps in the licensing entities' competences, imports of certain goods may require licences from more than one entity. Refusals to grant a licence may be appealed before the relevant licensing agency. Some agencies may levy a fee for the import licence; according to the authorities, the fees reflect the cost of services rendered.

3.56. In general, automatic licensing is used for statistics collection, and monitoring of specific products and import operations, including those under the drawback regime. According to the authorities, the purpose of non-automatic licensing is to prevent environmental damage and harm to human, plant or animal health, as well as to control imports of products classified as weapons and products subject to (tariff and non-tariff) quotas or trade remedies. The granting of non-automatic licences for imports of used machinery and equipment is conditional on proof that such items are not produced in Brazil and cannot be substituted by a similar item currently produced in Brazil. Non-automatic licensing is also used in the administration of duty and tax concessions; to benefit from such concessions, imports must undergo a "similarity examination", which must ascertain that no equivalent domestic production exists.⁶⁷ While most licensing requirements are established and modified through appropriate legislation, product coverage may be subject to administrative discretion when allowed by the normative framework.

3.57. Lists of products subject to automatic and non-automatic import licensing are published online by the MDIC⁶⁸, but the most up-to-date information is available to registered users of SISCOMEX. In February 2013, goods subject to non-automatic licensing significantly outnumbered those subject to automatic licensing. During 2009-11, non-automatic import licensing requirements were introduced on, *inter alia*, motor vehicles, apricots, and wheat flour.

3.2.7 Contingency measures

3.2.7.1 Overview

3.58. Brazil is a significant user of trade remedies, particularly anti-dumping (AD) measures, and there are indications that these remedies may play an increasingly important role in its future trade policy. Trade defence has been identified as a component of the *Plano Brasil Maior*, pursuant to which a number of steps have been taken to strengthen trade defence.⁶⁹ Brazil has announced its intention to increase the number of trade remedy investigators, and has implemented changes to certain practices (anti-circumvention, AD application formats, national interest), while a broader reform of the regulatory framework is under consideration. The number of Brazil's AD investigations and measures in force has been increasing since the last review period; Brazil has become somewhat more active in initiating countervail (CV) investigations, and in 2012 initiated its first safeguard investigation since 2008.

3.2.7.2 Anti-dumping and countervailing measures

3.2.7.2.1 Legislation and institutions

3.59. Decree No. 1,355 of 30 December 1994, which promulgated the Uruguay Round Agreements, and Law No. 9,019 of 30 March 1995, as amended, govern the application of AD and CV measures.⁷⁰ In addition, Decree No. 1,602 of 23 August 1995⁷¹ and Decree No. 1,751 of 19 December 1995⁷² further regulate the application of AD and CV measures respectively. SECEX Act No. 59 of 28 November 2001 clarifies the conduct of trade remedy investigations with respect

⁶⁶ For a list of the competent entities and the products under their respective responsibility, see: http://www.mdic.gov.br/arquivos/dwnl_1308919721.pdf.

⁶⁷ The examination is carried out by SECEX prior to the goods' shipment from the country of origin; the relevant modalities are set out in Decree No. 6,759 of 5 February 2009. Imports from other ALADI countries are considered as "special cases". The authorities affirm that the lack of a domestic equivalent is a prerequisite for the tax reduction or exemption, not for the importation of the good.

⁶⁸ MDIC online information. Viewed at: http://www.mdic.gov.br/arquivos/dwnl_1362506157.pdf.

⁶⁹ *Discurso da Presidenta da República, Dilma Rousseff, durante cerimônia de anúncio de novas medidas do Plano Brasil Maior, Brasília-DF, 3 April 2012*; and *Plano Brasil Maior 2011/2014, Situação de conjunto de medidas*: 7 May 2012. Viewed at: <http://www2.planalto.gov.br>.

⁷⁰ WTO document G/ADP/N/1/BRA/1-G/SCM/N/1/SCM/BRA/1.

⁷¹ WTO document G/ADP/N/1/BRA/2.

⁷² WTO document G/SCM/N/1/BRA/2.

to confidential information, time periods, and economies that are not predominantly market-oriented.⁷³ Rules regarding the contents of an application requesting initiation of an AD investigation, as recently revised, are contained in SECEX Directive No. 46 of 23 December 2011⁷⁴, while those relating to CV are in SECEX Circular No. 20 of 2 April 1996. With the exception of SECEX Circular No. 20, Brazil's legislation has been notified to the WTO and discussed in the Committees on Anti-Dumping Practices and/or on Subsidies and Countervailing Measures.⁷⁵

3.60. SECEX, through its Department of Trade Remedies (DECOM), is responsible for carrying out AD, CV and safeguards investigations and all other related procedures. Brazil intends to increase DECOM's team of investigators from 30 to 120, and has opened a public competition to hire those investigators.⁷⁶ The Chamber of Foreign Trade (CAMEX) is responsible for making final decisions regarding the application of provisional AD and CV measures and definitive duties, for altering or terminating definitive duties as a result of a review, and for accepting or terminating undertakings. CAMEX is also responsible for establishing the rules and procedures for contingent trade remedy investigations.⁷⁷

3.61. In December 2011, SECEX issued Directive No. 46, which contains revised guidelines relating to the information to be included in an application for the initiation of an AD investigation.⁷⁸ According to DECOM, the new format simplifies the application process by eliminating requests for some information that is not used during the investigation process. At the same time, it requires the application to include additional information that previously would have been gathered only after the initiation of an investigation. This eliminates the need to alter the period of investigation or update the data after initiation, thus permitting the authorities to verify the applicants' information and to impose provisional measures, in the case of affirmative determinations, within 120 days.

3.62. Under Brazilian legislation, an AD or CV duty may be equal to or less than the margin of dumping or the amount of the subsidy, and is for the exclusive purpose of neutralizing the injurious effects of dumped or subsidized imports.⁷⁹ Pursuant to its regulations, the lesser duty rule is mandatory as a recommendation of the reviewing agency and, in the majority of cases, Brazil has followed this recommendation, i.e. duties are applied to the extent necessary to remove the injury to the domestic industry, even if that implies a duty lower than the dumping margin. However, since 2007 Brazil has applied the full margin of dumping on suppliers who do not respond to the questionnaires sent by the SECEX during the investigation.⁸⁰ In May 2011, CAMEX decided that the full margin of dumping/subsidization could be applied even in cases in which there is a technical recommendation for a lesser duty.

3.63. In exceptional circumstances, for reasons of national interest, the Brazilian authorities may decide to suspend the application of definitive AD or CV measures, to impose a definitive measure in an amount different from the one recommended by DECOM, or to waive the application of a provisional measure recommended by DECOM.⁸¹ During the review period, CAMEX invoked national interest on a number of occasions. For example, it suspended application of an AD duty on Portland cement originating in Mexico and Venezuela and destined for consumption in certain Brazilian states to preserve price stability⁸²; it imposed a lower specific duty than recommended on ball point pens in order to avoid increasing the costs of teaching materials⁸³; and it capped the

⁷³ WTO document G/ADP/N/1/BRA/2/Suppl.1-G/SCM/N/1/BRAZ/2/Suppl.1.

⁷⁴ WTO document G/ADP/N/1/BRA/2/Suppl.8.

⁷⁵ For written questions and answers regarding these laws, see WTO documents G/ADP/Q1/BRA/1 to 15, and G/SCM/Q1/BRA/1 to 15.

⁷⁶ Law No. 12,545 of 14 December 2011.

⁷⁷ Decree No. 4,732 of 10 June 2003.

⁷⁸ WTO document G/ADP/N/1/BRA/2/Suppl.8.

⁷⁹ Decree No. 1,602, Article 45; Decree No. 1,751, Article 55.

⁸⁰ See, e.g. Resolution No. 24 of 19 April 2012, para. 7.1.

⁸¹ Decree No. 1602, Article 64.4; Decree No. 1751, Article 73.3.

⁸² CAMEX Resolution No. 64 of 1 September 2010.

⁸³ Resolution No. 24 of 28 April 2010.

specific duty on fertilizer inputs.⁸⁴ Most recently, CAMEX replaced a specific duty on polyvinyl chloride resins with an *ad valorem* duty in order to restore the efficiency of the duty.⁸⁵

3.64. In 2012, CAMEX established a Technical Group for Public Interest Assessment (GTIP) pursuant to Resolution No. 13 of 29 February 2012. The GTIP is tasked with examining the suspension or modification of definitive AD and CV measures as well as waivers on the application of provisional AD and CV measures for reasons of public interest. Resolution No. 13 sets out procedures for the operation of the GTIP. It provides that requests to suspend or modify measures are to be submitted to the Secretariat for Economic Monitoring of the Ministry of Finance, which serves as the GTIP secretariat, and must be substantiated by factual and legal evidence. In addition, any GTIP member or other federal government body may request an assessment by the GTIP of any definitive measure or on-going investigation. The GTIP has four months to submit its conclusions to the CAMEX, subject to justified extension; however, in the case of an on-going investigation, it shall not submit its conclusions to CAMEX until a final recommendation on the application of provisional or definitive measures has been submitted to that body. The GTIP is to include in its acts the grounds and reasons for its decision. As at March 2013, the GTIP was reviewing a request for non-application of AD duties on polymeric MDI (NCM 3909.30.20) and for the suspension, for public interest reasons, of definitive AD duties on lightweight coated paper (NCM 4810.22.9).⁸⁶ An investigation that took place in 2012 with respect to the importation of knitted or crocheted long pile fabrics (NCM 6001.10.20) was closed, deciding against the suspension of the extension of duties.⁸⁷

3.65. A provision authorizing the extension of AD and CV measures where circumvention frustrates their application was added to Brazilian law in 2008.⁸⁸ Since then, a CAMEX resolution and a SECEX Directive governing implementation have been promulgated.⁸⁹ Brazil may treat as circumvention (i) the import from a country subject to a measure of parts, pieces and components for the manufacture of a product that resembles the product subject to the measure; (ii) the import of a product manufactured in a third country using parts, pieces, and components from the country subject to the measure; and (iii) the import of the good with minor modifications that do not affect its end use.⁹⁰ In determining whether there is circumvention, Brazil will consider whether changes in trade flows results from an activity, process or practice which is insufficiently motivated or lacks economic justification; whether the remedial effects of a measure are being undermined, and, in the case of an AD measure, whether the goods are being sold in Brazil at prices lower than the normal value previously established. A manufacturing operation will be treated as circumvention if imported parts exceed 60% of the total parts. There is no circumvention if the value added exceeds 25% of the cost of manufacture.⁹¹

3.66. In February 2012, Brazil took its first anti-circumvention action, extending an AD measure on blankets from China to cloth imported from China as well as to blankets imported from Paraguay and Uruguay using imported Chinese cloth. In July 2012, Brazil took a second action, extending an AD measure on footwear from China to parts and components imported from China. However, Brazil found that there was no third-country circumvention and declined to extend the measure to footwear imported from Indonesia and Viet Nam. In September 2012, the extension of the AD measure due to circumvention practice was revoked at the request of the petitioner (Resolution CAMEX No. 65/2012). As at March 2013, no other anti-circumvention proceedings were pending.

3.67. Brazil is undertaking a broader revision of Decree No. 1602, which governs the application of AD measures. To this end it has opened the Decree for public comment⁹², and has published the

⁸⁴ Resolution No. 41 of 8 June 2010.

⁸⁵ Resolution No. 66 of 6 September 2011.

⁸⁶ Resolution CAMEX No. 50/2012 of 5 July 2012.

⁸⁷ Resolution CAMEX No. 92/2012 of 18 December 2012.

⁸⁸ Article 10-A of Law No. 9,019 of 30 March 1995, as modified by Law No. 11,786 of September 2008.

⁸⁹ CAMEX Resolution No. 63 of 17 August 2010, WTO document G/ADP/N/1/BRA/2/Suppl.4-G/SCM/N/1/BRA/2/Suppl.4; and SECEX Directive 21 of 18 October 2010, WTO document G/ADP/N/1/BRA/2/Suppl.5-G/SCM/N/1/BRA/2/Suppl.5.

⁹⁰ A fourth category of circumvention, "any other practice designed to thwart the effective application of anti-dumping measures", was subsequently rescinded. CAMEX Resolution No. 25 of 5 May 2011, WTO document G/ADP/N/1/BRA/2/Suppl.6-G/SCM/N/1/BRA/Suppl.6.

⁹¹ CAMEX Resolution No. 63, Article 2; and SECEX Directive 21, Article 4.

⁹² SECEX Portaria No. 28 of 25 August 2011.

comments received on the internet. As at March 2013, a revised decree had not yet been promulgated.

3.2.7.2.2 AD/CVD use during the review period

3.68. Although subject to fluctuation, Brazil's use of AD generally showed an upward trend during the review period. The number of new cases varied significantly from year to year, but with the exception of 2009 was above historical trends. Brazil notified 26 new cases in the first half of 2012, and DECOM recently noted that as of 20 September 2012 it had initiated 47 new investigations in 2012, exceeding the previous record of 40 investigations in 2010.⁹³ In terms of measures in force, Brazil had 83 anti-dumping measures in force as of 30 June 2012 (up from 63 in October 2008), of which 20 related to imports from China and 10 to imports from the United States. The number of countervailing investigations and measures remains small although the three new countervail investigations opened in 2010 equalled the total number of new cases opened since the entry into force of the WTO Agreement in 1995.

3.2.7.3 Safeguard measures

3.69. The WTO Agreement on Safeguards was incorporated into Brazilian legislation through Decree No. 1,355 of 30 December 1994. Administrative procedures for the application of safeguard measures are established in Decree No. 1,488 of 11 May 1995, as amended.

3.70. A common MERCOSUR regulation, based on the WTO Agreement on Safeguards, establishes procedures for the application of safeguard measures by MERCOSUR, as a single entity, and in the name of a member State with respect to imports of third countries.⁹⁴ However, this regulation is not yet in force, since other MERCOSUR members have not incorporated it into their legislation.

3.71. Safeguard measures are not applied among MERCOSUR members, but may apply to MERCOSUR's associate members, i.e. Chile and Plurinational State of Bolivia. In the respective bilateral agreements with these two countries, there are specific regulations on the application of preferential safeguard measures, which consist of temporary suspension or reduction of tariff preferences.

3.72. Safeguard investigations are initiated and conducted by the SECEX. CAMEX is responsible for determining safeguard measures⁹⁵, which may take the form of tariff surcharges or quantitative restrictions and be applied for a maximum of four years, renewable for six years. Measures applied for over three years are subject to a mid-term review by SECEX.

3.73. Brazil's only existing safeguard measure, on desiccated coconut, was first applied in 2002, and was most recently extended for two years on 1 September 2010; accordingly, it was terminated on scheduled on 31 August 2012.⁹⁶ On 15 March 2012, Brazil initiated a new safeguard investigation on fine or table wine.⁹⁷ The investigation was terminated on 23 October 2012, at the request of the petitioners.⁹⁸

3.2.8 Technical regulations, conformity assessment, and standards

3.74. Brazil's latest submission to the WTO outlining activities related to the implementation and administration of the TBT Agreement, dates back to 2003.⁹⁹ Apart from an extension of INMETRO's responsibilities, the Brazilian institutional framework in this field remained broadly unchanged during 2009-12.¹⁰⁰ The National Council of Metrology, Standardization and Industrial Quality (CONMETRO) oversees the National System of Metrology, Standardization and Industrial Quality

⁹³ SECEX press release, "Abertura de investigações de defesa comercial já é recordé este ano", 20 September 2012.

⁹⁴ 19th Additional Protocol to ACE No. 18 MERCOSUR (modified by the 49th Additional Protocol), incorporated into Brazilian legislation through Decree No. 2,667 of 10 July 1998.

⁹⁵ Decree No. 4,732 of 10 June 2003.

⁹⁶ CAMEX Resolution No. 51 of 17 July 2010; WTO document G/SG/N/14/BRA/3.

⁹⁷ G/SG/N/6/BRA/5.

⁹⁸ Circular SECEX No. 54/2012.

⁹⁹ WTO document G/TBT/2/Add.26/Rev.2, 26 June 2003.

¹⁰⁰ WTO document WT/TPR/S/212/Rev.1, 11 May 2009.

(SINMETRO), which regroups public and private entities active in metrology, standardization, quality management, and certification at the federal and sub-federal levels. The Brazilian Association for Technical Standardization (ABNT) is in charge of developing (voluntary) standards, while (mandatory) technical regulations may be issued by 31 federal agencies, according to their respective competence. Conformity assessment procedures defined by CONMETRO are binding only for INMETRO; other regulatory agencies have autonomy with respect to the choice of conformity assessment systems.

3.75. INMETRO acts as the Executive Secretariat of CONMETRO, the coordinator of the Brazilian Network of Legal Metrology and Quality, and the national enquiry point under the TBT Agreement; it is also responsible for implementing the TBT notification provisions. Since August 2011, INMETRO's competences include participating in SISCOMEX's consenting body for non-automatic licensing, adopting measures to prevent deceptive trade practices, and working with the Federal Police to improve the conformity assessment of goods before they enter Brazil; import licensing responsibilities, for certain goods, were also transferred from DECEX to INMETRO.¹⁰¹ During customs clearance, INMETRO may be called upon to assist the RFB in verifying compliance of imported goods' with Brazilian technical regulations (section 3.2.1).¹⁰² The authorities noted that INMETRO and ANVISA work together in the mandatory certification of products subject to sanitary control; INMETRO puts in practice the conformity assessment process, whereas the relevant rules and requirements are set by ANVISA.¹⁰³

3.76. Brazil does not grant equivalence to technical regulations adopted by any trading partner, but accepts equivalence in test results. Brazil did not notify to the WTO any new mutual recognition agreements (MRAs) on conformity assessment during the review period; its five notifications dating back to 2003 were covered in the Secretariat Report for Brazil's previous Review.¹⁰⁴ Through INMETRO's General Coordination for Accreditation (CGCRE), Brazil has mutual recognition agreements on accreditation and certification with 80 accreditation bodies in 66 economies. INMETRO also represents Brazil in relevant initiatives within MERCOSUR, LAIA, and the Organization of American States, and has signed technical cooperation instruments, including memoranda of understanding and agreements, with entities in: Argentina, Bolivia, China, Chile, Costa Rica; Cuba, Dominican Republic, Ecuador, France; Germany, Guatemala, India, Italy, Japan, Lebanon, Mexico, Mozambique, Panama, Paraguay, Peru, Portugal, the Republic of Korea, Russia, Singapore, South Africa, Trinidad and Tobago, Turkey, Ukraine, the United Kingdom, the United States, Uruguay, and Venezuela.

3.77. In the framework of MERCOSUR, requests for the elaboration of technical regulations, or for the revision of regulations already in force, must be submitted by a member State. Accepted requests are forwarded to working groups within the Common Market Group (GMC) for examination, preparation of draft regulations, and incorporation of comments received through public consultation. Technical regulations are notified to the WTO after each MERCOSUR member country has carried out domestic consultations, but before they are adopted by the GMC in the form of Resolutions. The Resolutions enter into force once they have been incorporated in national legislation and published by each member country. In 2010, MERCOSUR launched negotiations to make the revision of MERCOSUR technical regulations more fluid and more regular.

3.78. Although not legally binding, a set of recommendations for the elaboration, dissemination, periodic review, and elimination of technical regulations and conformity assessment procedures is

¹⁰¹ INMETRO's additional responsibilities are set out in Provisional measure No. 541 of 2 August 2011, converted into Law No. 12,545 of 14 December 2011; they include: elaborating and issuing technical regulations regarding metrological control; exercising administrative police powers and issuing technical regulations on conformity assessment (with regard to security, environmental and health protection, and prevention of deceptive trade practices); implementing, coordinating, and supervising legal metrology and compulsory conformity assessment activities; accrediting conformity assessment bodies; maintaining a register of items (*Registro de objetos*) for the purposes of compulsory conformity assessment; monitoring compliance with the principles of good laboratory practice; and approving the importation of goods that are both regulated by it and subject to non-automatic licensing or other administrative controls prior to clearance for consumption.

¹⁰² INMETRO may levy fines varying from R\$100 to R\$1.5 million for non-compliance with mandatory technical regulations and conformity assessment procedures.

¹⁰³ INMETRO's Certificate of Compliance is a prerequisite for registration at ANVISA.

¹⁰⁴ WTO document WT/TPR/S/212/Rev.1 of 11 May 2009.

contained in CONMETRO's Guide on Good Regulatory Practice.¹⁰⁵ According to the authorities, the competent agencies have committed, in principle, to follow the guide. Technical regulations may be established through laws, decrees or resolutions, and should be published in the *Official Journal*. A period of six months is typically allowed between the publication of the measure and its entry into force. Ministries and agencies with authority to elaborate and issue technical regulations may do so *ex officio*, or at the request of a third party; the holding of public consultations is generally required, except in exceptional cases. In principle, if a proposed technical regulation is considered to have trade effects, INMETRO would forward a draft to the WTO for Members' comments. After all comments and suggestions are taken under consideration, the competent ministry or agency decides whether to adopt the technical regulation, with or without modifications. According to the authorities, most technical regulations enacted in Brazil are based on international standards; when this is not the case, they are based on performance criteria. The recommended period for review and revision of technical regulations is four years.

3.79. The general process for adopting conformity assessment procedures is similar to the one for technical regulations. Conformity assessment may involve certification, performance verification, sampling, labelling, inspection, and a conformity declaration by the supplier; certain activities (e.g., certification) may be delegated to accredited third parties. The supplier's declaration of conformity is an admissible instrument only for products or services of low to medium risk to human health and safety. In general, labelling requirements relate to the products' quality, quantity, composition, guarantee, shelf life, origin, and risks to consumer health and safety. All labels must bear this information in Portuguese and indicate the brand or name of the manufacturer.

3.80. As at 19 January 2013, INMETRO applied the following compulsory conformity assessment procedures: certification (110 product groups, 9 services and 2 processes); performance verification (4 product groups); conformity declaration by the supplier (12 product groups and 5 services); inspection (4 product groups and 6 services); and labelling (13 product groups). Between January 2009 and January 2013, INMETRO introduced compulsory certification on 47 product groups, while the supplier's declaration of conformity and labelling became mandatory for 3 and 8 product groups, respectively. Additional compulsory conformity assessment procedures are administered by other competent entities, such as ANVISA, ANATEL, and the Ministry of Agriculture. SISCOMEX (section 3.2.1.), accessible only to registered users, contains the most up-to-date information on conformity assessment measures affecting imports.

3.81. The commercialization of items that are both subject to compulsory conformity assessment and under INMETRO's authority (directly or through delegation) is conditional on inscription in its Register of items¹⁰⁶; this requirement does not apply to items under the regulatory competence of other federal agencies. The Register is managed through a computerized system (*Orquestra*), which is also being used by INMETRO in its non-automatic import licensing activities.¹⁰⁷ Other regulatory agencies, such as ANVISA and ANATEL, may also require inscription in their respective registers.

3.82. Assisted by CONMETRO's technical committees, INMETRO acts as Brazil's national accreditation body. It accredits entities engaging in certification, inspection, training, calibration, and testing, including agri-toxic laboratories and clinical analysis laboratories. In general, the accreditation process comprises the submission of a formal request, a review of supporting documentation, and an *in situ* inspection; entities are subject to periodic evaluations to maintain their accreditation. According to the authorities, entities seeking accreditation to carry out compulsory conformity assessment activities are generally not required to have a permanent office in Brazil, but a few technical regulations stipulate it as a prerequisite.

¹⁰⁵ CONMETRO (2007).

¹⁰⁶ Items subject to model approval by INMETRO are exempted (INMETRO online information. Viewed at: www.inmetro.gov.br/metlegal/instrumentosApreciacao.asp).

¹⁰⁷ INMETRO collects a fee of R\$47.39 for inscription/renewal in its Register of items; in a few specific cases, such as fire extinguisher maintenance and installation of natural gas kits for vehicles, the fee is R\$1,197.48.

3.83. In January 2013, 305 calibration laboratories and 521 sampling laboratories were accredited in Brazil; there were also 721 entities with active accreditations to perform conformity assessments (certification, inspection, performance verification).¹⁰⁸

3.84. The ABNT coordinates the consensus-based development of Brazilian standards, and represents Brazil in the ISO/IEC and in regional normalization fora. It signed the WTO/TBT Code of Good Practice in 1995 and follows its Annex 3.¹⁰⁹ Standards are elaborated by technical committees and sectoral standardization bodies; all interested parties are allowed to submit requests for new standards and to participate in the standardization work. At present, there are 146 active technical committees. Draft standards are open to national consultation for 60 days. Once a consensus is reached among all interested parties, the standard is adopted by the ABNT. Standards older than five years are reviewed to ensure that they remain up to date; the review process also includes 60 days of public enquiry. Standards adopted by the ABNT may be used as references in the adoption of technical regulations by INMETRO, especially in the absence of international and regional ones.

3.85. Between January 2009 and January 2013, Brazil adopted 782 standards, 359 technical regulations, including those harmonized at MERCOSUR level, and 53 compulsory conformity assessment procedures.¹¹⁰ During the same period, the WTO Committee on Technical Barriers to Trade was notified of 145 draft technical regulations and 71 conformity assessment procedures relating to international trade. A number of Brazil's notifications during the review period ran short of the minimum period (60 days) for the submission of comments by Members.

3.2.9 Sanitary and phytosanitary measures

3.86. The Ministry of Agriculture, Livestock and Food Supply (MAPA), through its Secretariat of Agricultural Protection (SDA), is responsible for the protection of animal and plant health. The SDA is vested with authority to control the sanitary and phytosanitary (SPS) aspects of production and international trade of all livestock, fruits, vegetables, grains, plants, veterinary drugs, pesticides, and their components; it also registers and inspects products and activities that use genetically modified organisms, on behalf of the National Technical Commission on Biotechnology (CTNBio), which issues the relevant authorizations. The Ministry of Fisheries and Aquaculture (MPA) is responsible for aquatic animal health; its General Coordination Office for Aquatic Animal Health (CGSAP) carries out sanitary controls to protect the natural and reproduction environments in Brazil, including on imports of fish and aquatic animals and their reproductive materials. The Brazilian Health Surveillance Agency (ANVISA), an autonomous entity linked to the Ministry of Health under a management contract, is in charge of controlling the production and marketing of products and services subject to sanitary surveillance for the protection of human health. ANVISA is responsible for, *inter alia*, approving the importation of food products and performing sanitary inspections at the points of entry into Brazil.

3.87. Brazil's enquiry points comprise: MAPA's Secretariat for International Relations of Agribusiness, ANVISA's Office of International Affairs (formerly the Assistance Unit for International Issues), and MPA's CGSAP.¹¹¹ The Ministry of Foreign Relations is Brazil's notification authority for SPS matters.¹¹² As a general rule, proposed SPS measures are published in Brazil's *Official Journal* and notified to the WTO; 362 regular and 3 emergency notifications were submitted to the WTO between January 2009 and January 2013. As at the time of its previous Review, Brazil's notification record continues to show a predominance of comment periods of less than 60 days (85% of the 362 regular notifications); also, limited use is made of provisions for a six-month period between the measure's publication and its entry into force. According to the authorities, comments from interested parties have generally been taken into consideration even after the stipulated deadlines.

3.88. Brazil is a member of the Codex Alimentarius Commission, the World Organisation for Animal Health (OIE), and the International Plant Protection Convention (IPPC), and a party to the

¹⁰⁸ INMETRO online information. Viewed at: <http://www.inmetro.gov.br/qualidade/regObjetos.asp>.

¹⁰⁹ WTO document G/TBT/CS/2/Rev.14, 20 February 2008.

¹¹⁰ The authorities noted that, for technical reasons, exact figures on technical regulations and conformity assessment requirements are hard to compile.

¹¹¹ WTO document G/SPS/ENQ/26, 11 March 2011.

¹¹² WTO document G/SPS/NNA/16, 11 March 2011.

Convention on Biological Diversity. At the sub-regional level, Brazil participates in relevant technical work within MERCOSUR, in the Southern Cone Plant Health Committee (COSAVE), and in the Standing Veterinary Committee of the South Cone (CVP). Its bilateral initiatives on SPS issues include the negotiation of memoranda of understanding and/or cooperation agreements with various countries, and the establishment of Consultative Committees on Agriculture (CCAs) as a means of ensuring regular exchanges on relevant topics.¹¹³ Brazil accepts phytosanitary and zoosanitary certificates issued by official sanitary services in countries that follow the guidelines of Codex, IPPC, OIE, and other international scientific organizations.

3.89. Apart from general procedures issued by MPA and MAPA in their respective areas of competence¹¹⁴, Brazil's SPS legislation underwent no significant changes with respect to import-related controls during 2009-13.¹¹⁵ In 2012, MAPA implemented a computerized system (SIGVIG) for the management of agricultural products and inputs transiting through Brazil; SIGVIG is not interconnected with SISCOMEX (section 3.2.1).

3.90. Brazil's SPS system is based on risk analysis that generally takes account of an import's origin and product characteristics. The conclusions of pest risk analyses are notified, as a draft for comments, to the pertinent SPS authority of the country of origin and to the WTO. After consideration of the comments received, phytosanitary import requirements are publicized in Brazil's *Official Journal* and notified to the country of origin and the WTO; there is no statutory time-frame for the assessment process.¹¹⁶ Risk assessments for plant pests comply with IPPC standards; in general these assessments are required when there is no record of prior importation of the plant or plant product concerned from a given country. Risk assessments for imports of animals and animal products follow OIE standards. Competence for the adoption of SPS measures is vested in ANVISA, MAPA, and MPA; while MPA establishes the sanitary requirements for fish, unprocessed fish products, live aquatic animals and their respective reproductive materials, cells, organs, and tissues, the administration of relevant import authorizations and licences is done by MAPA.¹¹⁷

3.91. The importation of any product subject to SPS controls requires a non-automatic licence; ANVISA and SDA issue licences in their respective areas of competence directly through SISCOMEX. Additional requirements, such as prior authorization of each shipment to Brazil and inscription in a register, apply to some products; some of the relevant procedures may not yet be performed electronically.¹¹⁸ As at 18 January 2013, imports classifiable under 3,275 eight-digit tariff lines were subject to SDA controls, which could involve the intervention of up to three technical departments; procedures requiring, *inter alia*, SDA authorization prior to shipment or arrival at Brazil's borders applied to 2,675 of these lines.¹¹⁹ A consolidated list of the products controlled by ANVISA upon importation is available online.¹²⁰ Importers of controlled foodstuffs, cosmetics, and pharmaceutical products must obtain an authorization from ANVISA and a licence from a state or municipal sanitary authority; the licence serves as an authorization from the National Sanitary Surveillance System and is valid throughout Brazil. Inscription in ANVISA's sanitary register is also a prerequisite for importation of some of these products¹²¹; the remaining product categories regulated by ANVISA require a written notification by the prospective importer. The statutory time-frame for the registration of new products with ANVISA is 60 days. Subsequent

¹¹³ Brazil has established CCAs with Canada, China, the European Union, Indonesia, Korea, Mexico, Russia, Ukraine, and the United States; a similar tripartite arrangement is in force with India and South Africa.

¹¹⁴ MPA Normative Act No. 14 of 9 December 2010 and MAPA Normative Act No. 51 of 4 November 2011.

¹¹⁵ The core legal texts are: Ministerial Act No. 183 of 9 October 1998, and Resolution RDC ANVISA No. 81/08.

¹¹⁶ Generally, the cost of the risk analysis is borne by the Brazilian Government; however, interested parties may choose to contract, at their own expense, an accredited analyst (university or laboratory).

¹¹⁷ Requests concerning such imports are forwarded by SDA to MPA for evaluation and approval; once the approval is granted, SDA issues the authorization.

¹¹⁸ ANVISA is working on the development of a system for electronic submission of import authorization requests.

¹¹⁹ MPA online information. Viewed at: [http://www.agricultura.gov.br/arq_editor/file/Aniamal/Importa%C3%A7%C3%A3o/Anexo%20IN%2051%2018_01_13\(1\).xls](http://www.agricultura.gov.br/arq_editor/file/Aniamal/Importa%C3%A7%C3%A3o/Anexo%20IN%2051%2018_01_13(1).xls).

¹²⁰ ANVISA online information. Viewed at: <http://portal.anvisa.gov.br/wps/wcm/connect/c89fc6804ce34110b0d8ba551355428f/IMPORTA%C3%87%C3%83O+ANVISA+setembro+2012.pdf?MOD=AJPRES>.

¹²¹ Products that require registration are listed in ANVISA Resolution RDC No. 278 of 22 September 2005 (foodstuffs); ANVISA Resolution RDC No. 211 of 14 July 2005 (cosmetics); and ANVISA Resolution RDC No. 132 of 29 May 2003, as amended (pharmaceuticals).

imports of products in ANVISA's sanitary register, regardless of the importer, must also be notified to the agency.

3.92. Plants and plant products commercialized in Brazil, including imports, must comply with quality-related characteristics (e.g. size, purity, and maturity) laid out in the Brazilian classification system, whenever a specific standard to that effect is in place.¹²² The importation of seeds for commercial purposes is strictly limited to the species and varieties contained in the National Register of Plant Varieties (RNC) maintained by MAPA.¹²³ The conformity of imports is verified at the border, either by MAPA or by accredited private companies.¹²⁴

3.93. The requirements laid out by MAPA for importation of products of animal origin into Brazil include: (i) recognition of the sanitary inspection systems in the exporting country as equivalent to Brazil's; (ii) accreditation of the exporting establishments; and (iii) approval of the products and their labels.¹²⁵ The requirements for importation of aquatic animals and reproductive material include: (i) recognition of the aquatic animal health system (natural or reproduction environments) in the exporting country as equivalent to Brazil's; and (ii) when deemed necessary, import risk analysis. All imports of animal products and their sub-products must be inspected at the port of entry. In principle, physical inspections are performed on 1% of the lot comprising all packages classifiable under the same tariff line, with a minimum of two and a maximum of ten packages. For products in bulk, five samples are collected separately for inspection; different rules apply for containers. Samples from the packages that were physically inspected may also be used for laboratory testing; testing requirements are product-specific and do not follow a general rule. Testing should be carried out at MAPA laboratories; when necessary, laboratories officially accredited by MAPA may also be used. Testing costs are paid by the owner of the products.¹²⁶

3.94. Establishments that produce, import, or export fertilizers, as well as the products themselves, must be registered with MAPA. The Ministry also maintains a register of pesticides (AGROFIT), which incorporates relevant information from the Ministries of Health and Environment.

3.95. Brazil prohibits imports, exports, and the domestic commercialization of hormonal substances with anabolic characteristics, unless intended for therapeutic and research use.¹²⁷ The use of substances with anabolic hormonal properties for the purpose of promoting growth and weight in bovines and poultry destined for slaughter is banned; imports of hormone-treated meat are also prohibited.¹²⁸

3.2.10 Other measures

3.96. Brazil observes the trade sanctions imposed by the United Nations and the regional organizations to which it belongs. According to the authorities, Brazil is not a party to any agreements or arrangements seeking to influence the quantity or value of goods and services exported to Brazil.

3.3 Measures Directly Affecting Exports

3.3.1 Procedures and documentation

3.97. Export procedures are laid out in Chapter IV of SECEX Ordinance No. 23 of 14 July 2011 of the Secretariat of Foreign Trade (SECEX). As is the case for import operations, all procedures for the exportation of goods are carried out electronically through SISCOMEX.

¹²² Law No. 9,972 of 25 May 2000 and Decree No. 6,268 of 22 November 2007.

¹²³ New plant varieties may be included in the register after specific trials designed to verify their adaptation to Brazilian conditions (Normative Instruction No. 50 of 15 December 1998).

¹²⁴ The rules and guidelines that regulate inspections of imported plants and their products are laid out in Normative Instruction MAPA No. 36 of 10 November 2006 (WTO document G/SPS/N/BRA/144/Add.1 of 28 November 2006 and addenda).

¹²⁵ SDA carries out on-site inspections and sends questionnaires to the SPS authorities of the exporting country to evaluate the procedures followed by its counterparts; on-site inspections of the exporters' establishments are undertaken at the cost of the interested party.

¹²⁶ Annex of Ministerial Act MAPA No. 183 of 9 October 1998.

¹²⁷ MAPA Normative Instruction No. 55 of 1 December 2011.

¹²⁸ MAPA Normative Instruction No. 17 of 18 June 2004.

3.98. All exporters are automatically registered in SECEX's exporters and importers registry (REI) upon their first export operation. Registration in the REI is not required for exports shipped by post with a value of less than US\$50,000 (or equivalent amount in another currency), with certain exceptions (e.g. exports under special customs regimes). From 1 February 2012, a new SISCOMEX module is available for exporters.

3.99. All export goods must be registered in the export registry (RE) prior to submission of the export declaration. The RE is requested by the exporters or their representatives through SISCOMEX, and if all required information is complete and correct, registration will be issued within a maximum of 30 days. For financed exports (sales on terms exceeding 360 days or with interests) a credit register (RC) is required in order to register the goods in the RE. Annex XV of SECEX Ordinance No. 23 of 14 July 2011 contains a list of exports exempted from export registration requirements.¹²⁹ A simplified export declaration is available for exports up to US\$50,000.

3.100. Export documentation is processed through SISCOMEX and analysed by the relevant control agencies before the merchandise is loaded for exportation, except in certain cases.¹³⁰ The export documents required include an export declaration, bill of lading, packing list, letter of credit (if required), commercial invoice, and, in some cases, an export licence (see below).¹³¹ In addition, certificates of origin are required for preferential exports to MERCOSUR and LAIA countries, as well as under the GSP and GSTP schemes. Certificates of origin for MERCOSUR and LAIA must be issued by entities authorized by the SECEX¹³²; certificates of origin for GSP, and for preferential poultry exports to the EU are issued by the *Banco do Brasil S.A.*; and certificates of origin for the GSTP are issued by several Brazilian industry federations. Preferential exports of milk to Colombia require a MERCOSUR quota authorization certificate and preferential exports of sugar to the EU require a certificate of origin; both are issued by the Department of Foreign Trade (DECEX). A certificate of authenticity is required for tobacco exports to the EU, which is issued by the Banco do Brasil S.A. and the industrial federations of the State of Paraná, Santa Catarina, and Rio Grande do Sul.¹³³

3.101. A number of products are subject to special export procedures, including exports subject to specific standardization and classification requirements, export taxes, export licences, or country-specific tariff quotas in certain markets under Brazil's international agreements. Annex XVII of SECEX Ordinance No. 23 of 14 July 2011 contains a list of goods subject to special export procedures.¹³⁴ Since Brazil's last Review, two products have been removed from the list.¹³⁵

3.102. As of March 2008, Brazilian exporters of goods and services are allowed to maintain abroad the totality of their export proceeds.¹³⁶ However, exporters must inform the Federal Revenue about the origin and use of export proceeds kept abroad and may not use them for

¹²⁹ These include exports with a value equal to or less than US\$50,000; samples with no commercial value; luggage; domestic animals; and goods bought in Brazil by non-residents. In addition, under SECEX Ordinance No. 42 of 7 December 2011, exports up to a value of US\$50,000 and financed with PROEX funds (see below) are exempt from registration in the RE if they use a simplified export declaration.

¹³⁰ The exceptions are exports of fuel and food to airlines and ships in international traffic, and domestic sales of precious stones and jewellery to non-residents, as provided in Annex XVI of SECEX Ordinance No. 23 of 14 July 2011.

¹³¹ A simplified export declaration is available for exports with a value of up to US\$50,000 (Normative Instruction No. 611 of 2006).

¹³² The entities authorized by SECEX are listed in Annex XXII of SECEX Ordinance No. 23 of 14 July 2011 and its amendments: SECEX Ordinance No. 45 of 23 December 2011; SECEX Ordinance No. 2 of 17 January 2012; SECEX Ordinance No. 11 of 4 April 2012; and SECEX Ordinance No. 15 of 17 April 2012.

¹³³ SECEX Circular No. 9 of 11 February 2009.

¹³⁴ These include: exports of certain types of bovine meat to the EU under the "Hilton quota"; and exports of poultry meat and poultry meat preparations to the EU subject to country-specific tariff quotas; exports of sugar and confectionery products to the EU subject to export licences; milk exported to Colombia under MERCOSUR quota; frozen lobster, pine wood, granite in block, and marble (all four products subject to standardization); cigarettes, and skins and hides subject to export tax; precious stones, which may be sold in foreign currency to non-residents; and arms and ammunition subject to export tax and other restrictions.

¹³⁵ Coffee (HS 0901.11.10), and ethylic alcohol (HS 2207.10.00 and 2207.20.10).

¹³⁶ Central Bank of Brazil, RMCCI-International Capital and Foreign Exchange Market Regulation, Circular No. 3,548 of 12 March 2008.

loans.¹³⁷ When the exporter decides to repatriate the export proceeds, a foreign exchange contract must be signed with a financial institution authorized by the Central Bank.¹³⁸

3.3.2 Export taxes

3.103. Law No. 9,716 of 26 November 1998 and Decree No. 6,759 of 5 February 2009 provide for the application of an export tax of 30%, which may be decreased or increased (up to 150%) by the Foreign Trade Chamber (CAMEX) in order to address foreign exchange or trade policy objectives. In practice, the export tax is zero-rated, except on a few products (Table 3.6). The basis for assessing the export tax is the f.o.b. value or the price of the good in the international market at the time of exportation.¹³⁹ The price must not be lower than the cost of acquisition or production of the good, increased by taxes and other contributions and a profit margin of 15% on the sum of costs and taxes.

Table 3.6 Export taxes, 2008-11

HS Heading	Products	Destination	Rate (%)	Legislation	Situation as at August 2011
2402.20.00	Cigarettes containing tobacco	South and Central America and the Caribbean	150	Decree No. 2,876, 14/12/98	In place
4101, 4102, 4103, 4104.11, 4104.19	Raw hides and skins (bovine, equine, sheep or lamb)	Any country	9	CAMEX Resolution No. 42, 19/12/06	In place
Chapter 93	Arms and ammunition, parts and accessories thereof ^a	South and Central America and the Caribbean ^b	150	CAMEX Resolution No. 17, 06/06/01 CAMEX Resolution No. 88, 14/12/10	In place

a Except when destined to authorized consumers and to the military and police forces; fire-arms under HS 9302.00.000 (MERCOSUR classification NCM 9303) with intrinsic safety and identification features, arms and ammunition under HS 9304.00.00 (NCM 9306.29.00), and ammunition under NCM 9306.21.00, 9306.29.00, and 9306.30.00.

b Excluding Argentina, Chile, and Ecuador.

Source: Information provided by the Brazilian authorities.

3.104. During the review period, Brazil maintained unchanged the export taxes it applies on: raw hides and skins, cigarettes, and arms and ammunition. In the case of raw hides and skins, taxes apply on all exports with the stated purpose of ensuring supply to the domestic market. In the case of cigarettes and arms and ammunition, taxes are charged only on exports to certain destinations in order to control the regularity of trade flows. Export tax revenues amounted to R\$34.1 million (some US\$18.6 million) in 2008, and R\$41.5 million (US\$24.8 million) in 2011.¹⁴⁰

3.105. There are no minimum export prices, except as a basis for calculating the export tax. The registry of sale, in which certain products had to be inscribed, was revoked in 2008.¹⁴¹

3.106. Exports are exempted from the Tax on Industrial Products (IPI), the Contribution to the Social Integration Programme (PIS), the Contribution to Social Security Financing (COFINS) and the state-level Tax on the Circulation of Goods and Services (ICMS).

¹³⁷ Central Bank of Brazil Normative Instruction No. 726 of 28 February 2007.

¹³⁸ Central Bank of Brazil, RMCCI-International Capital and Foreign Exchange Market Regulation, Update 38, Circular No. 3,527 of 4 March 2011. Viewed at: <http://www.bcb.gov.br/Rex/LegCE/Ingl/Ftp/RMCCI-1-11 I.pdf> [24 July 2012].

¹³⁹ Decree-Law No. 1,578 of 1977 and Provisional Measure No. 2,158-35 of 2001.

¹⁴⁰ Ministry of finance online information. Viewed at: http://www.stn.fazenda.gov.br/contabilidade_governamental/execucao_orcamentaria_do_GF/Receita_Tributaa.xls [July 2012].

¹⁴¹ SECEX Ordinance No. 23 of 31 October 2008.

3.3.3 Export prohibitions, restrictions, and licensing

3.3.3.1 Export prohibitions

3.107. Exports of some products are prohibited for reasons of environmental protection and compliance with international agreements. Exports of some organic chemicals (included in HS Chapter 29) to non-signatories of the Montreal Protocol are prohibited. Exports of wood in the rough (HS 4403) are generally suspended unless certain conditions are met, and require the approval of the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA). Exports of raw leather of amphibians and reptiles are also prohibited.¹⁴² In accordance with United Nations Resolutions, Brazil prohibits exports of weapons and military equipment to the Democratic Republic of Congo, the Democratic People's Republic of Korea, Eritrea, Iraq, Ivory Coast, Liberia, Libya, Sierra Leone, Somalia, and Sudan, as well as exports of materials and technology that could lead to the development of nuclear weapons to Iran.¹⁴³

3.3.3.2 Export restrictions, quotas, and licences

3.108. Exports of "sensitive products" are subject to control by the Inter-Ministerial Commission for the Export Control of Sensitive Goods (CIBES) under Law No. 9,112 of 10 October 1995.¹⁴⁴ The CIBES is responsible for preparing regulations, criteria, procedures, and control mechanisms for the exportation of sensitive products and their related services. Law No. 9,112 defines as sensitive: double-use goods that could be utilized for war purposes; goods of use in nuclear activities and equipment, chemical or biological goods that may be used for war purposes; and services directly linked to the production or use of a sensitive good. Exporters of sensitive products must apply to the CIBES for a licence which will take into account the international conventions and regimes related to chemical, biological, nuclear, and missile technologies. The lists of controlled products and services are prepared, updated, and approved by the CIBES.¹⁴⁵

3.109. Some products listed in Annex XVII of SECEX Ordinance No. 23 of 14 July 2011 are subject to tariff quotas/licences when exported to certain markets. These include exports of some types of bovine meat¹⁴⁶ and poultry products¹⁴⁷, and exports of sugar¹⁴⁸ to the EU. Quotas are administered on a first-come-first-served basis through an export licensing procedure managed by the DECEX. In the case of bovine and poultry meat, the producers must be accredited by the Ministry of Agriculture (MAPA) and accepted by the EU as safe exporters in order to obtain a quota. Exports of milk (HS 0402) to Colombia must obtain a MERCOSUR quota authorization from DECEX in order to benefit from the access conditions under the Economic Complementary Agreement.

3.110. Exports of certain wood (pine, imbuia, and virola) are subject to specific rules and require prior authorization from the IBAMA. Exports of mahogany, Brazil wood, and cedar require CITES permission, which is issued by the IBAMA. Exports of jacaranda from Bahia (HS 4407.29.90) are subject to special rules on the grounds that this wood is becoming extinct. Normative Instruction No. 77 of 7 December 2005 establishes the procedures for exporting wood products and sub-products, including pine, imbuia, and virola. Exports of rough diamonds require a Kimberley Certificate.

3.111. Exports of a relatively large number of products require prior authorization from the relevant government agencies, mainly for safety, health, security, or environmental reasons, or when they are subject to export quotas. As at 30 December 2010 (latest information available), the list included some 1,055 tariff headings at the HS eight-digit level (HS 2007), representing

¹⁴² Article 18 of Law No. 5,197 of 3 January 1967.

¹⁴³ Article 254 of SECEX Ordinance No. 23 of 14 July 2011.

¹⁴⁴ The CIBES was created by Law No. 9,112 of 10 October 1995, as amended by Decree No. 4,214 of 30 April 2002. Headed by the Ministry of Science and Technology, CIBES is also integrated by the Ministries of Defence, External Relations, Justice, Finance, and the MDIC.

¹⁴⁵ For the lists of controlled sensitive goods, see Ministry of Science and Technology online information. Viewed at: <http://www.mct.gov.br/index.php/content/view/330710.html>.

¹⁴⁶ HS 0201.30.00; 0202.30.00; 0206.10.00; and 0206.29.90.

¹⁴⁷ HS 02.10.99.00; HS 1602.31.00 and 1602.32.20.

¹⁴⁸ HS 1701.13.00 and 1701.14.00.

around 10% of all tariff headings and involving 53 HS Chapters.¹⁴⁹ Products subject to prior export authorization are mainly organic and inorganic chemicals (55% of the products), pharmaceuticals, wood products, some vehicles and aircraft, mineral fuels, fish and crustaceans, raw hides and skins, arms and ammunition, and live animals. Wild animal leather products are subject to authorization from IBAMA on grounds of native fauna protection. Several agencies are responsible for issuing licences; and some products require authorization by more than one agency.¹⁵⁰

3.3.4 Export support and related tax measures

3.112. Brazil maintains a number of programmes designed to increase the competitiveness of export-oriented companies, in particular small-scale enterprises, and to boost exports. The authorities consider that ensuring tax neutrality for exports is a key element in this regard, and that this objective is served through the exemption of indirect taxes on exports, and the implementation of schemes such as the drawback system (which now also covers the purchase of local inputs for the production of exports), export processing zones, and other export-related duty and tax concessions. Since the last Review of Brazil, several export support programmes have been modified or expanded, and others have been introduced (e.g. *Reintegra*).

3.3.4.1 Export subsidies

3.113. Prior to this Review, the procedures of the Export Financing Programme (PROEX) were modified as a consequence of a WTO dispute settlement ruling that found that the manner in which they were applied to regional aircraft exports constituted an export subsidy.¹⁵¹

3.114. In March 2009, Brazil notified the WTO Committee on Agriculture that it had not granted export subsidies to agricultural products in calendar years 2002 to 2007.¹⁵² In a further notification, Brazil submitted that it had not granted agricultural export subsidies during the period 2008-10.¹⁵³

3.3.4.2 *Reintegra* programme

3.115. Law No. 12,546 of 14 December 2011 introduced the Special Regime for the Reimbursement of Taxes for Exporters, known as *Reintegra*. The programme enables exporters of manufactured goods to recover residual indirect tax costs levied on the production chain, such as the Tax on Services (ISS), the financial transaction tax (IOF), and the royalty tax (CIDE). Companies that export goods manufactured in Brazil are entitled to a refund of up to 3% of their gross receipts from exports, to be used either as a credit against federal tax liabilities, or as a cash payment.

3.116. In order to qualify under *Reintegra*, manufactured goods must: (i) be included in the Industrialized Products Tax Table (*Tabela de Incidência do Imposto sobre Produtos Industrializados* – TIPI) and listed in an act issued by the Executive branch; and (ii) the cost of the imported content of the goods must not exceed a percentage of their export price. Decree No. 7.633 of 1 December 2011 provides a list of eligible goods¹⁵⁴ and sets the maximum value of imported content at 40% for most products, except in the case of high-tech goods (e.g. pharmaceuticals, electronics, and aircraft and parts), which may have up to 65% of imported

¹⁴⁹ At the ten-digit level, the list covers 1,420 HS 2007 heading subdivisions (MDIC online information. Viewed at: http://www.desenvolvimento.gov.br/arquivos/dwnl_1293734870.pdf [July 2012]).

¹⁵⁰ The main agencies in charge of issuing export licences are: the National Agency for Electrical Energy (ANEEL), the National Agency for Petroleum, Natural Gas and Biofuels (ANP), the Brazilian Health Surveillance Agency (ANVISA), the National Commission of Nuclear Energy (CNEN), the Army Command, Ministry of Defence (COMEXE), the DECEX, the Directorate for the Supervision of Controlled Products (DFPC), the National Department of Mineral Production (DNPM), the Federal Police Department (DPF), the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA); the Ministry of Science and Technology (MCT), and the Ministry of Defence (MDIC online information. Viewed at: http://www.desenvolvimento.gov.br/arquivos/dwnl_122823_4625.xls [July 2012]).

¹⁵¹ WTO document WT/DS46/R, 14 April 1999. See also WTO (2009).

¹⁵² WTO document G/AG/N/BRA/25, 16 March 2009.

¹⁵³ WTO document G/AG/BRA/28, 12 October 2012.

¹⁵⁴ The list covers almost all HS Chapters of the manufacturing sector and over 8,500 tariff lines.

inputs.¹⁵⁵ Eligible exports include direct sales of goods abroad as well as sales to qualified domestic trading companies (ECEs), but ECEs themselves are not eligible. Imported goods do not benefit from the programme. Reintegra benefits were applied to exports made until 31 December 2012.¹⁵⁶ The authorities estimate that revenue forgone for the duration of this programme was about R\$6.96 billion. There are no plans to extend it.

3.3.4.3 Drawback

3.117. Brazil operates a drawback scheme designed to reduce the tax costs associated with inputs used in the production of goods for export.¹⁵⁷ The scheme provides for the suspension or exemption of import tariffs and indirect taxes such as IPI, PIS, COFINS, ICMS, and AFRMM levied on local or imported inputs and parts used to produce exportable goods.

3.118. Since Brazil's last Review, the drawback system has been modified and expanded. In March 2010, the Federal Revenue and the SECEX published RFB/SECEX No. 467 of 25 March 2010, regulating the new integrated drawback regime. The scheme allows for the suspension or exemption of taxes not only on imported inputs, but also on the local purchase of inputs to be used in the production of exports, including for repair, breeding, cultivation or extractive activities of the products to be exported. RFB/SECEX No. 467/2010 also extends the benefits of the scheme to enterprises that purchase local or imported goods to produce intermediate goods to be used by another enterprise in the production of final products for export (intermediate drawback). On 27 July 2010, Provisional Measure No. 497 further expanded the scope of the integrated drawback regime to include the "exemption" modality (see below). The procedures for granting the drawback scheme were consolidated in SECEX Ordinance No. 23 of 14 July 2011. Users of the integrated drawback regime include agri-business, industrial, and commercial enterprises engaging in foreign trade. Physical persons are not eligible under the scheme.

3.119. The integrated drawback regime has two main modalities: suspension and exemption. Both modalities are operated by SECEX through the SISCOEX system. The suspension modality consists in deferring payment of import duties and federal indirect taxes on imported goods and/or local goods to be exported after transformation, assembly, improvement or renovation.¹⁵⁸ The suspension is granted for one year, renewable for an equal period. Moreover, the suspension may be extended up to a maximum of five years, when the imported and/or local inputs are used to produce capital goods with a long production cycle. Between 2006 and 2010, exports under the suspension modality of the drawback scheme represented over a quarter of total exports. The authorities indicated that exports under this scheme totalled more than US\$45 billion in 2010, US\$59 billion in 2011, and US\$48.6 billion in 2012.

3.120. The exemption modality of the integrated drawback scheme provides for the rebuilding of stocks, free of import duties and indirect taxes, of both imported and local inputs, in a quantity and quality equivalent to those used in the manufacture of a product already exported.¹⁵⁹ The exemption also applies to purchases of local or imported goods equivalent to those used in repairing, breeding cultivation, or extractive activities connected with the exported product; as well as to the re-stocking of inputs used for intermediate products. The duty/tax exemption may be claimed after exportation of the final product, but no later than two years after the date of purchase or importation of the inputs for which duties and taxes were paid. Once the drawback authorization has been granted by SECEX, the beneficiary has a period of one year to purchase local or imported inputs in order to rebuild stock; this period may be renewed for another year.

¹⁵⁵ Decree No. 7.633 of 1 December 2011. Viewed at: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/decreto/D7633.htm [July 2012].

¹⁵⁶ Article 3 Law No. 12,546 of 14 December 2011.

¹⁵⁷ The drawback scheme was created in 1966 by Decree-Law No. 37 of 18 November 1966.

¹⁵⁸ The legal basis for the integrated drawback regime in its suspension modality is Law No. 11.945 of 4 June 2009, and is regulated by RFB/SECEX No. 467 of 25 March 2010.

¹⁵⁹ The exemption modality was instituted by Law No. 12.350 of 20 December 2010 (based on Article 9 of Provisional Measure No. 497 of 27 July 2010), and is regulated by RFB/SECEX No. 3 of 17 December 2010.

3.121. During 2008-11, the revenue forgone under the drawback suspension modality amounted to R\$5.4 billion and to R\$256.9 million under the exemption modality.¹⁶⁰

3.3.4.4 Special System of Industrial Depots subject to Standardized Control (RECOF)

3.122. Brazil continues to apply the RECOF, introduced by Decree No. 2,412 of 12 March 1997, and regulated by Normative Instruction No. 757 of 25 July 2007, as modified by subsequent normative instructions issued by the Federal Revenue Secretariat.¹⁶¹

3.123. RECOF allows for the suspension of import duties and indirect taxes (IPI, PIS, COFINS) on the purchase of imported or local inputs for the industrial transformation of products destined for export or the domestic market. The suspension is for one year, with the possibility of an extension for an additional year.¹⁶² Products imported under RECOF also benefit from expedited customs clearance procedures. RECOF's scope is limited to assembly, transformation, and reconditioning activities in: (i) aeronautics; (ii) automotive; (iii) information and telecommunications; and (iv) semiconductors and high-technology components for the electronics industry.¹⁶³ Only the products listed in Annex I to Normative Instruction No. 757/2007 are eligible under RECOF.

3.124. The Federal Revenue Secretariat administers the RECOF scheme and grants the suspension authorizations to importers. To qualify, companies must have capital equal to or above R\$25 million. Beneficiaries must export products using the goods imported under RECOF for a value of at least 50% of the total value of imports acquired under the scheme¹⁶⁴, and not less than US\$10 million for companies in the informatics and semiconductor industries, and US\$20 million for companies in the aeronautics and automotive industries. Companies must also commit to the industrial transformation of at least 80% of the goods imported under the regime (this is equivalent to a cap on sales of the imported goods to the domestic market). This percentage may be reduced to 75% if the enterprise exports, using the goods imported under RECOF, for a value of over US\$50,000, and to 70% if it exports over US\$100,000.

3.125. Domestic sales of the goods imported under the RECOF regime are subject to all taxes applicable on importation or domestic purchase, which must be paid with interest at SELIC rates and applicable penalties in accordance with legal provisions. The authorities indicated that during 2008-11, revenue forgone under the RECOF scheme amounted to almost R\$6.5 billion.

3.3.4.5 Special Regime for the Purchase of Capital Goods for Exporting Enterprises (RECAP)

3.126. The RECAP allows for the suspension of the PIS and the COFINS on the purchase of new local or imported capital goods (machines, equipment, and instruments), which must be incorporated in the beneficiary company's fixed assets.¹⁶⁵ In order to benefit from RECAP, an enterprise must have exported at least 50% of its gross income from sales of goods and services in the calendar year preceding its request to use the scheme, and commit to comply with such export requirement for the following two calendar years.¹⁶⁶ Start-up enterprises that did not achieve the 50% export requirement in the previous year may benefit from the scheme if they commit to comply with such requirement over three years. Brazilian shipyards are also eligible for RECAP benefits, irrespective of their export turnover, and do not need to undertake export

¹⁶⁰ Information provided by the Brazilian authorities.

¹⁶¹ Ministry of Finance online information. Viewed at: <http://www.receita.fazenda.gov.br/recof>. [July 2012].

¹⁶² The period of suspension may be extended for a maximum of five years for imported goods used in the manufacture of goods with a long production cycle. Normative Instruction No. 886 of 6 November 2008.

¹⁶³ The main products imported under the RECOF scheme are under H.S. codes: 8708; 8411; 8542; 8803; 8517; 8483; 8409; 8431; 9032; 8473; 880330; 841191; 851770; 841112; 854231; 870840; 854239; 870829; 843149; 903289.

¹⁶⁴ Normative Instruction RFB No. 963 of 14 August 2009 allows companies to comply with this 50% obligation gradually over five years.

¹⁶⁵ RECAP was instituted by Law No. 11.196 of 21 November 2005 (as amended), and is regulated by Decree No. 5.649 of 29 December 2005 and Normative Instruction SRF No. 605 of 4 January 2006.

¹⁶⁶ The export requirement of 50% of gross income from sales of goods and services applies as of 1 January 2013, as established by Provisional Measure No. 563 of 3 April 2012. Originally, the export requirement was set at 80% (Law No. 11.196 of 21 November 2005 and Decree No. 5.649 of 29 December 2005). It was reduced to 70% by Decree No. 6,887 of 25 June 2009, and then to 50% in 2012.

commitments.¹⁶⁷ The Federal Revenue Secretariat administers the RECAP scheme. As of February 2012, some 265 companies were benefiting from RECAP.

3.3.4.6 Definition of Predominantly Export-oriented Enterprises

3.127. Enterprises that produce predominantly for export may apply for suspension of the PIS, COFINS, and IPI taxes on the purchase of inputs, whether local or imported, or otherwise apply for a special regime such as the RECAP. A company is deemed to be a predominantly export-oriented enterprise, if it exports more than 50% of its gross income from sales of goods and services.¹⁶⁸ If this condition is not met, the suspended taxes must be paid, with penalty and interest on arrears.

3.3.4.7 Special Regime for the Information Technology Exportation Platform (REPES)

3.128. The REPES suspends the PIS and COFIN taxes on purchases of new local or imported goods, and local or imported information technology services, as well as the IPI tax on imports of new goods (when there are no equivalent domestic products) for their incorporation as fixed assets. Beneficiary companies must be dedicated exclusively to the development of software and the provision of IT services, and commit to export software and IT services for at least 80% of their annual gross income.¹⁶⁹

3.3.4.8 Export-processing zones

3.129. The legal framework for export-processing zones (EPZs) in Brazil includes Law No. 11,508 of 20 July 2007, as amended by Law No. 11,732 of 30 June 2008, and Law No. 12,507 of 11 October 2011¹⁷⁰, as well as Decree No. 6,634 of 5 November 2008, Decree No. 6,814 of 6 April 2009, Normative Instruction RFB No. 952 of 2 July 2009, and CZPE Resolutions. The enterprises located in EPZs benefit from fiscal and administrative incentives, which are legally guaranteed for 20 years (legal guarantee clause).

3.130. Authorized EPZ companies may import or purchase in the local market goods and services with suspension of import duties and the IPI, COFINS, PIS, and AFRMM taxes. The suspension applies to both new and used capital goods to be incorporated as fixed assets of the enterprises operating in the EPZs. The beneficiaries are exempt from import licence requirements or any other federal agency authorization for imports and exports, except for those related to sanitary controls, national security, and environmental protection. Law No. 11,732 of 30 June 2008 allows for the application of additional fiscal benefits for enterprises located in the SUDENE and SUDAM areas, including a reduction of the corporate income tax and accelerated depreciation.¹⁷¹

3.131. Companies in EPZs must export at least 80% of their gross income from sales of goods and services.¹⁷² Products sold in the domestic market, as well as goods and services used as inputs in the production of those domestic sales, are subject to all taxes imposed on domestic acquisition or importation. All taxes must be paid with interest at the SELIC rate.

3.132. The National Council of Export Processing Zones (CZPE) oversees the implementation of Brazil's EPZ policy and is responsible for granting companies authorization to establish in EPZs. Authorizations are valid for 20 years, renewable for the same number of years in the case of investments requiring long amortization periods. Companies that wish to establish in an EPZ must submit an application to the CZPE in accordance with the procedures laid out in Decree No. 6,814 of 6 April 2009 and Resolution CZPE No. 5 of 28 September 2011. Proposals for the creation of an EPZ are to be submitted by state or municipal authorities to the CZPE. Permission from the Brazilian customs authority is also required for the operation of an EPZ. Final approval rests with the President of the Republic. Approved EPZs that fail to start operations within 24 months of their

¹⁶⁷ Article 6 and Article 7 of Normative Instruction SRF No. 605 of 4 January 2006.

¹⁶⁸ Article 29 of Law 10,637 of 30 December 2002; Article 40 of Law 10,865 of 30 April 2004; and Article 13 of Law 11,196 of 21 November 2005.

¹⁶⁹ Law No. 11,196 of 21 November 2005 provides the legal basis for the REPES scheme, and it is regulated by Normative Instruction SRF No. 630 of 15 March 2006.

¹⁷⁰ Law No. 12,507 of 11 October 2011 extended from 12 to 24 months the time-limit for beginning work for the establishment of an EPZ.

¹⁷¹ Article 2 of Law No. 11,732 of 30 June 2008, which modifies Article 18 of Law No. 11,508 of 2007.

¹⁷² Article 18 of Law 11,508 of 20 July 2007, as amended by Law No. 11,732 of 30 June 2008.

agreed installation timetable may lose their right to establish.¹⁷³ As of December 2012, there were 24 approved projects for the creation of EPZs at different stages of development, of which nine were located in the north-east of Brazil. None had started operations.

3.3.5 Export finance, insurance, and guarantees

3.3.5.1 Overview

3.133. A number of export finance, insurance, and guarantee schemes are available to help Brazilian exporters of goods and services gain access to credit at attractive conditions, i.e., on terms similar to those obtainable in the international market. Among the main instruments are the Export Financing Programme (PROEX) and several export credit schemes operated under the BNDES-EXIM programme.

3.134. BNDES-EXIM programmes are geared to promote exports with local value added. The stated conditions to participate in some of these programmes include domestic content/production thresholds.¹⁷⁴ The Brazilian authorities have emphasized that these conditions apply only to qualify automatically for financing, and that products that do not meet these conditions may also benefit from the programmes subject to a non-automatic analysis procedure. All exporting companies, regardless of size, are eligible to apply for BNDES-EXIM financing, however MSMEs are granted special conditions under certain schemes, and some programmes are targeted at specific sectors (e.g. automobiles, aviation, pharmaceuticals). During the review period, BNDES introduced or re-launched two additional export financing facilities: the PSI-Export Pre-shipment programme to encourage exports of capital goods, and the Revitalize Exports scheme to support exporters adversely affected by the international economic crisis.

3.3.5.2 Export Financing Programme (PROEX)

3.135. The PROEX is one of Brazil's most important support schemes for exporters of goods and services. The programme is aimed at providing credit, at conditions similar to those prevailing in international markets, for companies that would otherwise find it difficult to obtain it, or would be able to do so only at higher interest rates in the domestic market. PROEX is a federal government programme administered by the Banco do Brasil S.A. It is predominantly, but not exclusively, targeted at small and medium-sized enterprises involved in international trade.

3.136. The Export Financing and Guarantee Committee (COFIG), created by Decree No. 4,993 of 18 February 2004, as part of CAMEX, is in charge of overseeing the operations of the PROEX and the Export Guarantee Fund (FGE, see below), and establishing the parameters and conditions for granting financial assistance. COFIG is chaired by a representative of the MDIC, and has representatives from other government bodies, such as the Ministries of Finance and External Relations.

3.137. PROEX has two main modalities: direct financing (PROEX Financing) and interest rate equalization (PROEX Equalization). In 2012, export operations under the programme totalled US\$4.88 billion: US\$495.4 million under PROEX Financing and US\$4.39 billion under PROEX Equalization.¹⁷⁵

3.138. PROEX Financing provides direct credit to the exporter or importer of Brazilian goods and services with funds from the Treasury. It is mainly designed to support micro, small, and medium-sized enterprises (MSEMs) with an annual turnover of up to R\$600 million (about US\$300 million).¹⁷⁶ Financing may also be provided to larger companies on a case-by-case basis. Credits are granted for between 60 days and 10 years, depending on the value of exports or the complexity of the service rendered. Financing is available for up to 100% of the value of exports for credits of two years or less, and up to 85% for the rest. The interest rates are those prevailing in the international market; credits are in U.S. dollars or other convertible currencies. There is no

¹⁷³ Law No. 12,507 of 11 October 2011 and Law No. 12,767 of 27 December 2012.

¹⁷⁴ For the conditions to qualify under the BNDES-Exim programmes, see BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/Produtos/BNDES_Exim/normas_exim.html [March 2013].

¹⁷⁵ Information provided by *Banco do Brasil S.A.*

¹⁷⁶ Increased from R\$300 million by CAMEX Resolution No. 10 of 17 February 2009.

minimum value for individual export operations to be financed. In 2012, PROEX Financing covered 875 transactions and served 205 exporters. The main sectors benefiting from this modality were agri-business (56%), textiles, leathers, and shoes (21%), and machines and equipment (8%). The main markets for exports under this modality were Cuba, Germany, and China.¹⁷⁷

3.139. PROEX Equalization pays part of the cost of the export credit provided by financial institutions in Brazil or abroad, so as to make interest rates equivalent to those in the international market. This modality applies to Brazilian exporting firms, irrespective of their size, that have obtained funding from a financial institution. Exports may be financed for up to 100% of their value, and the percentage eligible for equalization has recently been raised to 100% of the value of exports. The period of equalization varies between 60 days and 15 years (recently increased from 10 years), depending on the value of exports and the complexity of the services rendered (see below). The financing conditions (interest rates, terms, financing percentage, and guarantees) are negotiated between the banks and the exporter. Equalization is paid to the banks granting the export credit through the issue of National Treasury Notes (NTN-I). In 2012, some 2,119 operations involving 38 exporters were undertaken under PROEX Equalization. The sectors benefiting from this modality were machines and equipment (57%), services (26%), and transport equipment (17%); the main destinations were the United States, Angola, Peru, and Chile.¹⁷⁸

3.140. During the period under review, PROEX was modified several times to increase its scope and make it more accessible to exporters. CAMEX Resolution No. 45 of 26 August 2009 opened the possibility for financing the production of goods and services for export (pre-shipment financing), specifically targeted at MSEMs with an annual turnover of up to R\$60 million and exports of up to US\$1 million. Under this facility, which is not yet operational, credits may be granted for up to 100% of the export value, with a maximum term of 180 days.¹⁷⁹ Prior to this modification only post-shipment financing was permitted. Under SECEX Ordinance No. 42 of 7 December 2011, PROEX was extended to cover export operations made through the simplified export declaration. PROEX Financing and Equalization are limited to capital goods when the product is exported to MERCOSUR member states.¹⁸⁰

3.141. In the framework of the *Plano Brasil Maior*, in April 2012 the Federal Government announced a number of measures to increase the competitiveness of Brazilian exports, partly affected by the appreciation of the Brazilian real.¹⁸¹ These measures include a substantial increase in the resources allocated to PROEX, from R\$1.2 billion to R\$3.1 billion, and changes designed to simplify its implementation. With respect to PROEX Equalization, the maximum period of equalization was increased from 10 to 15 years and the percentage eligible for equalization was raised from 85% to 100% of the value of exports. Also, the limit for credit operations that do not require approval from the COFIG was increased from US\$10 million to US\$20 million. As regards PROEX Financing, new flexibilities were introduced to allow companies with a turnover of up to R\$3.6 million to provide their own credit guarantees for export operations of less than US\$50,000.¹⁸² At the time of writing, such credit guarantees had not been implemented yet.

3.3.5.3 Export Financing Fund (FFEX)

3.142. Law No. 12,545 of 14 December 2011 authorized the Federal Government to participate in the Export Financing Fund (FFEX) to finance exports of goods and services of small-scale companies (with a turnover of up to R\$60 million). The Federal Government is authorized to make an initial contribution of R\$1 billion to the FFEX, and other enterprises may also participate in the fund. The FFEX will follow the same procedures as PROEX Financing and will be administered by the Banco do Brasil S.A. In the context of the *Plano Brasil Maior*, it was announced that R\$500 million would be allocated to the FFEX. The Fund was not yet in operation at the time of writing this report.

¹⁷⁷ Information provided by *Banco do Brasil S.A.*

¹⁷⁸ Information provided by *Banco do Brasil S.A.*

¹⁷⁹ MDIC Ordinance No. 191 of 28 October 2009 established the commercial conditions for pre-shipment financing, while the products and services eligible under this facility are listed in an Annex to MDIC Ordinance No. 208 of 20 October 2010.

¹⁸⁰ MDIC Ordinance No. 208 of 20 October 2010.

¹⁸¹ Provisional Measures No. 563 and No. 564 of 3 April 2012.

¹⁸² For more details on the *Plano Brasil Maior* see MDIC online information at: <http://www.desenvolvimento.gov.br/cbapl/public/data/arquivos/documentos/e80392fec21ee94e8a42ce0b9a53b55.pdf>.

3.3.5.4 BNDES export financing programmes

3.143. BNDES operates several export financing programmes. One of the main programmes is BNDES-EXIM, which grants pre-shipment and post-shipment credits for Brazilian exports of goods and services. BNDES-EXIM has several sub-programmes or financing modalities. Generally, eligible goods are those listed in BNDES Circular No. 74/2012 of 27 December 2012, although some programmes target specific products or industries (e.g. automobiles and the aviation industry). The list of eligible goods comprises three groups of products, which cover about 70% of Brazilian tariff lines. The conditions to benefit from some of BNDES-EXIM programmes include meeting a certain index of nationalization (usually 60% defined in value and/or weight terms); domestic production thresholds (PPB), or other criteria established by BNDES (Table A3.1).¹⁸³ The Brazilian authorities have emphasized that these conditions apply only to qualify automatically for financing, and that products that do not meet these conditions may also benefit from the programmes subject to a non-automatic analysis procedure.

3.144. All exporting companies, regardless of size and the origin of the capital, are eligible to apply for BNDES-EXIM credits, however MSMEs are granted special conditions under some financing modalities. Operations are conducted through accredited financial institutions, which include most banks operating in Brazil. The total financial cost for the borrower is the relevant interest rate plus BNDES' remuneration charges, and the financial institution's remuneration.

3.145. Since Brazil's previous Review, a few new financing modalities have been added under BNDES-EXIM (while others have been temporarily suspended¹⁸⁴). For example, the EXIM/Pro-aviation exports subprogramme was introduced in September 2009 to finance the production of goods and services for export by MSMEs that form part of Brazil's aviation industry production chain. Financing may be granted for up to 90% of the export value, with terms for up to 36 months. EXIM-*Automático*, was introduced in late 2010 to finance Brazilian exports of capital goods to Latin American and African countries. It consists of a credit line granted to banks located abroad and accredited by the BNDES. The amount of the credit line to be granted to each bank is defined on a case-by-case basis and up to a maximum of US\$200 million. Financing is for up to five years at preferential interest rates. Funds are disbursed to the exporter in Brazilian currency after the shipment of goods. At end-May 2012, 30 banks had been granted credit lines, amounting to US\$1.4 billion. The main products exported were agricultural machinery and equipment, buses and trucks, generators, transformers, and telecommunication equipment.¹⁸⁵

3.146. Besides the EXIM schemes, the BNDES has implemented two additional export financing programmes since the last Review (Table A3.1). The PSI-Export Pre-shipment programme, launched in July 2009, finances the production of capital goods for export. Eligible products are those listed in Group 1 of BNDES Circular No. 74/2012 of 27 December 2012, with the exception of telephone appliances and parts thereof. Financed goods must be accredited in the BNDES FINAME programme or meet PPB criteria. Beneficiary companies must have their headquarters and administration in Brazil.¹⁸⁶ The authorities indicated that the total amount disbursed since the creation of the PSI-Export programme was US\$16.6 billion.¹⁸⁷ The second programme, Revitalize Exports, was created in 2007 but re-launched in October 2011.¹⁸⁸ It is targeted at export companies of all sizes that operate in sectors deemed to be negatively affected by the international economic environment, and that have their headquarters and administration in Brazil. Annex A of BNDES Circular No. 47/2012 of 10 July 2012 expanded the list of eligible sectors, which includes

¹⁸³ For the conditions to qualify under the BNDES-Exim programmes, see BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/Produtos/BNDES_Exim/normas_exim.html [March 2013].

¹⁸⁴ BNDES Agile Pre-shipment and BNDES Special pre-shipment are currently suspended.

¹⁸⁵ BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Noticias/2012/exportacoes/20120528_bradesco.html [August 2011].

¹⁸⁶ BNDES Circulars No. 27 and No. 28 of 8 May 2012 revoked the eligibility requirement under the PSI-Export and Revitalize Export programmes, that companies under foreign capital control had to perform activities deemed of national interest.

¹⁸⁷ Acceptance of new requests under the PSI-Export programme was suspended in June 2012 due to lack of budget resources.

¹⁸⁸ Support measures under the Revitalize Exports programme were authorized by Law No. 11, 529 of 22 October 2007, which was modified by Law No. 11,945 of 4 June 2009 to include new eligible products, and regulated by BNDES Circular No. 47/2012 of 10 July 2012.

textiles, leather, footwear, toys, fruits, automobile parts, and IT products. The Revitalize Exports programme has a total budget of R\$3.2 billion.¹⁸⁹

3.147. BNDES total disbursements for foreign trade operations amounted to US\$5.4 billion in 2012, US\$4 billion for exports of goods, and US\$1.4 billion for services (Table 3.7).

Table 3.7 BNDES total disbursements for exports of goods and services, 2008-12

(US\$ million)

Year	Total disbursements	For exports of goods	% of total exports of goods	For exports of services	% of total exports of services
2008	6,597	5,553	2.8	1,044	3.4
2009	8,330	6,949	4.5	1,381	4.9
2010	11,274	10,439	5.1	835	2.6
2011	6,716	5,130	2.0	1,586	4.1
2012	5,463	4,023	1.6	1,445	3.6

Source: WTO Secretariat, based on information provided by BNDES.

3.3.5.5 Other export financing programmes

3.148. Exporters also benefit from programmes, provided by private banks, which allow for advances of export proceeds, in Brazilian currency, either at the pre-shipment or post-shipment phase. The ACC (*Adiantamentos sobre Contratos de Câmbio*) is an advance of funds for the production of goods for export on account of their shipment at a future date. Financing may be for up to 100% of the value of exports and for a maximum period of 360 days before shipment. The cost of financing is equivalent to the LIBOR plus spread calculated on the export value in foreign currency. The ACE (*Adiantamentos sobre Cambiais Entregues*) is an advance of funds to the exporter after goods have been shipped abroad, through a transfer of the rights deriving from the export sale to an authorized bank. Financing may be granted for up to 100% of the export value, and the period is limited to the last business day of the 12th month after shipment. The cost of financing is determined by the bank based on the size of the enterprise and the risk involved, but is normally equivalent to the LIBOR plus spread calculated on the export value in foreign currency. All exporting companies, irrespective of size, and all types of goods may benefit from the ACC and ACE schemes.¹⁹⁰ A similar financing facility (*ACC Indireto*) is available for trading companies and producers of raw materials, inputs, and packaging materials used in the production of goods for export, and for exports of agricultural products.

3.149. PROGER Export provides export financing in local currency with resources from a workers fund (*Fundo de Amparo ao Trabalhador - FAT*).¹⁹¹ Financing may be: (i) for domestic production of goods for export (pre-shipment)¹⁹²; or (ii) for export promotion activities (post-shipment), including participation in trade fairs in Brazil and abroad, shipment of samples and material promotion, etc. Beneficiaries are exporting MSMEs with an annual gross turnover of up to R\$5 million, constituted under Brazilian laws, and having their headquarters in Brazil. The scheme does not apply to trading companies (ECEs). Financing may be granted for up to 100% of the value of the project, but no more than R\$250,000 per exporter, and for a maximum of 12 months. The cost of financing is equivalent to the TJLP plus interest. The resources are disbursed by the Banco do Brasil and the Caixa Econômica Federal.

3.150. The FAT Export fund finances pre-shipment production, including start-up capital and necessary inputs, of exportable goods. Financing may be granted for up to 100% of the value of the project, with a cap to be defined on a case-by-case basis by the BNDES, and maturity periods of up to 30 months. Beneficiaries are export-oriented companies, regardless of their size, provided

¹⁸⁹ BNDES Circular No. 46/2012 of 9 July 2012.

¹⁹⁰ Banco do Brasil online information. Viewed at: http://www.bb.com.br/portallbb/page44,107,2941,9,1,1,2.bb?codigoMenu=135&codigoRet=2446&bread=1_2.

¹⁹¹ The legal basis of the PROGER scheme is provided by CODEFAT Resolution No. 348 of 5 August 2003, CODEFAT Resolution No. 347 of 5 August 2003, and CODEFAT Resolution No. 330 of 10 July 2003.

¹⁹² Eligible products are listed in BNDES Circular No. 31/2007 of 30 July 2007.

they are constituted under Brazilian laws and have their headquarters in Brazil.¹⁹³ The same conditions apply as under the BNDES pre-shipment programme. The current interest rate for credits under FAT is the TJLP plus 5.5% a year. During 2008-11, funds disbursed through the FAT Export amounted to R\$3.79 billion.¹⁹⁴

3.3.5.6 Export insurance and guarantees

3.151. The Export Credit Insurance (SCE) scheme provides coverage for Brazilian exporters of goods and services against non-payment for their sales abroad. Export credit insurance is governed by Law No. 6,704 of 26 October 1979 and Decree No. 3,937 of 25 September 2001, as modified by Decree No. 6,452 of 2008, and Decree No. 7,333 of 19 October 2010. The SCE covers any exporter or financial institution that finances or refinances exports. The Brazilian Export Credit Insurance Company S.A. (SBCE) and a few other private financial institutions are authorized to operate the SCE scheme against commercial risk in short-term transactions (up to two years). Created in 1997, the SBCE is a private company, although two of its shareholders are public companies.¹⁹⁵ The SBCE offers short-term commercial risk insurance for export transactions with a maturity of up to 180 days, usually involving consumer goods. For certain products, such as light equipment, this period may be extended to two years. Coverage for commercial risk is up to 90% of the insured and unpaid value, and is guaranteed with the SBCE's own resources.

3.152. Medium and long-term insurance is provided for export contracts with a maturity exceeding two years, and generally involving capital goods, services, and other specific contracts. For these operations, and for political and extraordinary risks of any term, the SBCE acts as an advisor to the Federal Government and coverage is ensured through the Export Guarantee Fund. The authorities indicated that the value of exports covered by the Export Credit Insurance scheme during 2008-11 was US\$25.75 billion, and the main sectors that benefited from its coverage were infrastructure, civil aircraft, and engineering.

3.153. The Export Guarantee fund (FGE) was created by Law No. 9,818 of 23 August 1999. It is administered by BNDES, while CAMEX is responsible for deciding the concession of FGE-based insurance. The FGE is financed with resources from the federal budget and with proceeds and financial gains from the fund's own activities and financial operations. Coverage guaranteed by the Federal Government may be up to 95% for commercial risks, and up to 100% for political and extraordinary risks, as well as for commercial risks in operations supported by a bank guarantee. Insurance coverage may also be up to 100% for exports of the aeronautics industry, subject to CAMEX's approval, and for export operations of small and medium-sized firms, under certain conditions.¹⁹⁶ Insurance policies are divided into two categories: supplier's credit, issued on behalf of the exporter, and buyer's credit, issued on behalf of a bank.

3.154. Premiums are calculated on a case-by-case basis, taking into account the principal financed under the operation, the importer country, the nature of the risk (commercial, political and extraordinary), the maturity of the operation, and the debtor's financial standing. The authorities indicated that premiums are established according to best practices of credit risk, based on the Basel Accords and other references (e.g. the OECD Export Credit Arrangement).

3.155. As part of the *Plano Brasil Maior*, Provisional Measure No. 564 of 3 April 2012, converted into Law No. 12,712 of 13 August 2012, authorized the creation of a new agency for the management of funds and guarantees (*Agência Brasileira Gestora de Fundos Garantidores e Garantias/ABGF*). Law No. 12,712 also allowed the Federal Government to participate in funds designed to guarantee foreign trade operations and large infrastructure projects. When established, the ABGF will centralize the administration of the FGE and other funds, with the aim of realizing economies of scale and increasing efficiency in the concession of guarantees. At the time of writing, no further measures had been taken to establish the ABGF.

¹⁹³ Ministry of Labour online information. Viewed at: <http://proger.mte.gov.br/portalproger/pages/programselinhasdecredito/fatexportar.xhtml>.

¹⁹⁴ Information provided by the Brazilian authorities.

¹⁹⁵ SBCE's shareholders are Banco do Brasil, BNDES, and the Compagnie française d'assurance pour le commerce extérieur (COFACE). SBCE online information. Viewed at: <http://www.sbce.com.br/us/aEmpresa.asp> [August 2012].

¹⁹⁶ Decree No. 7,333 of 19 October 2010.

3.3.6 Export promotion and marketing assistance

3.156. The Brazilian Trade and Investment Promotion Agency (APEX-Brasil), created in 2003 as an autonomous social service supervised by the MDIC, is responsible for coordinating and implementing export promotion policies for Brazilian goods and services, for the internationalization of Brazilian companies, and for attracting foreign direct investment (FDI).¹⁹⁷ The agency's top management body, the Deliberative Council, comprises of representatives from the public sector (MDIC, Ministry of External Relations, CAMEX, and BNDES) and the private sector. APEX-Brasil is mandated to focus particularly on activities that may enhance exports of small and medium-size enterprises and create jobs, although it serves companies of all sizes. The agency's strategic objectives are to expand and diversify Brazilian exports, increasing their value added, foster the competitiveness of Brazilian companies by promoting their insertion in the international economy, and to attract FDI. In order to achieve these goals, APEX-Brasil works to increase the participation of Brazilian companies in international value chains, adopts initiatives to foster innovation and design, and encourages business that use "sociobiodiverse" resources. It also works to improve the positioning of Brazilian products worldwide and to attract investment projects that transfer innovative technologies to Brazilian companies. It provides services such as market intelligence, business capacity building, trade and image promotion, development of internationalization strategies, and other specific actions. Trade promotion activities include participation in trade missions, and international trade fairs, and visits of foreign buyers to Brazil.

3.157. APEX-Brasil works in partnership with private-sector associations representing 81 manufacturing, commerce, and services sectors. Sectoral support projects are divided into six broad categories: food and beverages; fashion; machinery and equipment; technology and health care; housing and civil construction; and entertainment services. Support for export promotion is given through the cofinancing of projects for up to 85% of the total value. As of September 2012, APEX-Brasil supported some 12,400 Brazilian companies, which accounted for 15% of total exports, and were destined to 132 markets.¹⁹⁸ During 2009-11, APEX-Brasil allocated R\$909.64 million to trade and investment promotion activities and R\$129.83 million to operational expenses.¹⁹⁹

3.158. Banco do Brasil operates the BrasilWebTrade site to promote Brazilian export companies in foreign markets and facilitate contacts with importers. BrasilWebTrade provides online support to exporters, ranging from the initial contact with potential buyers up to the shipment of goods abroad, including information dissemination, filling in trade documents, payment facilities for the importer, and foreign exchange contracts. Beneficiaries are Brazilian companies of all sizes, with export operations of up to US\$50,000 per transaction, and exporting under the modality of simplified foreign exchange.²⁰⁰

3.159. The Ministry of Foreign Relations operates a trade promotion website called BrazilTradeNet (BTN), which provides a network of trade information aimed at stimulating exports and attracting foreign direct investment. It is used by the Ministry's Department of Trade Promotion and by Brazilian embassies in more than 50 countries. BTN's support focusses on MSMEs, foreign importers and investors, and Brazilian entrepreneurs seeking foreign financial agents.²⁰¹

3.160. The Exporters Showcase (*Vitrine do Exportador/VE*) is a digital platform that utilizes SISCOMEX's data base to promote and disseminate information on Brazilian exports, which may be accessed by potential importers to search for Brazilian companies and products. The VE provides exporters with a virtual showcase service, allowing them to create their own web page, free of charge, to disseminate information on their firms and products.²⁰²

¹⁹⁷ APEX was created by Decree No. 4,584 of 5 February 2003 and Law N° 10,668 of 14 May 2003.

¹⁹⁸ APEX online information. Viewed at: <http://www.apexbrasil.com.br/portal/publicacao/engine.wsp?tmp.area=594&tmp.texto=5157> [September 2012].

¹⁹⁹ Information provided by APEX-Brasil.

²⁰⁰ For more details see <https://trade.bb.com.br>.

²⁰¹ For more details see <http://www.braziltradenet.gov.br>.

²⁰² For more information see www.vitrinedoexportador.gov.br.

3.4 Measures Affecting Production and Trade

3.4.1 Competition policy and price controls

3.4.1.1 Competition policy

3.161. Brazil's competition regime was overhauled by Law No. 12,529 of 30 November 2011, which entered into force on 29 May 2012. The main changes comprise significant institutional restructuring, a switch from *ex post* to *ex ante* control of concentrations (mergers and acquisitions), and amendments regarding the scope of prohibited conduct and sanctions, as well as staff and budget increases.

3.162. The new legislation redefined the structure and responsibilities of the government agencies in charge of administering the Brazilian Competition Policy System (BCPS). With a view to consolidating the investigation of anti-competitive conduct, merger control, and first-instance (administrative) adjudication into a single agency, the Administrative Council for Economic Defence (CADE) absorbed the Department of Economic Protection and Defence of the Secretariat of Economic Law (SDE); the SDE remained in charge of consumer protection. The Secretariat of Economic Monitoring (SEAE) became primarily responsible for competition advocacy, including issuing advisory opinions on competition-related matters (e.g., in regulation, trade, and industrial policies), and sector-wide studies.²⁰³ Previously, the SDE and the SEAE were both entrusted with collection of evidence and the preliminary review of cases, whereas the CADE was responsible for delivering first-instance decisions.

3.163. Law No. 12,529 also stipulates a new internal structure for the CADE, comprising an Administrative Tribunal of Economic Defence (in charge of adjudication), a General Superintendence (entrusted with conducting investigations), and a Department of Economic Studies (to help ensure the technical and scientific rigour of CADE decisions).²⁰⁴ A specialized General Attorney's Office is maintained at the CADE to, *inter alia*, represent it before Brazilian Courts and to enforce CADE decisions; in accordance with the new legislation, a member of the Federal Public Prosecutor's Office will continue to give opinions on administrative sanctions decided by the CADE. In a bid to strengthen independence, the term of office of Administrative Tribunal members was amended from two years (renewable once) to four years (non-renewable). Long-standing budget and human resource constraints are being addressed with provisions for the gradual filling of 200 additional staff posts at the CADE (primarily) and the SEAE.

3.164. The CADE may initiate investigations *ex officio* or on the basis of complaints from any person. Independently of CADE administrative proceedings, which are not to be suspended by virtue of filing a lawsuit, injured parties may seek cessation of anti-competitive practices (and compensation for damages) in civil courts. According to the authorities, court judges may decide to await and take into consideration the outcome of CADE proceedings. Likewise, independent and parallel appeals to CADE decisions may be made before the CADE and a civil court; however, the judicial system has the final say. Due to the peculiarities of Brazil's judicial system and the number of distinct instances for appeal, appeals of CADE decisions may take several years to reach final settlement in a court of law. Since 2007, court injunctions that suspend the enforcement of CADE decisions involving the imposition of a fine require the deposit of the same amount in an account under judicial administration.

3.165. Fines are the main sanctions imposable by the CADE and civil courts for infractions of competition law. The BCPS does not provide for advance rulings (negative clearance) on conduct and/or merger initiatives. Since 2009, the CADE has investigated cases relating to the markets for fuel, hospitals/medical care, airlines, pharmaceuticals, soft drinks, and staple foods. Merger reviews dominated CADE's enforcement activity during 2008-12, accounting for 86% of all cases;

²⁰³ As part of its mandate, the SEAE also provides advisory opinions to Brazil's Chamber of Foreign Trade (CAMEX) on anti-dumping measures, monitors markets and prices (including, since 2011, regulated prices), and undertakes *ad hoc* studies upon request. The SEAE's advisory opinions and recommendations are non-binding.

²⁰⁴ Most advisory opinions prepared by the Department of Economic Studies are enforcement-related, whereas the SEAE is responsible only for advocacy-related opinions.

the anticipated switch from *ex post* to *ex ante* merger control triggered an intensification of merger deals during 2010-12 (Table 3.8).²⁰⁵

Table 3.8 Competition enforcement, 2008-12

	2008	2009	2010	2011	2012
Total complaints/requests:	783	548	835	858	955
Merger notification filings	638	474	660	716	825
Reviewed	609	457	615	695	704
Not reviewed	18	11	30	13	112
Desisted	11	6	15	8	9
Leniency applications	2	4	8	1	10
Examinations and inquiries concluded:	803	538	765	814	822
Mergers	609	457	615	695	704
Approved without restrictions	550	437	588	649	565
Approved with restrictions	58	19	27	48	36
Disapproved	1	1	1	0	8
Total administrative fines (R\$ million)	..	..	..	31	45
Number of civil court sentences	..	..	..	..	..
Appeals (against 1 st instance decisions)	..	..	..	..	..
Decisions reversed/amended on appeal	..	..	..	..	..

.. Not available.

Note: Due to the important structural changes to the Brazilian competition policy system during the review period, full statistics are not yet available.

Source: Figures provided by the CADE.

3.166. In line with the effects principle common to many jurisdictions, Brazil's competition regime does not apply to export-oriented anti-competitive practices (including cartels) that have no effect on the domestic market; also, it does not apply to the provision of public aid or any preferential tax treatment by the federal and sub-federal governments. While no economic activity (even if exercised under legal monopoly) is explicitly excluded from the scope of Brazil's competition law, the CADE and the specialized regulatory agencies have complementary competence in regulated sectors; the former has authority over competition-related matters, and the latter are competent to issue rulings on regulatory grounds. According to the authorities, the CADE regularly takes into account the technical opinions of sectoral regulators in its investigations. During the review period, BCPS administering agencies concluded technical cooperation agreements with the National Industrial Property Institute (INPI), the National Department of Mineral Production (DNPM), the National Justice Council (CNJ), the Foundation for Higher Education Professionals (CAPES), several state prosecutor's officers, the MDIC, the Federal Police Department (DPF), the Brazilian Institute of International Trade, Consumer and Competition Studies (IBRAC), the National Regulatory Agency for Private Health Insurance and Plans (ANS), the National Agency for Civil Aviation (ANAC), the National Agency for Electrical Energy (ANEEL), and the Brazilian Health Surveillance Agency (ANVISA). The general aim of these agreements is to improve the exchange of information and expertise in investigations of possible antitrust violations.

3.167. Brazil's competition legislation provides for a rule of reason approach (i.e., effects-based assessment) in the consideration of all concentrations and anti-competitive practices, including abuse of dominance.²⁰⁶ The authorities affirm that, in its assessments, the CADE applies a consumer welfare standard, with top priority given to gains to consumers. In the new Law, the non-exhaustive list of potentially anti-competitive practices has been refined and expanded with a reference to the abusive use of intellectual property rights.²⁰⁷ In addition, compulsory licensing of intellectual property rights is explicitly mentioned among the possible remedies for conditional clearance of mergers and the possible penalties for anti-competitive conduct.²⁰⁸ The leniency

²⁰⁵ CADE online information. Viewed at: <http://www.cade.gov.br/Default.aspx?9696969a61bf401a2a2a>.

²⁰⁶ A dominant position is defined as having either the ability to unilaterally (including when acting as a group) alter market conditions or control over at least 20% of the relevant market. The CADE may, however, apply different market control thresholds for specific sectors.

²⁰⁷ Law No. 12,529 of 30 November 2011 (Article 36).

²⁰⁸ Previously, Brazil's competition legislation stipulated only the possibility of compulsory licensing of patents (as opposed to intellectual property rights) held by the infractor.

programme has also been strengthened with the extension of its scope to violations of other statutes, such as fraud, bid-rigging, and conspiracy.

3.168. Brazil's switch from *ex post* to *ex ante* control of concentrations (mergers and acquisitions) introduced fines ranging from R\$60,000 to R\$60 million for completing a transaction prior to approval.²⁰⁹ The CADE must evaluate proposed transactions, weighing the potential harm to competition against possible gains passed on to consumers²¹⁰, within 240 days from the notification's filing.²¹¹ The alternative market share (above 20%) and turnover (at least R\$400 million by one of the merging parties in the previous year) notification criteria have been replaced by a cumulative criterion based on the Brazilian turnover of two of the merging parties in the previous year: only deals involving at least one entity meeting the R\$750 million threshold and at least one other entity meeting the R\$75 million threshold must be notified.²¹² This is expected to reduce the number of transactions subject to notification.

3.169. The fines for infractions committed by companies have also been modified; formerly ranging from 1% to 30% of gross turnover in the last fiscal year, they are currently set at 0.1% to 20% of gross turnover in "the branch of activity" affected by the anti-competitive conduct in the fiscal year preceding the administrative investigation's commencement. This may result in a lower deterrent effect with respect to previous legislation, since prospective fines may be lower, and their application complicated by the need to determine the branch of activity of an infraction. Modalities for the implementation of this new concept have yet to be adopted. According to the authorities, the reduced range for the fines was motivated by the inability of managers to pay in cases where both the company and its managers were fined for an infraction.

3.170. During the review period, Brazil continued to strengthen and formalize its international cooperation efforts with a view to minimizing frictions arising from procedural or substantive differences between national competition regimes. The CADE has non-binding technical cooperation agreements with competition authorities from Chile, China, the European Union, France, MERCOSUR, Peru, Portugal, and Russia, as well as legally binding agreements with Argentina, Canada and the United States. In general, these cooperation instruments contain provisions on exchange of information, avoidance of conflicts, and confidentiality. Brazil is also an active participant in international fora on competition policy, including the International Competition Network and the BRICS International Competition Conference.

3.4.1.2 Price controls

3.171. Up until 2012, the consumer price index (IPCA) used in Brazil's inflation targeting regime contained 28 goods and services whose prices were deemed insensitive to supply and demand fluctuations because they were determined by a pre-established contract or set by a public sector entity (Table 3.9). Following an update of its methodology, the Central Bank of Brazil excluded some items from that list as from January 2012 (e.g. lubricating oils and airline tickets); their prices are considered to be set freely by the respective markets.

Table 3.9 Regulated prices, 2012

Regulated at the federal level	Competent entity
Petroleum products. Gasoline, diesel, bottled cooking gas	PETROBRAS
Residential electricity ^a	National Agency for Electrical Energy (ANEEL)
Telephone services: fixed line (private and public), cellular ^a	National Telecommunications Agency (ANATEL)
Healthcare plans	Federal Government
Pharmaceutical products ^a	Federal Government

²⁰⁹ A fee of R\$45,000 is payable upon filing a notification of concentration.

²¹⁰ Prospective gains are defined, cumulatively or alternatively, as: increasing productivity or competitiveness; improving the quality of goods or services; and/or fostering efficiency and technological or economic development.

²¹¹ This period may be extended once, either for 60 days (upon the request of the merging parties) or for 90 days (justified decision of the Administrative Tribunal). If the statutory time period has elapsed without a decision by the CADE, the transaction is considered automatically approved.

²¹² The thresholds stipulated in Article 88 of Law 12,529/12 (R\$400 and R\$30 million, respectively) were raised by Inter-ministerial Ordinance 994/2012 of 30 May 2012, on the basis of studies of the capitalization and dynamics of the Brazilian market.

	Competent entity
Gambling (lottery tickets)	Federal Government
Subway	..
Interstate bus service	Federal Government
Postal services (letters)	Federal Government
Ship fares (public transport)	Federal Government
Compressed natural gas (vehicle fuel)	Federal Government
Regulated at the sub-federal level	
Public transport: city bus fares, intercity bus fares, city train fares, ferry-boat fares	Municipalities
Water & sewage fees	Municipalities
Taxi fares	State governments
Vehicle registration fees	State governments
Notary services	State governments
Piped cooking gas	Rio de Janeiro and São Paulo Municipalities
Road tolls	State governments

.. Not available.

a Although the property owner is legally responsible for the payment of the IPTU, it is common practice for rental contracts to pass this obligation on to the tenants.

Source: Central Bank of Brazil online information. Viewed at: [http://www4.bcb.gov.br/pec/gci/port/focus/FAQ%20Preços%20 Administrados.pdf](http://www4.bcb.gov.br/pec/gci/port/focus/FAQ%20Preços%20Administrados.pdf).

3.172. Although formally deregulated since 2002, consumer prices of refined petroleum products are *de facto* fixed by the state-controlled PETROBRAS, which dominates Brazil's refining and wholesale distribution (Chapter 4.4). Residential electricity and fixed-line telephone tariffs are set through concession contracts awarded by the Federal Government. Since 2006, their annual readjustments are linked to general price indices. Prices for some 90% of pharmaceutical products are regulated; the Drug Market Regulation Chamber (CMED), an inter-ministerial body, sets maximum manufacturer and consumer prices, which are adjusted annually. The timing and size of readjustment of the remaining regulated prices is at the discretion of the respective competent entities.

3.173. Certain agricultural products remain subject to minimum producer prices (Chapter 4.2); according to the authorities, these prices are used as a tool to support producers and not the corresponding market prices.

3.4.2 Incentives

3.4.2.1 General characteristics

3.174. Incentives and government assistance are available in various configurations, with programmes administered at both the federal and sub-federal levels. Incentive programmes may be regional, aimed at developing research, or targeted at specific sectors. Most initiatives seek to promote entrepreneurship, technological and infrastructure upgrades, innovation, exports (section 3.3.4), energy efficiency, and regional development. Specific programmes are in place for the automotive, information technology, aeronautics, and petroleum industries (see also Chapter 4). The range of support measures includes: targeted loans²¹³; tax incentives; non-repayable financial contributions; long-term and equity financing; accelerated depreciation; guarantees; grants; advisory services; and credit insurance. Federal government expenditure on incentive and support programmes represented some 0.25% of GDP in 2012, up from 0.16% in 2009; these figures do not include estimates of forgone tax revenue.²¹⁴ The authorities affirm that all initiatives are assessed regularly to ensure that they effectively address market failures, which may constitute serious obstacles to the attainment of Brazil's development objectives.

²¹³ According to the authorities, most credit initiatives address financing gaps where the private sector may not be able to fully respond to the needs of Brazilian businesses; in general, the cost of financing is lower than that required by private creditors in Brazil.

²¹⁴ National Treasury online information. Viewed at: https://www.tesouro.fazenda.gov.br/images/arquivos/Responsabilidade_Fiscal/Politica_Fiscal/arquivos/Tabela3.xls.

3.175. Incentives granted in the context of certain programmes promoting information technology and telecommunications²¹⁵ are linked to Basic Productive Process (PPB) criteria, which are product-specific and stipulate which stages of the respective manufacturing process must be carried out in Brazil in order to recognize the industrialization of a product.²¹⁶ According to the authorities, compliance with PPB criteria ensures automatic (fast-track) approval of applications, but does not constitute a requirement for eligibility; this explanation is not clearly stated on official websites. By contrast, compliance with PPB criteria is an eligibility requirement for the incentives provided in the Manaus Free Trade Zone (ZFM) and for certain public procurement contracts in the technology and communication sector (section 3.4.4).

3.176. Basic Productive Process (PPB) criteria are established (and modified) by inter-ministerial decrees signed by the Ministers in charge of Development, Industry and Foreign Trade (MDIC) and of Science, Technology and Innovation (MCTI); proposals to that effect are elaborated, independently or upon request from interested companies, by a technical group (GT-PPB) comprising representatives of the two ministries and the Superintendence of the Manaus Free Trade Zone (SUFRAMA). The factors taken into consideration in the definition of PPB criteria include: investments to be made by the prospective manufacturer; technological development and local engineering skills employed; jobs created; the product's export potential; investment in R&D; and the incentives' possible negative externalities within Brazil (e.g., relocation of production or altered investment decisions of competitors).²¹⁷ The time-frame for assessment of PPB requests is 120 days. Incentives contingent on PPB criteria apply to some 235 companies established in the ZFM, and approximately 500 companies approved under the capacity building and competitiveness enhancement in information technology programme; in May 2012, PPB criteria were in place for some 438 products.²¹⁸

3.177. The Brazilian Agency for Industrial Development has created an online database with information on federal and sub-federal support initiatives; the authorities could not confirm that all existing incentive schemes are included.²¹⁹ According to the information available at the end of November 2012, private-sector companies could potentially benefit from some 184 assistance programmes, including incentives and exonerations (27), financial support (107), export support (35), technical assistance (4, export-oriented), and innovation support (9).²²⁰

3.178. Brazil's most recent notification to the WTO, under the Agreement on Subsidies and Countervailing Measures, contains 11 federal subsidy programmes that were operational in fiscal years 2009 and 2010 (Table 3.10). Following the notification, Brazil provided answers to requests for clarification by the European Union and Canada²²¹; a similar request was made by Japan.²²²

Table 3.10 Programmes notified to the WTO, 2009 and 2010

Type	Programmes	Forms of support	Amount disbursed (R\$ million)
Industrial	Support for the development of the pharmaceutical productive chain (PROFARMA – Innovation); capacity building and competitiveness enhancement in information technology; industrial technology and agricultural/cattle breeding technology development programmes	Long-term financing; equity participation; tax credits; accelerated depreciation	6,728.7

²¹⁵ PPB-linked programmes include: capacity building and competitiveness enhancement in information technology (Law No. 8,248 of 23 October 1991); computers for educational use (REICOMP, Law No. 12,715 of 17 September 2012); and national broadband programme (REPUBL-Redes, Law No. 12,715 of 17 September 2012).

²¹⁶ The PPBs are set with a view to maximizing the utilization of productive capacity installed in Brazil; they do not involve any thresholds for domestic value added, inputs or labour.

²¹⁷ Ministry of Development, Industry and Foreign Trade online information. Viewed at: <http://www.mdic.gov.br/sitio/interna/interna.php?area=2&menu=1103>.

²¹⁸ Ministry of Development, Industry and Foreign Trade online information. Viewed at: http://www.mdic.gov.br/arquivos/dwnl_1302542328.pdf and http://www.mdic.gov.br/arquivos/dwnl_1339511332.pdf.

²¹⁹ The authorities also noted that some definitions used by the Agency are targeted at entrepreneurs and may be misinterpreted in another context.

²²⁰ Brazilian Agency for Industrial Development, *Guide to Industrial Development Support Instruments*. Viewed at: <http://guia.abdi.com.br/default.aspx>.

²²¹ WTO documents G/SCM/Q2/BRA/35 and G/SCM/Q2/BRA/36 of 2 October 2012.

²²² WTO document G/SCM/Q2/BRA/37 of 24 October 2012.

Type	Programmes	Forms of support	Amount disbursed (R\$ million)
Regional	(PDTI/PDTA); productive development policy (PDP) Amazon Development Authority and North-East Region Development Authority (SUDAM/SUDENE); investment funds for the Amazon, the north-east regions and the State of Espírito Santo (FINAM/FINOR/FUNRES); constitutional funds for financing the north-east, the north and the mid-west regions (FNE/FNO/FCO); development funds for the Amazon and the north-east regions (FDA/FDNE); regional development and promotion of R&D and technological innovation programme	Tax exemptions and reductions; risk capital investments; loans	49,215.0
Fisheries	Programme for diesel oil support; programme for financing the enlargement and modernization of national fishing fleet (PROFROTA)	Fuel price support (equalization); loan performance bonus (interest payment discount)	44.2

Source: WTO document G/SCM/N/220/BRA, 10 January 2012.

3.179. The Brazilian development bank (BNDES) is the main entity responsible for federal long-term financing. It also plays a leading role in formulating and implementing government policies, such as the *Plano Brasil Maior* and the Growth Acceleration Programme (PAC).²²³

3.180. The Federal Government's recently adopted policy *Plano Brasil Maior* comprises a raft of stimulus measures, such as broadening fiscal, investment, and innovation incentives, aimed at fostering technological innovation as well as attenuating the impact of the global economic downturn.²²⁴ The measures implemented to date include: tax exemptions for manufacturers of laptop computers; substitution of employers' social security contributions by a (lower) tax on revenue from domestic sales for 40 subsectors (covering about 3,300 tariff lines)²²⁵; and amplification of eligible sectors and favourable financing terms under federal programmes.²²⁶ Besides increased BNDES resources and improved access to finance, the *Plano Brasil Maior* supplies additional public funds (up to R\$25 billion) for the provision of guarantees through the newly-created Brazilian Funds and Guarantees Management Agency (ABGF).²²⁷ The ABGF will intervene to cover risks related to infrastructure, shipbuilding, and civil aviation projects, as well as public-private partnerships and the hosting of major sporting events; it will also provide guarantees for foreign trade transactions, social housing, education loans, and rural insurance.

3.181. Most state and municipal governments offer additional tax incentives to businesses in the form of rebates, holidays, credits, or exemptions. In June 2011, Brazil's Federal Supreme Court (STF) declared unconstitutional 23 state-level programmes granting ICMS rebates; some 50 similar measures were being challenged at the STF in March 2012. According to the STF, such incentives may only be granted through legal instruments signed by the National Fiscal Policy Council (CONFAZ), which regroups the treasury secretaries of all states and that of the Federal District. Against the backdrop of on-going discussions aimed at ending fiscal competition among federative states, it has actually intensified. In some cases, ICMS exemptions granted on imported goods are accompanied by ICMS rebates upon these goods' resale in another State, resulting in tax credits for the importer. To correct this situation, the Brazilian Senate established a single ICMS rate of 4% on inter-state sales of imported goods, thus capping the tax credit that may be claimed for such transactions; the single rate must be phased in by 2025.²²⁸

²²³ The Banco da Amazônia (BASA) and the Banco do Nordeste do Brasil (BNB) manage, *inter alia*, federally-funded regional programmes.

²²⁴ Decree No. 7,540 of 2 August 2011.

²²⁵ For these subsectors, the new tax on revenue from domestic sales ranges between 1% and 2% (against 15% to 22.5% on payroll); the COFINS rate levied on imports of equivalent products is increased by the same rate (Law No. 12,546 of 14 December 2011 and Law No. 12,715 of 17 September 2012).

²²⁶ *Plano Brasil Maior* online information. Viewed at: <http://www.brasilmaior.mdic.gov.br/images/data/201208/ad9d7ee47c236ba9ee8fda7bb27501d7.pdf>.

²²⁷ Provisional Measure No. 564 of 3 April 2012, converted into Law No. 12,712 of 30 August 2012.

²²⁸ Resolution No. 13/2012 of 26 April 2012.

3.4.2.2 Industrial incentives

3.182. Brazil has notified to the WTO four industrial incentives programmes: the Support Programme for the Development of the Pharmaceutical Productive Chain (Profarma – Innovation); Capacity Building and Competitiveness Enhancement in Information Technology (CBIT); the Industrial Technology and Agricultural/Cattle Breeding Technology Development Programme (PDTI & PDTA); and the Productive Development Policy (PDP).

3.183. The PROFARMA – Innovation aims at supporting projects to help consolidation of Brazil's pharmaceutical industry. It supports pharmaceutical industry R&D efforts in Brazil, aimed at developing new or significantly improved products and/or processes. Beneficiaries must be enterprises incorporated under Brazilian Law. The BNDES is responsible for administration of the programme, which was established by BNDES Resolution No. 1,501/07 of 18 September 2007. The programme provides long-term financing and/or equity participation in the company (through subscription of securities) or participation in the project's revenues. Minimum financial support is R\$1 million. Loans are granted at a fixed interest rate of 4.5% per year with maturity up to 15 years. The programme was scheduled to be terminated in August 2012, but was extended to March 2013. Disbursements under the PROFARMA programme totalled R\$49.3 million (US\$25 million) during 2007-10 (Table 3.11).

Table 3.11 Tax exemption/reductions under industrial incentives programmes, 2007-11

(R\$ million)

Year/ Programme	PROFARMA	CBIT	PDTI & PDTA	PDP	Total
2007	4.0	2,755.4	2.4	0.0	2,771.9
2008	13.6	3,065.2	1.3	155.0	3,247.7
2009	12.7	3,027.0	0.2	97.0	3,138.1
2010	19.0	3,464.1	0.0	106.0	3,567.5
2011	..	3,758.7	0.0	..	3,758,7
2007-11	49.3	16,070.4	3.9	358.0	16,483.9

.. Not available.

Source: WTO documents G/SCM/N/186/BRA, 1 September 2010, and G/SCM/N/220/BRA, 10 January 2012. SEGIN/ASCAV/SEXEC/MCTI.

3.184. The CBIT programme has the purpose of encouraging manufacturers of information technology goods to invest in R&D activities, create new products, and improve Brazil's competitiveness in the area. The programme is governed by Law No. 8,248/91, as amended by Law No. 10,176/01 and Law No. 11,077/04, and is managed by the Ministry of Finance, the Ministry of Development, Industry and Foreign Trade, and the Ministry of Science and Technology. Benefits from the CBIT programme consist in an exemption or reduction of the indirect Tax on Industrial Products (IPI) for information technology goods, as well as reduction of the IPI on raw materials, intermediate goods, and material from used packages. This exemption or reduction is used as a tax credit. To qualify for the programme, companies must invest at least 5% of their turnover from product sales (after deduction of other indirect taxes) and the value of the acquisition of the products benefited by the programme, in R&D activities. Benefits have been granted since 1993 and the expected termination date is 2019. The beneficiaries are industrial enterprises, as well as research institutes, and centers, and laboratories, through financial support from industrial enterprises that choose to outsource the execution of research projects.²²⁹ Disbursements under the CBIT programme totalled R\$16.07 billion (US\$8.0 billion) in 2007-11 (Table 3.11).

3.185. The PDTI & PDTA fostered technological improvement for industrial and agricultural/cattle breeding enterprises, through R&D initiatives. The programme sought to promote partnerships between research centers and universities, institutes, and enterprises. The PDTI & PDTA was established by Law No. 8,661 of 2 June 1993, and regulated by Decree No. 949 of 5 October 1993. The Ministry of Science and Technology was responsible for its administration. Benefits consisted of income-tax deductions due on the sum of the expenses in R&D activities and of IPI due on equipment, machinery, and devices directly allocated to research and technological development

²²⁹ WTO documents G/SCM/N/186/BRA, 1 September 2010, and G/SCM/N/220/BRA, 10 January 2012.

and on instruments, parts, and tools associated with these goods. The amount of the subsidy was proportional to the value of the R&D expenses. The programme was officially terminated in 2006 and no new deductions have been granted since then, but firms with ongoing projects were authorized to continue benefiting from PDTI/PDTA until their completion. The last benefits were disbursed in 2009. Disbursements under the PDTI & PDTA programme in the period 2007-11 totalled R\$3.9 million (US\$2 million) (Table 3.11).

3.186. The PDP was established by Law No. 11,774/2008 to increase production capacity in the manufacturing sector. Incentives under the PDP consist of: (i) reduction of the indirect taxes PIS and COFINS for imports and acquisitions in the domestic market of goods and equipment, including parts and components, used in construction, conservation, modernization, conversion or repair of vessels registered in the Brazilian Special Register (REB); (ii) income tax postponement, as a result of accelerated depreciation of capital goods used in the manufacturing of vehicles and their parts; as well as of equipment, machinery and devices used in the manufacturing of capital goods. The Ministry of Finance is responsible for inspecting the programme's tax incentives and the Ministry of Defence is responsible for maintaining the REB. Reduction of indirect taxes PIS and COFINS is granted to shipyards that build, conserve, modernize, convert or repair of vessels registered in the REB. The programme has no pre-established termination date.

3.4.2.3 Regional programmes

3.187. At the federal level, Brazil administers a number of regional programmes, consisting mainly of tax benefits for investment in less developed regions, such as the north and north-east. Benefits apply equally to foreign and domestic investors. There are also programmes at the state level, of a general nature or targeting certain industries, which grant ICMS reductions or exemption.

3.4.2.3.1 SUDAM and SUDENE programmes

3.188. The SUDAM and SUDENE programmes grant tax incentives to firms and evaluate and approve projects of interest to the development of the legal Amazon and north-east regions.²³⁰ The programmes have been notified to the WTO as granting subsidies.²³¹ Their aim is to reduce economic and social imbalances between the Brazilian regions by means of compensatory mechanisms for the development of these regions. Beneficiaries are industrial and agricultural enterprises with undertakings in the Amazon or north-east.

3.189. The programmes and their benefits are regulated by Law No. 9,532/97 and Provisional Measure No. 2,199/01, and Supplementary Law Nos. 124 and 125 of 3 January 2007. The tax reduction benefits granted under these programmes include: (i) a 75% reduction of income tax for industrial or agricultural firms classified as being of interest to regional development, for ten years starting from the year after the enterprise started to operate; (ii) after the ten-year period, income tax reduction for enterprises meeting the conditions of interest to regional development (12.5% from 2009 to 31 December 2013); and (iii) reinvestment of income tax for activities of interest for regional development, requiring firms to deposit 30% of the income tax due, plus 50% of their own resources, on an annual basis, ending on 31 December 2013, in the Banco da Amazônia or in the Banco do Nordeste do Brasil (BNB), to be used in the legal Amazon or north-east regions in activities linked to capacity modernization or expansion.²³² Companies are allowed to submit projects until 31 December 2013. The income tax reduction benefit is terminated after ten years from the date the industry starts operations.

3.190. Accumulated tax exemptions/reductions for both SUDAM and SUDENE programmes for 2007-11 were R\$22.97 billion (some US\$11.5 billion), up from R\$7.06 billion (US\$4.25 billion),

²³⁰ The legal Amazon region comprises the states of Amazonas, Roraima, Amapá, Pará, Tocantins, Rondonia, Mato Grosso, and part of Maranhão. The north-east area includes Maranhão, Piauí, Ceará, Rio Grande do Norte, Paraíba, Pernambuco, Alagoas, Sergipe, and Bahia, and an area of Minas Gerais included in the so-called "drought polygon" ("*polígono das secas*").

²³¹ WTO document G/SCM/N/220/BRA, 10 January 2012.

²³² Ministry of National Integration online information. Viewed at: http://www.mi.gov.br/fundos/incentivos_fiscais/index.asp.

during 2002-06 (Table 3.12). The authorities note that statistical data for the assessment of the trade effects of the subsidy are not available.²³³

Table 3.12 Tax exemptions/reductions under the SUDAM and SUDENE programmes, 2007-11

(R\$ million)

Year	SUDAM/ADA	SUDENE/ADENE	Total
2007	2,112.5	2,052.2	4,164.7
2008	2,350.1	2,282.9	4,633.0
2009	1,508.9	2,849.8	4,358.7
2010	1,703.9	3,217.9	4,921.8
2011	1,559.1	3,334.5	4,893.6
2007-11	9,234.5	13,737.3	22,971.8

Source: WTO documents G/SCM/N/186/BRA, 1 September 2010, and G/SCM/N/220/BRA, 10 January 2012; and information provided by the Brazilian authorities.

3.4.2.3.2 Development Funds for the Amazon and the North-East Regions (FDA/FDNE)

3.191. The Amazon Development Fund (*Fundo de Desenvolvimento da Amazônia* (FDA) and North-East Region Development Fund (*Fundo de Desenvolvimento do Nordeste*) (FDNE) are under the authority of the Ministry of National Integration, SUDAM, SUDENE, and the Deliberative Council of the Development Authorities of the North and North-East Regions. They are governed by Provisional Measures No. 2156-5 and No. 157-5, as amended by Supplementary Laws No. 124 and No. 125 of 3 January 2007. Banco da Amazônia and BNB operate the Funds.

3.192. The beneficiaries of loans backed by development fund resources are enterprises that carry out productive activities in the sectors of crop/livestock, mineral, industrial and agri-industrial, tourism, and infra-structure in the Amazon and north-east regions. Law No. 12.712/12 of 31 August 2012 allowed the operators to take up to 100% of the credit risk. SUDAM and SUDENE must approve the projects. The maturity of the loans is up to 12 years, including the grace period, and may be extended up to 20 years for infrastructure projects. Since December 2012, CMN Resolution No. 4,171/12 regulates the operations of the development funds, and allows the operators an annual charge of 2.5% for risk. The FDA and FDNE charge 4% yearly. The difference between the interest rate of the operation (from 5% to 6.5% per year) and the amount paid to funds and banks (6.5%) is equalized by the National Treasury.²³⁴ Loans backed by development fund resources have been granted since 2006 with a deadline of 31 December 2013. Accumulated tax exemptions/reductions for the FDA and FDNE programmes for 2007-11 were R\$6.35 billion (Table 3.13), or some US\$3.18 billion.

Table 3.13 Tax exemptions/reductions under the FDA and FDNE programmes, 2007-11

(R\$ million)

Year	FDA	FDNE	Total
2007	0.0	48.0	48.0
2008	0.0	528.6	528.6
2009	334.5	2,672.4	3,006.9
2010	1,809.3	53.5	1,862.8
2011	404.7	494.0	898.7
2007-11	2,548.5	3,796.5	6,345.0

Source: WTO documents G/SCM/N/186/BRA, 1 September 2010, and G/SCM/N/220/BRA, 10 January 2012, and information provided by the Brazilian authorities.

3.4.2.3.3 FINAM/FINOR/FUNRES

3.193. The Amazon Investment Fund (FINAM), North-East Investment Fund (FINOR), and Fund for the Economic Recovery of the State of the Espírito Santo (FUNRES) programme, regulated by

²³³ WTO documents G/SCM/N/186/BRA, 1 September 2010, and G/SCM/N/220/BRA, 10 January 2012.

²³⁴ Information provided by the Brazilian authorities; and Ministry of National Integration online information. Viewed at: http://www.mi.gov.br/fundos/fundos_de_desenvolvimento_regional/index.asp.

Law No. 8,167 of 16 January 1991, Law No. 9,532 of 10 December 1997, and Law No. 9,808 of 20 July 1999, aims to reduce economic and social imbalances between regions by means of compensatory mechanisms for the development of the Amazon and North-East regions and for the State of Espírito Santo. FINAM/FINOR are the responsibility of the Department of Investment Fund Management, under the Ministry of National Integration, in accordance with Decree No. 5.847, of 14 July 2006.²³⁵ Banco da Amazônia and BNB are respectively the financial agents of the FINAM/FINOR. FUNRES is administered by Grupo de Recuperação Econômica do Estado do Espírito Santo (GERES), and Banco de Desenvolvimento do Espírito Santo S.A. is the financial agent.

3.194. The beneficiaries of FINAM/FINOR/FUNRES are legal persons implementing a project that can generate jobs and income and promote regional or local development. The programme provides financial support in the form of risk capital investment operated by BASA, BNB, or Banco de Desenvolvimento do Espírito Santo with funding drawn from the FINAM, the FINOR, and the FUNRES, respectively. The investments made are matched with primary debenture issues convertible into stock, which occurs only after the project is implemented; the shares are non-voting. The FINAM/FINOR/FUNRES programme also allows income tax incentives, through a deduction of currently 9% until end December 2013. Tax incentives are channelled through the respective fund for investment in projects by beneficiary companies. Benefits have been granted since 1975; their expiry is scheduled for 31 December 2013. Benefits totalled R\$474.67 million (US\$233 million) in 2007-11 (Table 3.14), down from R\$532.6 million (US\$321 million) in 2002-06.

Table 3.14 FINOR/FINAM/FUNRES, FISCAL BENEFITS, 2007-11

(R\$ million)

Years	2007	2008	2009	2010	2011	2007-11
FINAM	9.77	0.0	5.2	0.0	20.1	35.07
FINOR	0.32	1.08	49.7	164.8	200.5	416.4
FUNRES	0.0	0.0	5.9	4.8	12.5	23.2
Total	10.09	1.08	60.8	169.6	233.1	474.67

Source: WTO documents G/SCM/N/186/BRA, 1 September 2010, and G/SCM/N/220/BRA, 10 January 2012, and information provided by the Brazilian authorities.

3.4.2.3.4 Constitutional funds for financing the north-east, the north and the mid-west regions (FNE/FNO/FCO)

3.195. The constitutional funds finance activities in productive sectors in the north, north-east and mid-west regions (FNE/FNO/FCO), with the aim of contributing to the social and economic development of these regions. They were created by Law No. 7,827 of 27 September 1989, as amended by Law No. 10,177 of 12 January 2001 and Decree No. 6,367 of 30 January 2008. The administration of each fund is autonomous and held by a Deliberative Council in each region; these councils approve the financing programmes of each fund and evaluate the results obtained. The Ministry of National Integration defines the guidelines and priorities for investments, and for monitoring and evaluating the financing programmes. The financial agents of the funds are Banco da Amazônia, BNB, and Banco do Brasil S.A. The constitutional funds have no pre-established time limit. They comprise some of the financial instruments included in Decree No. 6,047, of 22 February 2007, which institutes a National Policy of Regional Development (PNDR).

3.196. The beneficiaries of loans backed by constitutional fund resources are producers (natural or legal persons, as well as production cooperatives) that carry out productive activities in the crop/livestock, mineral, industrial and agri-industrial, tourism, infra-structure, commerce and service sectors of the north, north-east and mid-west regions. The FCO, FNE and FNO, are financed with 3% of IPI and income tax revenue (IR), of which 0.6% for the FCO, 1.8% for the FNE, and 0.6% for the FNO. Credit operations based on constitutional financing funds are subject to the charges defined in Law No. 10,177 of 2001 and following legislation. Decree No. 6,367, of 30 January 2008 fixes annual interest rates between 5% and 8.5% for rural operations and between 6.75% and 10% for other agri-industry, industrial operations, infrastructure, tourism,

²³⁵ WTO document G/SCM/N/155/BRA, 11 October 2007.

commerce, and services.²³⁶ These rates may be reduced by 15% or 25% if the beneficiary operates in the north-east semi-arid area and payments are made before the due date.²³⁷ Resolutions CMN 4,075/12 and 4,078/12, lowered the rates to 3.5% for farmers affected by the drought in the north-east and to 1% for farmers affected by the rains in the north. These rates were in place for operations contracted until the end of February 2013.

3.197. Between 2007 and 2011, the constitutional funds granted loans for R\$71.36 billion (US\$35.8 billion), of which 60% under the FNE (Table 3.15). The programme loans for 2011 totalled R\$18.51 billion (US\$9.7 billion). In 2011, the constitutional funds channelled R\$7.2 billion to agriculture.²³⁸ Disbursements over 2007-11 exceed the accumulated loans granted between the beginning of the programme in 1989 and 2006. The accumulated loans granted between 1989 and end 2011, totalled R\$120.9 billion; 90% of beneficiaries were micro and mini producers.

Table 3.15 Constitutional fund loans, 2007-11

(R\$ million)

Years	2007	2008	2009	2010	2011	2007-11
FCO	1,973.8	3,470.1	3,183.4	4,253.7	5,546.6	18,427.6
FNE	4,246.5	7,668.6	9,134.1	10,755.1	11,090.7	42,895.0
FNO	1,109.9	2,053.6	2,440.4	2,568.6	1,869.2	10,041.7
Total	7,330.2	13,192.3	14,757.9	17,577.4	18,506.5	71,364.3

Source: Ministry of National Integration. Viewed at: http://www.mi.gov.br/fundosundos_constitucionais/index.asp?area=FCOProgramação2011; http://www.mi.gov.br/fundos/fundos_constitucionais/index.asp?area=FNO-Programação2011; and http://www.mi.gov.br/fundos/fundos_constitucionais/index.asp?area=FNE-Programação2011. WTO documents G/SCM/N/186/BRA, 1 September 2010, and G/SCM/N/220/BRA, 10 January 2012.

3.4.2.3.5 Regional Development and Promotion of R&D and Technological Innovation Programme

3.198. The Regional Development and Promotion of Research and Development and Technological Innovation Programme is aimed at promoting investment in R&D and technological innovation in the north, north-east and mid-west regions (except the Federal District). The programme is regulated by Law No. 9,826/1999 of 23 August 1999, amended by Law No. 12,218/2010 of 30 March 2010.²³⁹ The Ministry of Development, Industry and Foreign Trade and the Ministry of Finance are responsible for determining the requirements for the submission of a project's application and approval. The Ministry of Development, Industry and Foreign Trade is responsible for evaluating and monitoring the programme. The Ministry of Science and Technology is responsible for verifying the proof of investment in R&D and technological innovation in the regions covered by the programme.

3.199. The programme offers benefits in the form of tax reductions, i.e. a 32% reduction of the IPI levied on sales of products classified in codes 8702 and 8704 of the Table of Incidence of IPI. The reduction is applied on products produced in the domestic market or directly imported by the beneficiaries. Beneficiaries are industrial enterprises installed in the areas covered by SUDAM, SUDENE, and in the mid-west region. Beneficiaries must invest at least 10% of the value corresponding to the IPI reduction in R&D and technological innovation in the regions covered by the programme. Incentives totalled R\$1,165.4 million in 2009 (US\$580 million) and R\$1,333.7 million (US\$670 million) in 2010. In accordance with Law No. 12,218/2010, the programme is scheduled to expire in December 2015.

²³⁶ Ministry of Integration online information. Viewed at: http://www.mi.gov.br/fundos/fundos_constitucionais/index.asp.

²³⁷ Ministry of Integration online information. Viewed at: http://www.mi.gov.br/fundos/fundos_constitucionais/encargos/outras_operacoes.asp.

²³⁸ Central Bank online information. Viewed at: <http://www.bcb.gov.br/?RELRURAL>.

²³⁹ The text of the law may be viewed at: <http://www6.senado.gov.br/legislacao/ListaTextoIntegral.action?id=240103&norma=261030>.

3.4.2.3.6 Other regional programmes

3.200. Under Law No. 9,440 of 14 March 1997 fiscal incentives were granted to enterprises in the automotive industry located in the north, north-east and mid-west regions. The original incentives included: 50% import duty reduction on capital goods and parts; and up to 50% reduction of import duties and up to 25% reduction of the IPI for inputs and parts and components. Since 2002, benefits have been limited to credits on IPI payments. Under Law No. 9,440/97, benefits would terminate on 31 December 2010. However, they were extended, albeit modified, by Law No. 12,218/2010, which eliminated the import duty and IPI reductions and introduced a system of tax credits up to 31 December 2015, in accordance with the practice since 2002.²⁴⁰ The benefit is conditional upon the realization of investments in R&D and technological innovation in the region, including in automotive engineering, corresponding to at least 10% of the value of the tax credit determined.

3.4.2.4 Free-trade zones

3.201. Brazilian legislation defines free-trade zones (FTZ), for imports and exports, as zones created to promote the development and regional integration of border areas in the north region, for which they are granted fiscal incentives. The basic legislation is contained in Decree Law No. 288 of 28 February 1967, Decree Law No. 356 of 15 August 1968, Decree Law No. 1,435 of 16 December 1975, and Law No. 8,387 of 30 December 1991, as amended.

3.202. Eight free-trade zones have been created (Manaus and Tabatinga, in Amazonas; Macapá/Santana in Amapá, Brasília and Cruzeiro do Sul, in Acre; Boa Vista and Bonfim, in Roraima; and Guajará-Mirim, in Rondônia).²⁴¹ However, as at end 2012, only four were in operation, of which the Manaus Free Trade Zone (ZFM) was the only one engaged in production operations; the other three zones were engaged only in commerce operations. The Tabatinga FTZ, in Amazonas, was created by Law No. 7,965 of 22 December 1989, and started operating in mid-1990; its main activity is the importation of foreign and national goods to be used in the area. The Macapá/Santana FTZ was created by Law No. 8,387 of 30 December 1991, and regulated by Decree No. 517, of 8 May 1992; it started functioning in 1993 and its main activities are export/import operations. The Guajará-Mirim FTZ located in Rondônia, next to the border with Bolivia, was created by Law No. 8,210 of 19 July 1991 and regulated by Decree No. 843 of 23 June 1993; it started operations in May 1994. The Brasília FTZs in Acre, was created by Law No. 8,857 of 8 March 1994 and regulated by Decree No. 1,357 of 30 June 1994. The Boa Vista FTZ located in Roraima was created by Law No. 11,732 of 30 June 2008 and regulated by Decree No. 6,614 of 23 October 2008. The FTZs of Bonfim in Roraima, and Cruzeiro do Sul in Acre, although created, have not started operations yet.

3.203. The main FTZ is the ZFM, established in 1967 with the goal of creating a development pole in the Amazon region through the formation of an industrial park, which would turn Manaus into an industrial, commercial, and agriculture centre with economic conditions to promote the development of the region. The ZFM's administrator is the Superintendence for the Manaus Free Trade Zone (SUFRAMA), an autonomous agency created in 1967 and linked to the MDIC. SUFRAMA also manages Brazil's seven other free-trade zones.²⁴² Companies established in the ZFM are granted tax exemptions by both the federal and state governments. One of the main requirements for the concession of these benefits is observing the Basic Productive Process (PPB) criteria, for which firms need to undertake agreed local manufacturing steps for specific products, and provide a detailed description of the various stages of assembly, preparation, and transformation of inputs used in the production of manufactured products.²⁴³ A number of environmental and social requirements must also be met for a project to be eligible. All imports to the ZFM require a licence, authorized both by the SECEX and by SUFRAMA. Incentives under the

²⁴⁰ The IPI credit varies in each year during 2011-15 and is equivalent to twice the tax due net of domestic market sales in 2011: 1.9 times its value in 2012, 1.8 in 2013, 1.7 in 2014, and 1.5 in 2015.

²⁴¹ SUFRAMA online information. Viewed at: http://www.suframa.gov.br/suframa_descentralizadas_alcs.cfm.

²⁴² SUFRAMA online information. Viewed at: <http://www.suframa.gov.br/>.

²⁴³ The following products are excluded from tax incentives in the ZPM, in accordance with Decree Law No. 288/67: (a) weapons and munitions; (b) tobacco and derived products; (c) alcoholic beverages; (d) passengers automobiles; and (e) perfume or beauty products (except positions 3303 to 3307 of the MERCOSUR CET) destined to internal consumption in the ZFM or when made with raw materials of regional fauna or flora.

ZFM programme will be in force until 2023, in accordance with Constitutional Amendment No. 42 of 19 December 2003.

3.204. Federal tax incentives include: (i) import-duty exemption for goods to be used or consumed in the ZFM, including capital goods and raw materials, as well as for goods listed in Inter-Ministerial Ordinance No. 300 of 20 December 1996²⁴⁴, destined for consumption in the western Amazon region; (ii) up to 88% reduction of import duties applied on raw materials, intermediate inputs, and secondary and packaging materials used in the production of industrial goods in the ZFM to be sold in the rest of Brazil; (iii) reduction of import duties on material used in the fabrication of informatics goods and motor vehicles, with the percentage of reduction depending on the share of domestic inputs and labour in total production (the coefficient of reduction is increased by 5% for motor vehicles); (iv) IPI exemption for goods produced in the ZFM, for imports used or consumed in the zone, and for goods listed in Inter-Ministerial Ordinance No. 300/96 destined for consumption in the western Amazon region; (v) IPI exemption for domestic goods entered into the ZFM or other areas of the western Amazon region, for goods produced with regional agricultural raw materials, in all areas of the western Amazon region; (vi) IPI credits, when applicable; (vii) export-tax exemption for goods produced in the ZFM, when applicable; (viii) exemption from PIS/PASEP and COFINS contributions for operations in the ZFM; and (ix) 75% reduction of income tax until 2013.

3.205. The fiscal incentives granted by the State of Amazonas, regulated by Law No. 2,826/2003, as modified by Law Nos. 2,879/2004, 2,927/04, and 3,022/05 are: (i) exemption from the ICMS on machinery and equipment purchases to be used for production in the ZFM; (ii) ICMS credit on industrial and agri-industry product purchases ranging from 60% to 100%, depending on the products; (iii) reduction of the tax base for the calculation of the ICMS of 55% (for goods to be used in the production of integrated circuits) or 64.5% (for goods to be used in the production of capital goods).²⁴⁵ There is also the possibility of deferring the ICMS for imports of raw materials, and of reducing the ICMS rate to 4%. On average, some 80% of the ICMS is returned. Municipal government incentives are also granted an exemption for ten years of the Tax on Urban Real States Property (IPTU), the public cleaning and conservation tax, and of business taxes.

3.206. ZFM beneficiaries may also take advantage of the Western Amazon Export Special Programme (PEXPAM), which allows the importation of raw material, inputs and industrial components exclusively for export and grants exemption of import duties, the IPI, the ICMS, and of any other tax or financial retribution to any public body. Companies are not required to fulfil the PPB criteria to benefit from the PEXPAM programme. ZFM enterprises may also benefit from the SUFRAMA programme until 2013.²⁴⁶

3.207. There are no restrictions on movements from the ZFM to the rest of Brazil: importers may supply foreign goods from their stock in the ZFM to other parts of the country, without quantitative limits. Goods imported into Brazil from the ZFM are subject to all import duties and taxes normally assessed, in accordance with Decree Law No. 1,455 of 1976, with the exception of duties on inputs, which are reduced by up to 88%.²⁴⁷ The reduction does not apply to informatics products or to vehicles, for which the full duty is applied. Products manufactured in the ZFM solely with imported inputs, goods sold to FTZs, and obsolete machinery and equipment are not subject to the payment of duties.

3.208. The main activities in the ZFM are: electronics, information technology and telecommunication goods (including mobile phones), vehicles, chemicals, thermoplastics, lighters, pens, disposable shavers, mechanical machinery, metallurgical products, and watches. Most production is industrial and destined for the domestic market: in 2012, 97.7% of production was sold in the Brazilian market. Production for the domestic market almost doubled between 2007 and 2011, to US\$40.4 billion; production for export remained in the US\$800 million to US\$1.2 billion range (Table 3.16). Investment in the ZFM during the period totalled

²⁴⁴ SUFRAMA online information. Viewed at: <http://www.suframa.gov.br/download/legislacao/ppb/1996/pi-300-96.pdf>.

²⁴⁵ SUFRAMA online information. Viewed at: http://www.suframa.gov.br/zfm_incentivos_estado.cfm.

²⁴⁶ SUFRAMA online information. Viewed at: http://www.suframa.gov.br/eng/modelozfm_incentivos_tax_EN.cfm.

²⁴⁷ The methodology to assess final duty is described in Decree No. 4,543 of 26 December 2002.

US\$52.5 billion. As at late September 2012, the ZFM employed 110,982 persons; it had income totalling US\$32.8 billion in 2011.²⁴⁸

Table 3.16 Manaus free-trade zone production, 2007-12

(US\$ million)

Year	Domestic market			Foreign market			Final balance
	Exports	Imports	Balance	Exports	Imports	Balance	
2007	24,623.5	6,598.4	18,025.1	1,044.8	6,299.1	-5,254.5	12,770.8
2008	28,907.2	7,918.1	20,989.1	1,192.0	8,555.3	-7,363.3	13,625.7
2009	25,099.6	5,481.1	19,618.5	857.4	6,344.6	-5,487.2	14,131.3
2010	34,180.8	7,222.7	26,958.1	1,037.5	10,181.3	-9,143.8	17,814.3
2011	40,411.4	9,048.6	31,362.8	838.7	11,246.4	-10,407.7	20,955.0
2012 (Sept.)	27,133.4	5,621.2	21,512.2	619.5	8,370.5	-7,751.0	13,761.1

Source: SUFRAMA (2012), *Indicadores de Desempenho do Polo Industrial de Manaus 2007-2012*. Viewed at: [http://www.suframa.gov.br/download/indicadores/RelatorioIndicadores Desempenho_9_2012-05_11_2012-08_34_23.pdf](http://www.suframa.gov.br/download/indicadores/RelatorioIndicadores%20Desempenho_9_2012-05_11_2012-08_34_23.pdf).

3.4.2.5 R&D and other programmes

3.209. The administration of R&D programmes is the responsibility of the Ministry of Science, Technology and Innovation (MCTI). Brazil's policy of fiscal incentives for promoting R&D programmes in Brazilian enterprises is contained mainly in Law No. 8,661 of 2 June 1993 and Decree No. 949 of 5 October 1993. The *Financiadora de Estudos e Projetos* (FINEP), public enterprise linked to the MCTI created in 1967, is the administrator of the resources of the Scientific and Technological Development Fund (*Fundo Nacional de Desenvolvimento Científico e Tecnológico*, FNDCT).

3.210. The FINEP grants refundable and non-refundable financing to all stages and dimensions of the scientific and technological development cycle: basic research, applied research, innovation and development of products, and services and processes. The FINEP also supports the development of technology-based companies, the establishment of technological parks, the implementation of research, development, and innovation processes in already established companies, and the development of markets. In addition, from 2012 the FINEP began offering support for the setting up of a first industrial unit, for incorporations, and for mergers and joint ventures.

3.211. Repayable loans are financed with the FINEP's own resources or from transfers from other sources. Non-reimbursable funding is made with funds from the FNDCT, currently formed mainly by sectorial funds for science, technology, and innovation (S, T&I), intended for non-profit institutions, programmes. Financing proposals must be submitted in response to public calls or invitations.

3.212. The sectoral S, T&I funds are an important R&D financing mechanism in Brazil since their establishment in 1999. The income of the funds stems from contributions levied on the exploitation of natural resources, portions of the IPI tax on certain sectors, and of the CIDE applied on remunerations for the use or acquisition of technological knowledge/technology transfer from abroad.²⁴⁹ There are 16 such funds, each corresponding to a specific area and with its own resources (Table 3.17). The resources allocated to each of the funds are deposited with the FNDCT (with the exception of the Telecommunications Fund) and managed by the FINEP. A regional policy is followed for the allocation of the funds: at least 30% must be invested in the north, north-east, and mid-west regions, and there is a special fund for the Amazon region, targeted at institutions operating in the states of Amazonas, Rondônia, Roraima, and Acre. Resources may not be transferred between funds.

²⁴⁸ SUFRAMA (2012).

²⁴⁹ FINEP online information. Viewed at: <http://www.finep.gov.br/pagina.asp?pag=30.10>.

Table 3.17 Sectoral science, technology, and innovation (S, T&I) funds, 2012

Fund/Law	Resources
Petroleum and Natural Gas Fund (CT-PETRO), Law No. 9,478 of 6 August 1997	25% of the share of the value of royalties exceeding 5% of the production of petroleum and natural gas
Energy Fund (CT-ENERG), Law No. 9,991 of 24 July 2000	0.4% of the net value of the bills issued by concessionaries for the generation and transmission of electricity; 0.3% for distribution
Hydric Resources Fund (CT-HIDRO), Law No. 9,993 of 24 July 2000	4% of the financial compensation of electricity generation companies
Land Transport Fund (CT-TRANSPORTES), Law No. 9,992 of 24 July 2000	10% of the receipts obtained by the National Transportation Infrastructure Department stemming from contracts for the use of roads by communications and telecommunications systems
Mining Fund (CT-MINERAL), Law No. 9,993 of 24 July 2000	2% of the financial compensation of the mining sector
Spatial Fund (CT-ESPACIAL), Law No. 9,994 of 24 July 2000	25% of revenues of spatial operations
Telecommunications Technology Development Fund (FUNTTTEL), Law No. 10,052 of 28 November 2000	0.5% on telecommunications providers bills, and 1% on bills for services provided through telephone links
Information Technology Fund (CT- INFO), Law No. 10,176 of 11 January 2001	0.5% on informatics enterprises' bills
University and Enterprise Fund (CT-VERDE AMARELO), Law Nos. 10,168 and 10,332 of 29 December 2000 and 19 December 2001	50% of the CIDE on remittances abroad of royalties, plus 43% of the IPI on informatics products
Infrastructure Fund (CT-INFRA), Law No. 10,197 of 14 February 2001	20% of other funds
Water Transport and Naval Construction Fund (CT-Aquaviário)	3% of the AFRMM tax accruing to the Merchant Marine Fund (FMM)
Amazon Fund (CT-AMAZÔNIA), Law No. 8,387 of 30 December 1991, Law No. 10,176, of 11 January 2001, and Decree No. 4,401, of 1 October 2002	At least 0.5% of companies operating in the Manaus Free Trade Zone that produce informatics-related goods and services
Biotechnology Fund (CT-Biotecnologia); Agri-business Fund (CT-AGRONEGÓCIO); Aeronautical Fund, (CT-AERONÁUTICO); Health Fund (CT SAÚDE), Law No. 10,332 of 29 December 2001	17.5% of proceeds collected by the CIDE (section (2)(v)) to be devoted to the Agri-business fund; 17.5% to the Health Fund; 7.5% to the Biotechnology Fund; and 7.5% to the Aeronautical Fund

Source: FINEP online information. Viewed at: <http://www.finep.gov.br/pagina.asp?pag=30.10>.

3.213. One of the FINEP's most important reimbursable financing programmes is the INOVA Brasil Programme (*Programa de Incentivo à Inovação nas Empresas Brasileiras*), which aims to support strategic investments by Brazilian companies in innovation. Its guidelines are in the *Plano Brasil Maior* and are the following: (i) increased national and international competitiveness; (ii) increased R&D activities carried out in the country with investments consistent with the technological dynamics of the sectors in which they operate; and (iii) innovation with regional relevance or inserted in MCTI's programme objectives. Beneficiaries are domestic companies under domestic capital control and those under foreign capital control whose activities are specified in Decree No. 2,233 of 23 May 1997 and its amendments.²⁵⁰

3.214. The INOVA Brasil programme is managed under three "action lines" in accordance with the FINEP's new operational policy for 2012-14: (a) Pioneer Innovation (*Inovação Pioneira*), aimed at supporting the technology development cycle, from basic research to the development of markets for innovative products, processes, and services, being essential that the end result is, at least, an innovation for the domestic market; (b) Continuous Innovation (*Inovação Contínua*), which grants support to companies wishing to implement R&D activities or continuous R&D investment

²⁵⁰ Decree No. 2,233 of 23 May 1997 defines industries and services that are considered of national interest. They include the following public infrastructure services: (a) exploitation of energy sources, generation, transmission, and distribution of energy of any kind; (b) any kind of telephony service; (c) ports and transport systems, including cargo and passengers; and (d) environmental sanitation. They also include industrial complexes in the following areas: (a) chemical-petrochemical (basic chemical industries, petrochemicals, fine chemicals, and fertilizers); (b) mineral and metallurgical; (c) automotive and auto spare parts; (d) agri-industrial and forestry (agricultural products, food, beverages and wood panels, pulp and paper); (e) capital goods (equipment and components industries); and (f) electronics (electronic components industry, consumer electronic industries, information technology, telecommunication and automation).

programmes by means of the installation of R&D centers or in collaboration with other R&D institutions; this line aims at fortifying medium and long-run R&D activities; and (c) Innovation and Competitiveness (*Inovação e Competitividade*) to support the development projects and/or improvement of products, processes, and services projects, acquisition and/or absorption of technologies, so as to consolidate the culture of investment in innovation as a relevant factor in competitive business strategies.

3.215. Financing conditions vary according to the action line. For the Pioneer Innovation line, in late 2012, the interest rate was 4%, the period of amortization 84 months, with a grace period of 36 months, and the percentage financed by the FINEP was up to 90% of the project. For the Continuous Innovation line the interest rate was 5%, the period of amortization up to 72 months, with a grace period of 24 months, and the percentage financed by the FINEP was also up to 90% of the project. For the Innovation and Competitiveness line, the interest rate was a range between the TJLP and the TJPL + 2%, the period of amortization up to 60 months, with a grace period of 24 months, and the percentage financed by the FINEP was up to 80% of the project.²⁵¹

3.216. The Assistive Technology Innovation Programme (*Programa de Inovação em Tecnologia Assistiva*) is aimed at financing technological development and innovation of products, processes and services for people with disabilities, older persons and persons with reduced mobility. The programme has a budget of R\$150 million until 2014, of which R\$90 million are offered as loans for Brazilian companies and R\$60 million as non-reimbursable grants to universities and research centres. The programme finances up to 90% of projects of between R\$1 million and R\$20 million, at interest rates between 4% and TJLP +3%. The amortization period is up to 84 months, with a grace period up to 36 months.

3.217. The INOVA PETRO programme is a joint initiative of the FINEP and the BNDES, with the technical support of PETROBRAS. Its goal is to support projects in R&D, engineering, use of technologies, production, product processes, and services for the development of Brazilian suppliers to the petroleum and natural gas production chain. INOVA PETRO is open to Brazilian companies and/or affiliates with gross operating revenue (ROB) of more than R\$16 million, individually or in association, that have an interest in undertaking the production and marketing of products or services resulting from technologies related to topside processing technologies, sub-sea equipment, and down-hole equipment and services. Business projects with ROB below this threshold are eligible only if developed jointly with another company and/or group with ROB exceeding this value. In the case of an association between a domestically controlled firm and a foreign undertaking and/or controlled by a head office abroad, support may be granted only for projects that involve an effective technology transfer. The programme is scheduled to continue until 2017. Projects must be developed in the Brazilian territory, have a minimum budget of R\$1 million, and a maximum implementation period of 60 months. The FINEP and the BNDES may finance up to 90% of the total value of the project. There are R\$3 billion available for the programme, 50% provided by each institution.

3.218. The Economic Subvention to National innovation Programme (*Programa de "Subvenção Econômica à Inovação Nacional"*) has as its goal the promotion of innovation and productivity enhancement among Brazilian companies. The programme consists of financial support in the form of non-reimbursable resources to share the costs and risks inherent in innovation activities. The programme's regulatory framework is contained in Law No. 10,973 of 2 December 2004, regulated by Decree No. 5,563 of 11 October 2005 (Innovation Law), and in Law No. 11,196 of 21 November 2005, regulated by Decree No. 5,798 of 7 June 2006. Grants are awarded through tenders made available on the FINEP site. The value of projects financed may be between R\$500,000 and R\$10 million; but the value may not exceed the company's turnover or social capital. Details of the programme are in a manual prepared by the FINEP in October 2010.²⁵² In 2011, approved projects totalled R\$239.6 million.²⁵³

²⁵¹ FINEP online information. Viewed at: http://download.finep.gov.br/programas/inovaBrasil/politica_operacional_tabelaconsolidada_22ago.pdf.

²⁵² FINEP (2010).

²⁵³ MICTI (2012).

3.4.2.6 BNDES credit facilitation schemes

3.219. The BNDES promotes Brazil's economic and social development through tailored financing, equity participation, non-reimbursable financial support, and guarantees. Eligibility for BNDES support is subject to few restrictions regarding operations: the negative list comprises banking/financial activities, weapons trade, establishments for adult entertainment, and gambling. Support granted by the BNDES over 2008-12 totalled R\$687 billion (some US\$344 billion) (Table 3.18)

Table 3.18 Brazilian development bank support, 2008-12

(R\$ billion)

	2008	2009	2010	2011	2012
Industry	39	63.5	54	43.8	47.7
Infrastructure	35.1	48.7	52.4	56.1	52.9
Trade/services	11.2	17.3	27.1	29.2	44.0
Agriculture	5.6	6.9	10.1	9.8	11.3
Other market operations	1.4	1	24.8	0.8	0.1
Total	92.2	137.4	168.4	139.7	156.0

Source: BNDES (2011), *Annual Report 2011*. Viewed at: <http://www.bndes.gov.br>; and information provided by the Brazilian authorities.

3.220. BNDES activities are funded by returns on its operations; resources raised in foreign markets; a portion of all contributions to the Workers' Assistance Fund (FAT); and public funds injected by the Federal Government, its sole shareholder, either in the form of paid-in capital or debt instruments. At end 2011, government sources accounted for 81.7% of BNDES's total capital, and resources raised abroad for 3.6%. In 2009-11, the National Treasury lent R\$246.3 billion to BNDES in the form of government bonds linked to the long-term interest rate (TJLP).

3.221. The BNDES maintains a number of schemes that facilitate access to credit. Operations under these credit lines may be carried out directly by the BNDES, or through accredited financial institutions. Projects eligible for credit include: implementation, expansion, and modernization of fixed assets; new machinery and equipment produced in Brazil and accredited by the BNDES; production of certain goods for export²⁵⁴; offering or development of services for export; foreign commercialization of eligible goods; and working capital associated with a fixed investment. A number of items are eligible for credit, under certain conditions, including importation of equipment, through specific lines and/or guarantees; expenses incurred from the importation of equipment; and implementation and/or expansion of foreign activities. Indirect schemes (through the banking sector) represented 53.8% of total financing over 2007-12, and direct schemes accounted for the rest. The BNDES FINEM programme was the largest, accounting for 34.8% of financing, followed by the FINAME, with 25.1% of the total (Table 3.19).

3.222. Among the credit lines operated by the BNDES through financial institutions, the Automatic BNDES offers financing of up to R\$10 million for the implementation, expansion, modernization or company relocation projects, including the acquisition of new machinery and equipment of domestic manufacture, accredited by the BNDES, and associated working capital. The FINAME provides financing, without a limit in value, for individual acquisitions of new machinery and equipment of domestic manufacture, accredited by the BNDES. In the case of the Automatic BNDES, financing is limited to 90% for the public administration, Brazilian citizens, and micro, small, and medium-sized, domestically controlled enterprises, and to 80% for large domestically controlled enterprises and companies with foreign-controlled capital.²⁵⁵ Products with a domestic content, in value terms, of at least 60% are automatically eligible for financing, while products with local content below the threshold are subject to a non-automatic analysis procedure.

²⁵⁴ This includes most manufactured products. See BNDES online information. Viewed at: http://www.bndes.gov.br/english/bndes/financeable_products.pdf.

²⁵⁵ BNDES online information. Viewed at: <http://www.bndes.gov.br/english/finame.asp>.

Table 3.19 BNDES disbursements by credit scheme, 2007-12

(R\$ million)

Credit scheme	2007	2008	2009	2010	2011	2012	2007-12
Direct Schemes	26,910.9	42,414.4	78,200.5	74,663.0	54,624.1	71,910.2	348,723.1
BNDES FINEM	22,028.5	28,577.8	65,082.4	37,597.2	45,217.2	62,598.7	261,101.8
BNDES-EXIM	1,321.7	3,276.6	4,269.5	4,151.5	4,657.7	4,343.2	22,020.2
BNDES Não reembolsável	62.5	105.2	137.7	203.8	271.6	367.3	1,148.1
BNDES Mercado de Capitais	3,498.1	10,454.8	8,710.9	32,710.5	4,477.6	4,601.0	64,452.9
Indirect schemes^a	37,980.9	48,463.5	58,155.9	93,759.7	84,249.3	84,082.1	406,691.4
BNDES FINAME	17,030.8	22,159.3	20,678.3	46,759.0	46,521.9	36,681.0	189,830.3
BNDES FINEM	5,111.6	6,041.1	9,874.7	7,790.0	6,275.4	7,978.1	43,070.9
BNDES AUTOMÁTICO	5,077.3	5,515.0	10,314.7	13,407.1	11,273.1	16,422.0	62,009.2
BNDES FINAME AGRÍCOLA	2,071.3	2,701.7	2,813.6	5,361.4	5,419.9	6,737.2	25,108.7
BNDES-EXIM	6,734.7	9,554.7	11,360.3	15,526.9	6,726.3	6,558.2	56,461.1
BNDES FINAME Leasing	1,446.0	1,645.9	635.7	601.3	458.6	162.1	4,949.6
Cartão BNDES	509.2	845.7	2,478.6	4,314.0	7,574.1	9,543.4	25,265.0
TOTAL of above	64,891.8	90,877.9	136,356.4	168,422.7	138,873.4	155,992.3	755,414.5

a Through the banking sector.

Source: BNDES online information. Viewed at: <http://www.bndes.gov.br>.

3.4.2.7 Other schemes

3.223. The Special Regime for the Exportation and Importation of Goods Destined to the Exploration of Petroleum and Natural Gas (REPETRO) was created by Law No. 9,478 of 6 August 1997. The REPETRO allows for the "fictitious exportation" and subsequent importation, under the temporary admission customs procedure, of goods produced in Brazil sold in foreign currency to a person domiciled abroad for use in the exploration of petroleum and natural gas in Brazil. The REPETRO also allows the application of the drawback regime on imported inputs and parts used to produce those goods. The regime is granted with the waiver of all import taxes until 31 December 2020.²⁵⁶ The REPETRO is really a special case of the temporary admission customs procedure; the difference with the regular case, is that the latter permits only a partial exemption of the customs duty and the IPI, which must be paid proportional to the period of time of the admission. Under the REPETRO, the application of federal and state taxes on these goods is totally suspended, provided that certain conditions are fulfilled.

3.224. Law No. 12,249 of 11 June 2010 created the Special Regime for the Aeronautical Industry (*Regime Especial para a Indústria Aeronáutica Brasileira*, RETAERO). The beneficiaries are companies that produce parts, tools, components, equipment, systems, subsystems, inputs and raw materials, or services to be employed in the maintenance, conservation, modernization, repair, overhaul, conversion, and industrialization of aircraft classified under NCM heading 88.02. The law provides benefits also for companies providing goods or services that are used as inputs in the production of these goods. In this case, the company must be a "preponderant supplier" to the aircraft industry; that is it must obtain at least 70% of its income from sales to the industry, including exports. Benefits include a suspension of the IPI for purchases in the domestic market and for imports, as well as of PIS/Pasep and COFINS contributions (including PIS/*Pasep-Importação* and COFINS-*Importação*). The suspension becomes a zero-rated regime after the employment or use of the goods acquired or imported under RETAERO, on goods used for the maintenance, upkeep, repair, modernization, industrialization, conversion and overhaul of aircraft classified in heading NCM 88.02.

3.225. Law No. 12,715 of 17 September 2012, published in the *Official Journal* on 18 September 2012 introduced a number of incentive programmes, including the Programme of Incentives Technological Innovation and Production Strengthening in the Automotive Industry (INOVAR-AUTO) (Programa de Incentivo à Inovação Tecnológica e Adensamento da Cadeia Produtiva de Veículos Automotores), the Special Taxation Regime for the National Broadband Programme for the Deployment of Telecommunications Networks (REPNBL-Redes) (Regime Especial de Tributação do Programa Nacional de Banda Larga para Implantação de Redes de Telecomunicações), and the Special Incentives Regime for Computers for Educational Use (Regime Especial de Incentivo a Computadores para Uso Educacional (REICOMP).

²⁵⁶ Decree No. 5,138, of 12 July 2004 extended the period from 31 December 2005.

3.226. The INOVAR-AUTO was created with the purpose of supporting technological development, innovation, safety, environmental protection, energy efficiency, and the quality of vehicles and automotive parts. INOVAR-AUTO is set to expire on 31 December 2017; its beneficiaries are companies that produce or plan to produce in Brazil products classified under headings 87.01 to 87.06 of the Tax on Industrial Products-TIPI schedule, approved by Presidential Decree No. 7,819 of 3 October 2012, or commercialize them. To benefit from INOVAR-AUTO a joint permit by the MDIC and the MCIT is required. This permit is contingent upon meeting energy efficiency standards for the vehicles produced or commercialized and the commitment to making R&D and infrastructure investments in Brazil, as well as participating in a nationwide vehicle labelling programme, except for diesel or semi-diesel vehicles. Permits have a 12-month validity and are renewable for 12-month periods. Approved companies may benefit from IPI credit for expenses on research, technological development, strategic inputs, tooling, engineering, and industrial technology. This credit is not subject to PIS/Pasep or COFINS contributions, nor must it be computed for income tax purposes.

3.227. Law No. 12,715 also created the REPNBL-Redes for deployment of new projects, or expansion or modernization of telecommunications networks supporting broadband internet access, including satellite earth stations that contribute to the implementation of the national broadband programme (PNBL). The regulations for the implementation of this programme were still in drafting phase in late 2012 and are expected to be presented to the Ministry of Communications by 30 June 2013. Foreseen benefits include the suspension of the COFINS/PIS and the IPI on equipment acquired in the domestic market by REPNBL-Redes beneficiaries. Also under the programme, the bills for telecommunications services using radio frequencies between 451MHz and 458 MHz, and 461 MHz to 468 MHz, as well as through small satellite earth stations that contribute to the goals of the PNBL, are exempt from federal taxes until 31 December 2018. The gross revenues from retail sales of components and network equipment, handsets, and transceivers dedicated to telecommunications services provided by means of those radio frequencies or through small satellite earth stations are also exempt from federal taxes until 31 December 2018.

3.228. The REICOMP is aimed at increasing the use of computers in schools. The REICOMP's beneficiaries are enterprises that are manufacturers of computer equipment. The REICOMP suspends the IPI on the output of the industrial plant supplying inputs or parts for the products, as well as PIS and COFINS contributions on the sale of inputs and services linked to the production of computer equipment.

3.4.3 State-owned enterprises, privatization, and state-trading

3.229. Brazil reported ten state-trading enterprises in its 1996 full notification to WTO Members under Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII.²⁵⁷ Brazil made an updating notification in December 1997, announcing the removal of three companies from the list.²⁵⁸ As at August 2012, Brazil had issued no updates or new notifications under these provisions. In the context of the Working Party on State Trading Enterprises, Brazil received a question from a WTO Member concerning its overdue notifications, but had not yet responded as at the time of writing.²⁵⁹ For the present Review, the Brazilian authorities noted that the existing state-trading enterprises are: PETROBRAS; BR Distribuidora; COBRA; CONAB; CMB; and ELETROBRAS (Table 3.20).

3.230. The INB (*Indústrias Nucleares do Brasil*) was removed from the list of state-trading enterprises provided by the Brazilian authorities for the Review. The authorities indicated that it was removed from this list because all of its production is sold to ELETRONUCLEAR, a branch of ELETROBRAS. The company, which is virtually fully owned by the Government, operates in the uranium production chain. It holds the exclusive right to import and export nuclear material, in accordance with the state monopoly set by Law No. 4,118 of 27 August 1962.²⁶⁰

²⁵⁷ WTO document G/STR/N/1/BRA, 21 March 1996.

²⁵⁸ WTO document G/STR/N/3/BRA, 11 December 1997.

²⁵⁹ WTO document G/STR/Q1/BRA/7, 17 October 2011.

²⁶⁰ INB online information. Viewed at: <http://www.inb.gov.br/pt-br/WebForms/default.aspx>.

Table 3.20 Key features of Brazilian state-trading enterprises (STEs)

STE	State participation	Key features
PETROBRAS (<i>Petroleo Brasileiro</i>)	64% of voting shares (as of 2011)	Held a monopoly over the importation of petroleum for over three decades. ^a Since 1997, any company established in Brazil may import and export petroleum and derivatives, provided it has an authorization from the Government. However, PETROBRAS continues to hold a dominant position in hydrocarbons trading. In 2010, PETROBRAS traded 93.5% of the oil imported into Brazil. ^b
BR Distribuidora (<i>Petrobras Distribuidora</i>)	100% owned by PETROBRAS	Created in 1971 as a subsidiary of PETROBRAS. Responsible for production and commercialization of petroleum derivatives, including export and import activities. ^c No imports reported. Accounted for 25% of total exports of petroleum derivatives in 2012.
COBRA (<i>Computadores e Sistemas Brasileiros</i>)	99.95% of shares owned by Banco do Brasil (public bank with 50.73% of voting shares owned by the National Treasury)	Currently a subsidiary of BANCO DO BRASIL. Deals with production and development of information technology products, and provision of IT services. Imports digital equipment. Does not have any exclusive rights.
CONAB (<i>Companhia Nacional de Abastecimento</i>)	100%	Responsible for managing agricultural and supply policies with the objective of meeting the basic needs of the Brazilian society, while preserving market mechanisms. One of its functions is to coordinate policies regarding strategic buffer stocks of agricultural goods. May import certain food products under exceptional circumstances. ^d
CMB (<i>Casa da Moeda do Brasil</i>)	100%	In accordance with Law No. 5,895 of 19 June 1973, the CMB has exclusive rights over the manufacture of banknotes, coins, postal and fiscal stamps, and government bonds. Exports banknotes and other products, and imports of raw materials, equipment, and other inputs. ^e
ELETRONBRAS	52% of voting shares (as of 2010)	Exports and imports electricity. Private companies authorized by the ANEEL may also engage in these activities. ^f ELETRONBRAS does not have exclusive rights for imports and exports of electricity.

- a PETROBRAS online information. Viewed at: <http://www.petrobras.com.br/minisite/memoria/comercializacao/index.html>.
- b Petrobras online information. Viewed at: <http://www.petrobras.com.br/rs2010/pt/relatorio-de-sustentabilidade/desempenho-operacional/balanco-de-nossas-atividades/refino-e-comercializacao/>.
- c PETROBRAS online information. Viewed at: <http://www.petrobras.com.br/pt/quem-somos/perfil/principais-subsidiarias/>.
- d *Federal Official Gazette* of 26 August 1994; and WTO document G/STR/N/1/BRA, 21 March 1996.
- e WTO document G/STR/N/1/BRA, 21 March 1996.
- f Law No. 9,648 of 27 May 1998.

Source: WTO Secretariat, based on information provided by the Brazilian authorities.

3.231. Two state-owned enterprises involved in international trade activities were created during the review period. In 2008, the Government established the National Center for Advanced Research in Electronics (CEITEC). This company, which began its activities in 2009, produces and commercializes semiconductors for the domestic and international market. In August 2010, the Brazilian Congress authorized the creation of Pré-Sal Petróleo S.A. (PPSA), a fully state-owned company responsible for managing contracts under the production-sharing regime for oil and gas (Chapter 4.4). Among other activities to be performed on behalf of the Federal Government, the PPSA will have exclusive rights to manage and conclude contracts for the commercialization of hydrocarbons generated under the production-sharing regime.²⁶¹ In the exercise of this function, the PPSA has been charged with overseeing the implementation of Brazil's oil and gas commercialization policy. In the case of natural gas originating from production-sharing contracts, the Law determines that Brazil's commercialization policy must give priority to the supply of the domestic market.²⁶² At the time of writing, the PPSA was not yet in operation.

²⁶¹ Law No. 12,304 of 2 August 2010.

²⁶² Law No. 12,351 of 22 December 2010.

3.232. Since 1990, when the Brazilian Privatization Programme (PND) was put in place, 41 federal state-owned enterprises have been privatized. The latest major privatization occurred in 2005, when the Banco do Estado do Ceará S.A. was sold to private commercial bank BRADESCO.²⁶³

3.233. The Brazilian State still controls a relatively large number of companies involved in a wide range of activities, including electricity, hydrocarbons, port services, financial services, transportation, and health services. At end 2010, the Ministry of Planning's Department of Coordination and Control of State Enterprises (DEST) reported the existence of 122 majority government-owned enterprises at the federal level, up from 114 in 2008.²⁶⁴ An independent estimate conducted by the Brazilian press in 2011 indicated that the Federal Government controlled 276 companies through majority-voting capital ownership.²⁶⁵ In addition, a large number of sub-federal companies are owned by state and municipal governments. In the State of São Paulo alone, there were 19 government-owned companies in 2008, according to an IMF study.²⁶⁶

3.234. State-owned companies contribute significantly to employment and GDP in Brazil. In 2010, federal state-owned companies invested R\$83.9 billion, amounting to 2.3% of GDP.²⁶⁷ In the same year, the 122 companies controlled by the Federal Government employed approximately 497,000 people, a 16.9% increase over 2006.²⁶⁸

3.235. Nine of the ten federal state-owned companies reporting the largest net revenues in 2010 operated in the energy sector. Six of them were linked to PETROBRAS and three to ELETROBRAS. According to the DEST, 17 federal state-owned companies are dependent on Federal Treasury funding for their operations.

3.236. Since 2008, Congress has authorized the creation of at least six new state-controlled companies. In addition to CEITEC and PPSA, the new enterprises include: EBC, a public broadcasting company; EPL, a research and logistics company to promote high-speed railways services; ABGF, responsible for managing funds and guarantees; AMAZUL, which is developing nuclear technology and submarines for the Brazilian Navy; and EBSERH, which manages hospital services (Table 3.21).

Table 3.21 State-owned enterprises created since 2008

Legal basis	Ministry/ body responsible	Area of activity	Minimum State participation	Monopoly/exclusive rights
Centro Nacional de Tecnologia Eletrônica Avançada S.A. (CEITEC)				
Law No. 11,759 of 31 July 2008	Ministry of Science, Technology and Innovation	Research, production and commercialization of semiconductors	Must be majority government-owned	May receive government funds aimed at fostering technological development.
Empresa Brasil de Comunicação (EBC)				
Law No. 11,652 of 7 April 2008	Secretariat for Social Communication of the Presidency of the Republic	Provision of broadcasting services	51% of ordinary shares	Can be contracted by government bodies without prior tendering procedures.
Pré-Sal Petróleo S.A. (PPSA)				
Law No. 12,304 of 2 August 2010	Ministry of Mines and Energy	Management of contracts under the oil and gas production-sharing regime	100%	Exclusive rights to conclude contracts for the commercialization of hydrocarbons extracted under production-sharing.

²⁶³ DEST online information. Viewed at: http://www.planejamento.gov.br/secretarias/upload/Arquivos/dest/estatistica/UnivEst_privatizadas.pdf.

²⁶⁴ DEST (2011).

²⁶⁵ EPOCA online information. Viewed at: <http://editora.globo.com/premios/2011/download/finalistas/economia/284647.pdf>.

²⁶⁶ IMF (2008).

²⁶⁷ Ministry of Planning, Budget and Management online information. Viewed at: http://www.planejamento.gov.br/secretarias/upload/Arquivos/dest/serie_historica_120223.pdf; and IBGE online information. Viewed at: http://www.ibge.gov.br/home/presidencia/noticias/noticia_visualiza.php?id_noticia=1830&id_pagina=1.

²⁶⁸ DEST (2011).

Legal basis	Ministry/ body responsible	Area of activity	Minimum State participation	Monopoly/exclusive rights
Empresa de Planejamento e Logística S.A. (EPL)				
Law No. 12,404 of 4 May 2011, Provisional Measure No. 576 of 15 August 2012	Ministry of Transport	Planning and promotion of high-speed railway services	50% + 1 of ordinary shares	Can be contracted by government bodies without prior tendering procedures.
Agência Brasileira Gestora de Fundos e Garantias S.A. (ABGF)				
Law No. 12,712 of 30 August 2012	Ministry of Finance	Management of funds and guarantees	Must be majority government-owned	May be granted preferential treatment by insurance regulation authorities.
Amazônia Azul Tecnologias de Defesa S.A. (AMAZUL)				
Law No. 12,706 of 8 August 2012	Ministry of Defence	Development of technologies for the Brazilian Nuclear Program and the Navy	100%	May receive direct funds from the Navy Fund and the Federal Government.
Empresa Brasileira de Serviços Hospitalares (EBSERH)				
Law No. 12,550 of 15 December 2011	Ministry of Education	Management of federal university's hospitals service provision.	100%	Receives funds from the Federal Budget.

Source: WTO Secretariat, based on information provided by the Brazilian authorities.

3.4.4 Government Procurement

3.4.4.1 General features

3.237. In 2011, procurement expenditure by the Brazilian Federal Government totalled R\$72.7 billion (1.8% of GDP), up from R\$45.6 billion in 2007. Procurement data concerning most federal government bodies is monitored by the Ministry of Planning through the Integrated System for the Administration of General Services (SIASG). Procurement by government bodies registered under the SIASG totalled R\$51.8 billion in 2011, of which 50.2% for goods and 49.8% for services.²⁶⁹

3.238. Since Brazil operates a decentralized procurement system, data provided by the federal authorities does not include state and municipal governments. According to the OECD, by conservative estimates, overall government procurement expenditures amount to 8.7% of Brazil's GDP. The OECD calculates that the federal government contributes 1.6% of GDP; the remaining expenditures are incurred by state governments (1.5% of GDP), local governments (2.1%), and majority state-owned companies (3.2%).²⁷⁰

3.239. Brazil is neither a party nor an observer to the WTO Plurilateral Agreement on Government Procurement (GPA). The authorities indicated that Brazil has no plans to join the agreement. Under MERCOSUR, Brazil is engaged in negotiations on the Public Procurement Protocol, which is currently being revised (Chapter 2.5.2).²⁷¹

3.240. In 2011, the federal administration's procurement practices were assessed by the OECD in its Public Integrity Review. The study commended Brazil's progress in promoting transparency and risk-management throughout the procurement cycle, but suggested efforts could be made to increase professionalism among public officials and develop performance indicators.²⁷² The World Bank also conducted an assessment of Brazil's procurement regime in 2010, in which the country scored well in all covered areas. Nevertheless, the World Bank identified a number of areas for improvement, including issues concerning performance evaluation and appeal mechanisms.²⁷³

²⁶⁹ ComprasNet Online information. Viewed at: http://www.comprasnet.gov.br/ajuda/Brasil_Econ%C3%B4mico_Relatorio_Dados_Gerais_Janeiro_a_Dezembro2011.pdf.

²⁷⁰ OECD (2011).

²⁷¹ MERCOSUR online information. Viewed at: http://www.mercosur.int/innovaportal/file/4488/1/comunicado_conjunto_presidentes_ep.docx.

²⁷² OECD (2011).

²⁷³ World Bank (2010), *Assessment of the Procurement Systems of the Brazilian Federal Government and the Brazilian State of São Paulo*. Viewed at: [http://siteresources.worldbank.org/INTPROCUREMENT/Resources/278019-1311363656902/Brazil_OECD_Indicators_Proposed_Scores_June-07-2011\(editor+clean\).pdf](http://siteresources.worldbank.org/INTPROCUREMENT/Resources/278019-1311363656902/Brazil_OECD_Indicators_Proposed_Scores_June-07-2011(editor+clean).pdf).

3.241. According to Brazilian legislation, all procuring agencies must be audited by their respective controllers.²⁷⁴ Federal-level bodies are surveyed by the Federal Accounts Tribunal (TCU). Sub-federal bodies are subject to accounts tribunals established at the state or municipal level.²⁷⁵

3.4.4.2 Legislation

3.242. Brazil's main procurement law is Law No. 8,666 of 21 June 1993 (Tendering Law), as amended most recently by Law No. 12,349 of 15 December 2010.²⁷⁶ According to Article 37 of the Brazilian Constitution, the procurement of goods, services, and public works must be conducted through tendering procedures, unless otherwise specified in the law. Article 170 indicates that preferential treatment may only be granted to small enterprises established in Brazil. A constitutional provision allowing preferential treatment for national companies in public procurement was revoked by Constitutional Amendment No. 6 of 15 August 1995.

3.243. Brazil's 1993 Tendering Law indicates that in the unlikely case of equivalent offers, preference may be given to goods and services: (i) produced in Brazil; (ii) produced or supplied by Brazilian companies; (iii) produced or supplied by companies that invest in technology development in Brazil.²⁷⁷ Moreover, small enterprises controlled by a foreign holding company are not eligible for the preferential procurement rules provided by the General Law on Micro and Small Businesses (Supplementary Law No. 123 of 14 December 2006). This law allows for preferential measures that may include quotas, preference margins of up to 10%, as well as tendering procedures completely restricted to small companies.²⁷⁸

3.244. During the review period, the Government revised the procurement regime and introduced further changes that grant preferential treatment to goods and services produced in Brazil. Law No. 12,349 of 15 December 2010 significantly altered the procurement legislation, including the 1993 Tendering Law, to make the granting of preferences a permanent and important feature of the regime. Law No. 12,349 added a new objective to Brazil's procurement policy: in addition to seeking the most advantageous offer for the administration and ensuring equality under the law, public tendering must now promote national sustainable development. In order to achieve this goal, the law allows the Government to grant preferential margins of up to 25% for goods and services produced nationally and in accordance with Brazilian technical standards.

3.245. The preference margins for particular products, services, and sectors are determined by the newly created Interministerial Commission for Public Procurement (CI-CP).²⁷⁹ The definition of the actual margins must be based on studies that take into account a number of criteria, including job and income generation, effect on tax revenues, as well as technology development and innovation performed in Brazil.²⁸⁰ The criteria for conferring national status to products or services are set out by Ordinances; the suppliers' origin is not among these criteria. In tenders where the lowest-price offer does not meet the criteria, the preference margin is calculated on the basis of that offer's price.

3.246. As of September 2012, the Government had issued at least eight decrees establishing preference margins for certain national products in tendering procedures (Table 3.22). The measures fix margins ranging from 8% to 25%, and cover goods including textiles, apparel, footwear, backhoe loaders, motor graders, and pharmaceutical and medical products.

3.247. In principle, the above decrees apply only to procurement contracts established under the federal administration. However, state and municipal governments may also adopt the preference margins set by the Federal Government. The federal authorities indicated that they were not aware of any such case.

²⁷⁴ Article 113 of Law No. 8,666 of 21 June 1993.

²⁷⁵ TCU online information. Viewed at: http://portal2.tcu.gov.br/portal/page/portal/TCU/ouvidoria/perguntas_frequentes/fiscalizacao_prefeituradas.

²⁷⁶ This law establishes general rules on procurement and administrative contracts related to public works, services, including advertising, procurement, alienations, and rental services at the federal, state and municipal levels.

²⁷⁷ Law No. 8,666 of 21 June 1993.

²⁷⁸ See WTO (2009), Chapter III (4)(v).

²⁷⁹ Decree No. 7546 of 2 August 2011.

²⁸⁰ Law No. 12,349 of 15 December 2010.

Table 3.22 Decrees establishing preference margins for national products in public tendering

Legislation	Products covered	Preference margins
Decree No. 7,601 of 7 November 2011	Some textiles, apparel, and footwear	8% for all products listed in the decree
Decree No. 7,709 of 3 April 2012	Backhoe loaders and motor graders	15% for backhoe loaders and 18% for motor graders
Decree No. 7,713 of 3 April 2012	Pharmaceutical products	8% to 20%, depending on the product
Decree No. 7,756 of 14 June 2012	Textiles, apparel, and footwear	20% for all products listed in the decree
Decree No. 7,767 of 27 June 2012	Medical products	8% to 25% depending on the product
Decree No. 7,810 of 20 September 2012	Textiles, apparel, and footwear	20% for all products listed in the decree
Decree No. 7,756 of 14 June 2012	Locomotives, wagons, trains, and car parts for railways	20% for all products listed in the decree
Decree No. 7,816 of 28 September 2012	Some road tractors, transport trucks, fighting vehicles, road equipment, trailers, and ambulances	14% to 17% depending on the product

Source: WTO Secretariat, based on information provided by the Brazilian authorities.

3.248. In the context of public tendering, national products are defined as those produced in accordance with a Basic Productive Process (PPB) or with rules of origin established by the Federal Government, which must follow MERCOSUR minimum standards.²⁸¹ The term national services apply to services supplied inside the Brazilian territory, under conditions to be determined by the Government.²⁸² Under Law No. 12,349 of 15 December 2010 preference margins may be totally or partially extended to products and services coming from MERCOSUR countries in the future.

3.249. In addition to allowing for price preferences in certain areas, Law No. 12,349 of 15 December 2010 also allows for procurement contracts in the technology and communication sector to be restricted to goods and services developed in Brazil and produced in accordance with the PPB. The restriction may be applied to contracts aiming at the implementation, maintenance, and development of information and communication systems defined as strategic by the Government. Currently, the measure may be used in tendering procedures under the National Broadband Programme (PNBL), which was established as strategic under Decree No. 7,175 of 12 May 2010.²⁸³

3.250. According to the Tendering Law of 1993, public entities may use five procurement modalities: open tendering (*concorrência*); price consultation (*tomada de preços*); invitation (*convite*); competition (*concurso*); and public auction (*leilão*). Law No. 10,520 of 17 July 2002 introduced the reverse auction (*pregão*) modality, which may be carried out in electronic and/or onsite formats. In general, the main factors for determining the modality to be employed are the value and the nature of the object being tendered.²⁸⁴ In practice, reverse auction is the preferred method for government procurement; its use was made compulsory for tendering of common goods and services by Decree No. 5,504 of 5 August 2005.

3.251. Generally, tendering procedures may be designated as national or international at the Government's discretion. However, procurement contracts funded by international institutions or cooperation agencies are necessarily set as international tendering and are subject to the rules of the financing institution. To take part in national tendering, foreign suppliers must be legally established in Brazil.²⁸⁵ In the case of international tendering, foreign companies must have legal representation in Brazil or be associated with a Brazilian firm.²⁸⁶ In 2011, international tendering

²⁸¹ For more details on the PPB see Chapter 3.4.2.1.

²⁸² Decree No. 7,546 of 2 August 2011.

²⁸³ Ministry of Communication online information. Viewed at: <http://www.mc.gov.br/component/content/article/36-noticias/23206-telebras-assina-mais-um-contrato-para-pnbl>.

²⁸⁴ The criteria to determine procurement methods are set out in Articles 22 and 23 of Law No. 8,666 of 21 June 1993, as well as Article 1 of Law No. 10,520 of 17 July 2002.

²⁸⁵ Ministry of Finance online information. Viewed at: http://www.tesouro.fazenda.gov.br/siafi/download/projetos_externos/Licitacoes_MP.pdf.

²⁸⁶ WTO (2009), Chapter III (4) (v).

accounted for 0.16% of the total value of procurement contracts signed by the Federal Government.²⁸⁷

3.252. Articles 24 and 25 of the 1993 Tendering Law foresee several situations in which the requirement to tender may be waived (*dispensa e inexigibilidade*). These include contracts with a low value, cases of emergencies, natural disasters, wars, and other exceptional circumstances.²⁸⁸

3.253. According to the Ministry of Planning, 37% of the total value negotiated in federal administration procurement contracts did not require tendering in 2011. Reverse auction was the main method employed in that year, accounting for 49.5% of the value of contracts. Open tendering and price consultations represented 12.5% and 0.9% of tendering respectively, while invitation and contest accounted for less than 0.1%. No figures with regard to public auction were provided for 2011; the authorities indicated that this procedure is used for sales of public goods and hence there is no obligation to register them in the Federal System of Statistics of Public Procurement.²⁸⁹

3.254. Brazil has made significant progress in modernizing government procurement through the use of information technology. In 2011, nearly 96% of federal government reverse auctions were conducted electronically. In addition, substantial information on federal government procurement is available online to any interested party at the ComprasNet website, the Transparency Portal (*Portal da Transparência*) and relevant agencies' websites. The law requires both federal and sub-federal governments to publish tenders in advance in their respective *Official Gazettes* and, in some cases, in a widely circulated newspaper.²⁹⁰ In its 2010 assessment study, the World Bank rated access to information as one of the strongest components of federal procurement and noted that the mainstreaming of reverse auctions has helped enhance the efficiency and transparency of Brazil's procurement system.²⁹¹

3.255. Bidders and other interested parties may challenge a published award decision within two to five days, depending on the procurement modality.²⁹² Complaints are first reviewed by the authorities that conducted the bidding process, which must decide on the protest within five days. Once the means of administrative recourse are exhausted, bidders may appeal to the Federal Accounts Tribunal (TCU), whose decisions are binding, although they may be appealed to the judiciary. TCU decisions are not subject to specific time frames, which may cause delays in the procurement process.²⁹³

3.256. Majority state-owned companies must also abide by the 1993 Tendering Law. However, they are exempt from the requirement to tender for contracts concerning their core business activities.²⁹⁴ In addition, PETROBRAS is subject to a simplified procurement regime, which is governed by a Presidential Decree rather than the Tendering Law.²⁹⁵ Decree No. 2,745 of 24 August 2008 allows PETROBRAS more flexibility when determining the modality to be used in tendering procedures. Furthermore, procurement by PETROBRAS is, in practice, affected by local-content requirements governing the oil and gas industry (Chapter 4.4.2).

3.257. During the review period, Brazil conducted two wind-energy auctions (in 2009 and 2010) as part of its Alternative Sources of Electric Energy Programme (PROINFA). Under auction terms, bidding projects were not allowed to use imported turbines with nominal capacity under

²⁸⁷ ComprasNet Online information. Viewed at: http://www.comprasnet.gov.br/ajuda/Brasil_Econ%C3%B4mico_Relatorio_Dados_Gerais_Janeiro_a_Dezembro2011.pdf.

²⁸⁸ See WTO (2009) for more details on exceptions to the obligation of tendering.

²⁸⁹ ComprasNet Online information. Viewed at: http://www.comprasnet.gov.br/ajuda/Brasil_Econ%C3%B4mico_Relatorio_Dados_Gerais_Janeiro_a_Dezembro2011.pdf.

²⁹⁰ Transparency issues are regulated by Articles 20 and 21 of Law No. 8,666 of 21 June 1993, and Article 4 of Law No. 10,520 of 17 July 2002.

²⁹¹ World Bank (2010).

²⁹² Article 109 of Law No. 8,666 of 21 June 1993.

²⁹³ World Bank (2010).

²⁹⁴ Public Ministry of Accounts of the Federal District online information. Viewed at: <http://www.tc.df.gov.br/MpjTcdf/noticias1.php?ACAO=ABRIRNOTICIA&ORDEM=160&PAGINA=>

²⁹⁵ PETROBRAS online information. Viewed at: <http://fatosedados.blogspot.com.br/2009/06/11/>.

1,500 kw.²⁹⁶ The authorities indicated that this was to prevent the purchase of turbines with outdated technology.

3.258. In August 2011, the Government established a special procurement regime for international sporting events to be hosted by Brazil, including the 2014 FIFA World Cup and the 2016 Olympic Games in Rio de Janeiro. The objective of the regime is to increase the efficiency of public procurement and facilitate the organization of these events. The regime is regulated by Law No. 12,462 of 4 August 2011, which states that tendering should be conducted in line with the principle of national sustainable development. The law determines that bidders should strive as much as possible to include local labour force, technology and materials when calculating their price offers. There are no specific preference margins for national suppliers under Law No. 12,462.

3.4.5 Intellectual property rights

3.4.5.1 General features

3.259. Brazil is a net importer of IPR-intensive goods; its royalties and licence fee balance showed a deficit of US\$2.71 billion in 2011 (Table 3.23). Cumulative credits in the 2007-September 2012 period were US\$2.83 billion, while debits totalled US\$16.35 billion, with a deficit of US\$13.52 billion.²⁹⁷ There are no restrictions on royalty payments.

Table 3.23 Balance of royalties and incomes, 2007-11

US\$ million	2007	2008	2009	2010	2011
Royalties and licences (expenses)	-2,259.43	-2,697.17	-2,512.04	-2,850.25	-3,301.09
Royalties and licences (income)	319.41	465.44	43.81	397.21	590.77
Royalties and licences (net results)	-1,940.02	-2,231.73	-2,078.24	-2,453.04	-2,710.32

Source: Central Bank of Brazil.

3.260. Royalty revenue totalled US\$3.15 billion in 2008-11, while expenses totalled US\$10.27 billion (Table 3.24). Contracts for industrial property rights (patents, industrial designs, use of trademarks), technology transfer and technical assistance must be registered by the National Industrial Property Institute (INPI) in order to have effect. In these contracts the economic conditions of the transaction and its technical aspects must be explicitly spelled out, as well as its subject, royalties, and periods of application and execution.

Table 3.24 Balance of licensing contracts, 2008-11

US\$ million	2008		2009		2010		2011	
Use of trademarks	49.3	169.8	39.5	172.7	66.6	282.7	94.1	340.2
Patent exploitation	12.8	186.8	1.2	184.2	6.9	211.7	9.7	298.2
Technology supply	46.6	1,363.3	74.6	1,277.3	63.8	1,310.3	122.0	1,378.3
Technical assistance services	611.0	592.2	689.6	536.3	605.2	546.9	653.1	790.7
Franchising	706.0	115.8	2.8	105.2	821.0	192.5	1.2	219.2
Total	720.3	2,427.8	807.7	2,275.8	1,573.5	2,544.1	880.2	3,026.5

Source: Central Bank of Brazil.

3.261. In the context of this review, the authorities noted that Brazil and the World Intellectual Property Organization (WIPO) have an ongoing "country study" which analyses the relationship between intellectual property protection and various aspects of economic performance. The study focuses on domestic innovation, the international and national diffusion of knowledge, and institutional features of the IP system and its economic implications. The project is being implemented by the Brazilian Institute of Applied Economic Research (IPEA) and the WIPO Office of the Chief Economist.

²⁹⁶ ANEEL online information. Viewed at: http://www.aneel.gov.br/aplicacoes/editais_geracao/edital_geracao.cfm.

²⁹⁷ Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/>.

3.262. Brazil is a member of the World Intellectual Property Organization (WIPO) and a number of WIPO-managed intellectual property rights (IPRs) treaties.²⁹⁸ Brazil has also made IPR commitments under multilateral and regional treaties entered into alone or as a MERCOSUR party.²⁹⁹ Brazil has not joined any WIPO-administered IPR treaties since its previous TPR. At the multilateral level, however, Brazil joined the Protocol (III) additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem, which it ratified on 28 February 2010.

3.263. The TRIPS Agreement is part of Brazil's domestic law as it was incorporated into Brazilian legislation in December 1994.³⁰⁰ Brazil notified its main intellectual property laws and regulations to the TRIPS Council in 2000, and 2001.³⁰¹ Brazil's IPR legislation was reviewed by the TRIPS Council in late 2001.³⁰² During the review period Brazil made no notifications with respect to changes in legislation. Law No 11,484 of 31 May 2007 on Integrated Circuit Topographies had not been notified to the WTO as of December 2012. In the context of this Review, the Brazilian authorities noted that they were working on an updated notification of their legislation to be submitted to the TRIPS Council.

3.264. Discussions regarding IPRs within MERCOSUR take place in Subgroup No. 7, which deals with subjects related to industrial policies aimed at contributing to the integration of industries and a common industrial policy.³⁰³ The Brazilian authorities have noted that, despite debates in recent years, no harmonization efforts have ensued.

3.265. Considerations of intellectual property are included in the *Plano Brasil Maior* featuring measures such as tax relief on investments, an increase in the availability of credit, and improvements to the regulatory framework for innovation. The aims are: to reduce costs and stimulate the productivity of companies; to foster foreign trade by facilitating credit and increasing access to technologies and markets; to attract investments in R&D; to improve the business environment by simplifying procedures for registration, legalization, and taxation. The Plan sets a number of targets including, in IPR/technology: to increase private companies' investments in R&D from 0.59% of GDP in 2010, to 0.90% in 2014; and to increase the knowledge-intensive industry's share of total value added in the industrial sector, from 30.1% in 2009 to 31.5% in 2014. The authorities noted that the Brazilian Government has also been investing in the consolidation of the intellectual property system to contribute to the expansion of investments in R&D by providing legal certainty for inventors.

3.4.5.2 Legal and institutional framework

3.4.5.2.1 General laws

3.266. Brazil's legislation covers all the major aspects mentioned in the TRIPS Agreement (Table 3.25). In some of these, including copyright, Brazil grants rights that exceed the minimum terms laid down in the Agreement. There have been no substantial modifications on intellectual property legislation since 2009.

²⁹⁸ WIPO-administered treaties and entry into force: Nairobi Treaty on the Protection of the Olympic Symbol (10 August 1984); Patent Cooperation Treaty (9 April 1978); Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (28 November 1975); Strasbourg Agreement Concerning the International Patent Classification (7 October 1975); Convention Establishing the World Intellectual Property Organization (20 March 1975); Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (29 September 1965); Berne Convention for the Protection of Literary and Artistic Works (9 February 1922); Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (3 October 1896); and Paris Convention for the Protection of Industrial Property (7 July 1884).

²⁹⁹ OAS Foreign Trade Information System (SICE) online information. Viewed at: <http://www.sice.org/Trade/mrcsrac/>.

³⁰⁰ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

³⁰¹ WTO documents IP/N/6/BRA/1, 24 March 2000; IP/N/1/BRA/2, 10 April 2000; IP/N/1/BRA/C/1, IP/N/1/BRA/C/2, IP/N/1/BRA/I/1, IP/N/1/BRA/P/1, IP/N/1/BRA/P/3, and IP/N/1/BRA/P/4, 19 September 2000; IP/N/1/BRA/I/1/Add.1, 4 October 2001; and IP/N/REV.6/Add.1, 24 July 2002.

³⁰² WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

³⁰³ For further information on the Subgroups, see: http://www.mercosur.int/msweb/00_Dependientes/SGT7/PT/index.htm.

Table 3.25 Overview of IPR protection, 2012

Subject/Law	Coverage	Duration	Exclusions and limitations	Remarks
Patents				
Industrial Property Law No. 9,279 of 14 May 1996. Law No. 10,196 of 2001. Decree No. 4,830/2003	Any invention that is new and involves an inventive step, is capable of industrial application and is capable of industrial application.	20 years from date of filing.	Substances, materials, mixtures or products of any kind, and processes for their modification, when resulting from the transformation of the atomic nucleus; biological processes and natural living material; computer programmes per se. Compulsory licences may be granted in cases of anti-competitive behaviour, national emergency or in public interest.	Law No. 10,196 of 2001: prior approval from the Brazilian Health Surveillance Agency (ANVISA) for granting patents for medicines and its processes. Decree No. 4,830/2003 amends Decree No. 3,201 of 6 October 1999, which provides for the grant of compulsory licences.
Industrial designs				
Industrial Property Law, Resolution No. 076 of 2000. Normative Act No. 161 of 2002	New ornamental form of an object or new ornamental arrangement of lines or colours whose visual configuration can be used in manufacture.	10 years from date of filing; may be extended for 3 successive 5-years periods.	Designs contrary to morals and good customs, or of an ordinary shape of an object determined essentially by technical or functional considerations.	Resolution No. 076/2000 provides for the adoption of the international classification system. Normative Act No. 161 of 2002 establishes the conditions for the registration of industrial designs.
Utility models				
Industrial Property Law No. 9,279 of 14 May 1996	New invention in a new shape or arrangement, capable of industrial application.	15 years from date of filing.	Substances, materials, mixtures or products of any kind, and processes for their modification, when resulting from the transformation of the atomic nucleus; biological processes and natural living material.	
Trade marks				
Industrial Property Law, Normative Acts No. 150, 151 of 1999. Resolutions No. 121 of 2005 and No. 260 of 2010	Visually perspective sign that distinguishes or certifies a good or service.	10 years, renewable for equal successive periods.	Crests, armorial bearings, emblems, flags, national and international monuments.	Normative Act No. 110 of 2004 establishes rules for the recognition of famous marks.
Geographic indications				
Industrial Property Law, Normative Act No. 075 of 2000	Name of a country or region used to designate a service or good whose characteristics or reputation are derived from the country or region.	Undetermined.	Use restricted to the goods or service providers from the locality.	Normative Act No. 075 of 2000 establishes conditions for the registration of geographic indications.
Copyright and related rights				
Law No. 9,610 of 19 February 1998. Law No. 10,695 of July 2003	Text of literary, scientific or artistic works; musical compositions, audiovisual works, drawings, paintings, photographic works. No registration necessary.	Life of the author plus 70 years as the general term of protection; term varies depending on the type or nature of the work.	No authorization required where the name of the author is cited in the reproduction of current affairs, or the reproduction in one copy of short extracts from a work for the private use of the copier, provided that it is without intent for financial gain.	Law No. 10,695 amends the Criminal Code to include stiffer sanctions for copyright violations and to improve criminal procedures.
Computer software				
Law No. 9,609 of 19 February 1998. Normative Acts Nos. 58 of 1998 and 278 of 2011	Information in natural language or encoded, used in automatic machines for the manipulation of data.	50 years from 1 January of the year following publication or, if this is unavailable, its creation.		Normative Acts Nos. 58 of 1998 and 278 of 2011 establish the requirements for the registration of computer software.

Subject/Law	Coverage	Duration	Exclusions and limitations	Remarks
New plant varieties				
Plant Variety Protection Law No. 9,456 of 25 April 1997	New plant varieties and derived plant varieties of any genus or species.	15 years from the grant of certificate, except for vines, fruit trees, forest trees, and ornamental trees, including, the mother graft thereof, for which the term is 18 years.	May be subject to compulsory licences for three-year periods, subject to renewal.	Guarantees the property right to any natural or legal person obtaining a new plant variety or essentially derived variety.
Layout designs of integrated circuits				
Law No. 11,484 of 31 May 2007. Normative Act No. 273 of 2011	Protection of layout of integrated circuits	10 years from application.		Normative Act No. 273 of 2011 establishes the requirements for the registration of the layout design of integrated circuits.
Undisclosed information				
Law No. 10, 603 of 17 December 2002. Industrial Property Law No. 9,279 of 14 May 1996	Undisclosed information related to pharmaceutical products for veterinary use, fertilizers, pesticides, their components and related products; protection against unfair commercial use of undisclosed information.	10 years for products that use new chemical or biological entities, five years for all others.	Authorized use by ANVISA.	Industrial Property Law No. 9,279 of 14 May 1996 protects against unfair commercial use, information and data presented to the authorities for commercial approval

Source: WTO Secretariat, based on information provided by the INPI, WIPO, and WTO documents.

3.4.5.2.2 Industrial property

3.4.5.2.2.1 Main bodies

3.267. The National Industrial Property Institute (INPI), an autonomous federal agency under the MDIC, is responsible for implementing rules regulating industrial property. The INPI also provides advice regarding the advisability of signing, ratifying, and terminating conventions, treaties, accords, and agreements on industrial property. It is responsible for granting and registering patents (inventions and utility models), industrial designs, marks, geographical indications, computer programs, and technology transfer or franchise contracts.³⁰⁴ Decree No. 7,356 of 12 November 2010 reorganized the INPI, following which the INPI reorganized its technical divisions, increasing the number of specialized divisions in order to provide a more balanced division between examiners, and to better control quality and the methods.

3.268. In recent years, the INPI has worked with other industrial property offices in developing and consolidating PROSUR, a project focused on cooperation between industrial property offices in Argentina, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Suriname, and Uruguay. PROSUR aims at: (i) establishing a forum for dialogue between offices; (ii) creating a common portal in order to offer a set of services for the participating countries, such as centralized search in interconnected databases; (iii) database interconnection; and (iv) collaborative examination of patent applications. The industrial property offices of PROSUR are also considering the possibility of collaboration in the examination of trademark applications. PROSUR's current institutional framework is a cooperation agreement between the participating industrial property offices signed in Santiago, Chile, on 5 July 2012. PROSUR does not aim at this stage to harmonize procedures, but only to deepen cooperation among offices while maintaining their autonomy.

3.4.5.2.2.2 Patents and industrial designs

3.269. Patent and industrial design regulations are contained in Industrial Property Law No. 9,279 of 14 May 1996, Law No. 10,196 of 2001, and Decree No. 4,830/2003. The patent protection term is the standard 20 years from the date of filing. Patentable matter includes any invention that is

³⁰⁴ INPI online information. Viewed at: http://www.inpi.gov.br/inpi/conheca_inpi.htm.

new and involves an inventive step, and is capable of industrial application. Brazil maintains an archive of international patents (*Banco de Patentes do INPI*), which contains complete technical descriptions and is open for consultation.

3.270. All patent applications are filed in one of INPI's offices in Brazil or by postal service. When the "e-patentes" system (see below) is fully functional, it will also be possible to file patent applications online. The first phase is the formal analysis, when the INPI has 60 days to examine whether the application includes all the required documents. If necessary, the INPI may demand that the applicant comply with the formal requirements within 30 days. After this initial step, the application is kept confidential until 18 months from the date of deposit or the date of priority, when it is published in the *Industrial Property Gazette (Revista da Propriedade Industrial)*. The application may be published earlier if the applicant so chooses. In the 24th month from the deposit of the application, the applicant must start paying an annual fee.

3.271. Technical examination of the patent criteria must be requested by the applicant or by an interested third party no earlier than 60 days after the application is published and within 36 months from the date of deposit or the date of priority, failing which the process stops. Within 60 days after a technical examination request, interested parties may present an opposition to the grant of the patent. Under INPI Resolution No. 191/08, priority for the examination of an application may be requested in certain cases (see below). The examiner may issue further requirements, which must be addressed within 90 days. After the search is accomplished and examination report prepared, the examiner issues the decision regarding the patentability of the application under Brazilian Law. The patent is granted and the letters patent is issued after the application is considered patentable and the applicant pays the required taxes. The patent is considered granted on the day of publication of the act in the *INPI Gazette*. The "e-patentes" system allows the publication of the technical examination and the letters patent issued on the INPI website.

3.272. Decisions by the INPI may be challenged by the applicant or by a third party through administrative or judicial procedures. The applicant must initiate administrative procedures within 60 days of publication of the decision by the examiner; procedures that are initiated *ex officio* or by interested third parties, must start within six months after the grant of the patent. Judicial procedures for nullification may be initiated *ex officio* or by interested third parties any time.

3.273. The time needed by the INPI to analyse patent applications depends on the field of technology. In 2012, the average pendency time for patents was five years. In order to reduce the backlog and cut pendency time, the INPI is implementing a series of actions specific to patents. In this respect, at the end of 2010, the INPI launched the "Training Programme of Patent Examiners". The authorities indicated that, during the training, new examiners carry out the technical examination of applications filed at the INPI, under the supervision of experienced examiners.

3.274. In the context of this Review, the authorities noted that all the procedures, standards, and guidelines related to the technical examination of patent applications are currently being updated by the INPI. The INPI is also revising other procedures in order to standardize managerial methods of patent examiners.

3.275. Applications were not yet fully processed electronically as of March 2013, but the INPI has developed a system of electronic processing of patent applications denominated "e-Patentes", with the purpose of optimizing and modernizing the entire flow of a patent application, including the issuance of letters patent. Also, a system for the electronic filing of patent applications became operational in March 2013. As of March 2011, the "e-patentes" system allows online access to the opinion issued by the technical divisions as well as to a granted letters patent, simultaneously with its publication in the *Industrial Property Gazette*. The INPI has also developed a number of management systems, including: the Integrated Industrial Property System (SINPI), developed for the administrative management of applications; the SISCAP, an electronic system for managing the workflow of the examination process, through which it is possible to verify the productivity of examiners; the Administrative SISCAP, an electronic system for monitoring administrative procedures, which automates administrative tasks and monitors the workflow. To speed up the classification process of patent applications, the INPI has put in place automated systems, including systems for the pre-classification of patent applications, their reclassification (IPCRclass) to meet the frequent adaptations of the International Patent Classification (IPC) system, and their translation (IPC Translate).

3.276. Other improvements introduced by the INPI to enhance the transparency of the process, include the establishment of an electronic platform for publishing, on the internet, technical opinions issued by patent examiners regarding the patentability of an application, as well as its search report (e-*parecer*); the creation of an electronic platform providing online access to letters patents (e-*carta-patente*); devising an electronic platform for the deposit and technical examination of applications containing biological sequences (SISBIOLIST); and the introduction of a system for automatic retrieval of data from PCT/WIPO and storage in the INPI's internal system (e-*Patentes – PCT*).

3.277. In April 2012, the INPI started the Pilot Programme of Priority Examination of "Green Patents", which fast-tracks patent applications filed in Brazil via the Paris Convention for the Protection of Industrial Property, with an application date from 2 January 2011, by residents or non-residents. The number of applications is limited to 500, based on a first-requests-considered-apt criterion determined after an analysis by a Technical Commission. The Programme was scheduled to last one year but was extended. The programme of fast-tracks patent applications related to: (i) alternative energy; (ii) transport; (iii) preservation of energy; (iv) waste management; and (v) agriculture.

3.278. Other fast-track actions include the introduction of a "Preliminary Opinion on Patentability" service, through which the INPI provides an informative report, issued by a patent examiner, with an opinion on the patentability of a patent application, giving the applicant a more expedited search and preliminary opinion compared with a regular application. This service is available for any patent application where the INPI is the office of first filing. Also, INPI Resolution No. 191/2008 provides for the request of priority of examination of patent applications: (a) when the applicant is aged 60 or over, the subject matter of the application is used or made by unauthorized third parties, or the grant of the patent is a requirement for obtaining funds from official credit institutions; and (b) the application is made by third parties who are being accused by the applicant of using or making the subject matter of the patent application without authorization. In addition, patent applications with subject matter declared by the Executive Branch to be of public interest or of national emergency have priority, as well as applications considered by the Ministry of Health to include subject matter of medicines purchased regularly by the Unified Health System.

3.279. The number of patents granted annually has increased significantly since 2007, when 1,855 patents were granted. More than double that number of patents were granted in 2011 (Table 3.26).

Table 3.26 Patent applications and decisions, 2005-14

Year	Applications	Final decisions	Letters patents	Examiners
2005	24,096	10,759	2,833	122
2006	25,406	10,491	2,785	201
2007	24,685	15,634	1,855	189
2008	27,050	15,870	2,824	182
2009	25,951	16,012	3,153	295
2010	28,058	20,040	3,620	287
2011	31,897	29,540	3,806	270
2012 (projected)	35,000	32,000	4,500	365
2013 (projected)	42,000	40,000	7,500	500
2014 (projected)	50,000	50,000	10,000	700

Source: INPI.

3.280. According to available data, less than 2.5% of the INPI's decisions on patent applications are challenged in courts. The rate of success of the challenged decisions is of 1.5% of all patent applications.

3.281. Parallel imports of goods embodying IPRs covered by the Industrial Property Law are not allowed. Where the characteristics of a good are altered in such a way as to jeopardize or to make impossible its identification, it may be seized *ex officio* by customs authorities, both in case of importation or exportation. The holder of an intellectual property right of any type may request a

judicial order for the suspension by the customs authorities of the release of goods into free circulation.

3.282. Chapter 7, title I of Law No. 9,279 of 14 May 1996 provides for the granting of compulsory licences. In the case of patents, compulsory licences may be granted for reasons of national emergencies, to meet the public interest, in cases of abuse of rights or of economic power, for non-commercial use in Brazil, and for failure to meet the needs of the market. Decrees Nos. 4,830 of 4 September 2003 and 3,201 of 26 October 1999 regulate the granting of compulsory licences in cases of national emergency and public interest. If a compulsory licence is granted in the public interest, it must be for non-commercial public use.³⁰⁵ No compulsory licences have been granted since 2007, when the Brazilian Government granted a compulsory licence for the relevant Efavirenz's patents, a life-saving medicine for AIDS patients. These licences were determined by Decree No. 6,108 of 4 May 2007 and relate to patents PI 1100250-6 and PI 96088839-7. Decree No. 7,723 of 4 May 2012 further extended Efavirenz's patent compulsory licensing for public non-economic purposes. The compulsory licence was extended for another five years, up to the expiry of the patents.

3.283. Compulsory licensing of patents may also be used as a remedy for anti-competitive conduct, as determined by the CADE. The Brazilian Antitrust Law No. 12,529 of 30 November 2011 improved the treatment of intellectual property in competition issues through a provision indicating that to exercise or to exploit abusively industrial property, intellectual property, and technology or trademark rights constitutes a violation of the economic order. The previous law, No. 8,884/1994, contained looser language indicating only that "to take possession of or bar the use of industrial or intellectual property rights or technology" would be deemed a violation of the economic order. Similarly to the previous law, Law No. 12,529/2011 lists sanctions that may include a recommendation to the competent public authorities to grant a compulsory licence for the intellectual property right held by the infringer, when the infringement is related to the use of this right. Another innovation introduced by the new Antitrust Law is an explicit provision including compulsory licensing of IPRs as one of the conditions for approval of a merger that may be ruled by the CADE's plenary tribunal.

3.284. In the context of this Review, the authorities indicated that, to date, the CADE has not ruled for the compulsory licensing of intellectual property rights. However, one merger case during the review period involved licensing that associated dominance in relevant medicine markets to patent rights. Although the CADE did not set a compulsory licence condition for the merger, the case resulted in an agreement to implement a voluntary medicine patent licence celebrated ("*Termo de Compromisso de Desempenho*" - TCD, a legal concept present in Law No. 8,884/1994). The case involved the global acquisition of all Schering-Plough shares by Merck (Case AC No. 08012.002252/2009-92); it started in March 2009 and was concluded in October 2010.

3.285. In October 2010, the CADE approved the operation, conditioning it to the celebration of a TCD, to guarantee the presence of at least one competitor in the production/sale of products belonging to Merck's therapeutical subdivisions C10A9 and C10C0 categories in the Brazilian market. According to the TCD, the merging parties have to require, simultaneously, a register at ANVISA, in order to convert their previous distribution relation into a product licensing relation, in which third parties will be able to, as soon as they have proper registers and authorizations from ANVISA, commercialize the products with their trademark, package and other characteristics. This was the first time a restriction was imposed on patent exploitation in a merger in Brazil. The authorities noted that, while the case was essentially about dominance in relevant medicine markets, the decision was not strictly focused on IPRs, since the TCD signed is not on pharmaceutical patents licensing, but exclusive distribution contracts for products considered to be critical. In this respect, the TCD sets an exclusive distribution transition period to ensure the entrance of a competitor on the market, as it is considered that the patent licensing alone would not necessarily result in the entrance of a new manufacturer in the market.

3.286. Under Brazilian law, a patent will be forfeited, ex officio or at the request of any party having a legitimate interest, if, after two years since the granting of the first compulsory licence,

³⁰⁵ INPI online information. Viewed at: <http://www.inpi.gov.br/legislacao/conteudo/dec4830.htm>.

abuse or disuse has not been remedied, unless there are justifiable reasons. Industrial design applications are examined only in case of challenges.³⁰⁶

3.287. Law No. 10,196 of 16 February 2001 amended Law No. 9,279 of 1996, *inter alia*, with respect to the procedures for the patentability of pharmaceutical products. The grant of patents for pharmaceutical products or processes must receive the prior approval of the Brazilian Sanitary Surveillance Agency (ANVISA). Ordinance MS/MDIC/AGU No. 1,956/2011 created an Interministerial Working Group formed by representatives from the Ministry of Health, the Ministry of Development, Industry and Foreign Trade, the Office of the Attorney-General of the Union, ANVISA, and the INPI. The task of the working group was to analyse and suggest criteria, mechanisms, procedures, and obligations in order to coordinate the works of ANVISA and INPI in order to comply with Article 229-C of Law No. 9,279/1996. The final report, in Interministerial Ordinance No. 1,065/2012, confirms the need for ANVISA to undertake an analysis prior to the one carried out by the INPI, to evaluate the impact of the pharmaceutical product or process on public health. The report confirmed the process for the evaluation of patent applications for pharmaceutical products: (i) ANVISA carries out the technical examination of patent applications related to pharmaceutical products or processes received from the INPI; (ii) ANVISA publishes its decision regarding its prior consent; and (iii) submits it to the INPI. The INPI's role consists in: (i) formal examination of the documents received from the patent applicant; (ii) identification and remittance to ANVISA of applications related to pharmaceutical products or processes; (iii) technical examination of applications that receive ANVISA prior consent; and (iv) publication of the final decision regarding the patent application.

3.288. Industrial designs are protected under the Industrial Property Law, Resolution No. 076 of 2000, and Normative Act No. 161 of 2002. The term of protections is ten years from the date of filing, which may be extended for three successive five-year periods. Industrial design applications are subject to a formal preliminary examination and, if in order, are officially recorded; otherwise, the INPI may formulate demands to be complied with within five days. In both cases, the filing date is considered to be the date the application was first submitted. Applications must refer to a single object, with up to 20 variations, provided that such variations are intended for the same purpose and have the same main distinguishing characteristic. Once the application is filed and all the formal requirements are met, the INPI automatically publishes it and simultaneously grants the registration. Applicants may request, at the time of filing, that the application is kept secret for 180 days, after which it is processed. There is no compulsory licensing of industrial designs.³⁰⁷ Industrial design registrations increased from 5,335 in 2007 to 6,791 in 2011.

3.289. Trademark registrations increased substantially between 2003 and 2007, from 20,193 to 75,710.³⁰⁸ Brazil adheres to the Convention on the Protection of New Varieties of Plants (UPOV).³⁰⁹ A protected plant variety may be the object of a compulsory licence. The INPI has a division that covers the protection of geographical indications and has already approved protection for some geographical indications, such as French Cognac, Champagne and *região dos vinhos verdes* (green wine) of Portugal.³¹⁰

3.4.5.2.3 Trademarks

3.290. The Brazilian trademark protection system is based on the Industry Property Law, Resolutions No. 121 of 2005, No. 260 of 2010, Normative Acts Nos. 110 and 111 of 1999, the Paris Convention, and the TRIPS Agreement. Protection is for 10 years renewable for equal successive periods. The protection of trademarks in the Brazilian system grants the right or priority (six months) and the protection to well-known trademarks. Brazilian law also offers protection for collective trademarks and famous trademarks. Any visually perceptive distinctive sign, when not prohibited under law, may be registered as a mark. Private legal entities may only request registration of a mark relating to the activity that they effectively and licitly exercise directly or through undertakings that they control directly or indirectly. The application for registration and any documents attached must be presented in Portuguese and, whenever there is a document in a foreign language, a simple translation must be presented at the time of filing the

³⁰⁶ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

³⁰⁷ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

³⁰⁸ INPI online information at: <http://www.inpi.gov.br/menu-esquerdo/instituto/estatisticas>.

³⁰⁹ WTO document IP/C/M/25, 22 December 1999.

³¹⁰ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

application or within 60 days. A foreign applicant must maintain a qualified attorney, resident in Brazil, with authority to represent the applicant administratively and judicially.

3.291. There are absolute and relative grounds for refusals of registrations. Both are examined *ex officio*. Based on absolute grounds, the INPI does not grant registration to trademarks that: do not consist of signs graphically represented; are devoid of any distinctive character; contain or consist of a false or true designation of origin or a geographical indication; are contrary to accepted principles of morality or against the freedom of religion or conscience; contain official symbols, such as national flags and monuments; are of such a nature as to deceive the public, for instance, as to the nature, quality or geographical origin of the good or service; are signs or expression used only as a means of advertising; are not related to the activity performed directly or indirectly by the applicant. Based on relative grounds, the INPI does not grant registration to trademarks that: contain or imitate any previous rights or trademarks of a third part; are identical trademarks, even in cases where both are related to the same owner; are usual, common or ordinary shapes of the product or its packaging, or shapes that cannot be separated from a technical effect.

3.292. The number of trademark applications increased during the period under review, reaching 149,612 in 2012, of which 74% were filed electronically (Table 3.27), while the number of registrations remained relatively flat after 2007. Over 2007-May 2012, the ratio of filings to registrations was slightly above two to one.

Table 3.27 Trademark applications registrations, 2007-12

Year	2007	2008	2009	2010	2011	2012
e-filing	48,716	67,125	76,625	91,173	111,284	110,681
Paper	56,889	57,375	38,927	38,580	41,647	38,931
Total	106,605	124,500	115,552	129,753	152,931	149,612
% of e-filing	46%	54%	66%	70%	73%	74%
Registrations	128,540	60,286	64,182	64,529	60,504	55,306

Source: INPI.

3.4.5.2.4 Other forms of industrial property

3.4.5.2.4.1 Geographical indications

3.293. Geographical indications (GIs) are protected in Brazil in accordance with the TRIPS Agreement, through Industrial Property Law No. 9,279 of 14 May 1996. As of July 2012, 30 were GIs protected in Brazil, including national and foreign indications. A GI registration application must be accompanied by: instruments proving the legitimacy of the applicant; norms regulating of use of the GI by holders; official documents delimiting the geographical area; the description and characteristics of the product or service; and proof of existence of a structure for controlling the standards of production by authorized producers.

3.294. After the application is filed, the INPI proceeds to a formal examination of the documents. If they are in order, the INPI publishes the application in the *Official Gazette*; otherwise, the applicants have 60 days to comply with the requirement(s) made by the INPI. Following publication of the application, third parties have 60 days to file opposition, and the applicants have 60 days to respond. The INPI issues a decision regarding the application. If granted, applicants have 60 days to pay the required fee; in case of rejection, they have the same time period to appeal. The final decision is issued by the President of the INPI.

3.4.5.2.4.2 Layout of integrated circuits

3.295. Law No. 11,484 of 31 May 2007 protects layouts of integrated circuits for ten years from application. The law defines the topography of an integrated circuit as a series of related images, constructed or encoded in any form or medium, representing a three-dimensional configuration of the layers comprising an integrated circuit, in which each image represents, in whole or in part, the geometric or surface arrangements of the integrated circuit in any stage of its design or manufacturing. Protection is granted only to topographies that are original, result from the

intellectual efforts of the creator(s), and are not common or usual for technicians, experts or integrated circuit manufacturers.

3.296. All applications are filed with and analysed by the INPI. They must contain: (i) the description of the topography and its function; (ii) drawings or photographs of the integrated circuit; (iii) a declaration of previous exploitation, if needed; (iv) a receipt of payment of the filing fee. Once the application is filed and all the formal requirements are complied with, the INPI automatically publishes it and simultaneously grants the registration. Applicants may request, at the time of filing, that the application is kept secret for a period of six months, after which it is processed. There were 12 applications at the INPI for protection of topographies of integrated circuits during the 2007-11 period.

3.4.5.2.4.3 Plant varieties

3.297. Plant Variety Protection Law No. 9,456 of 25 April 1997 protects new plant varieties and derived plant varieties of any genus or species. The law guarantees the property right to any natural or legal person obtaining a new plant variety or essentially derived variety. The term of protection is 15 years from the grant of a certificate except for vines, fruit trees, forest trees, and ornamental trees, including the mother graft thereof, for which the term is 18 years. Plant varieties may be subject to compulsory licences for three-year periods, renewable.

3.4.5.2.4.4 Undisclosed information

3.298. Law No. 10, 603 of 17 December 2002 regulates undisclosed information related to pharmaceutical products for veterinary use, fertilizers, pesticides, their components, and related products. The law grants protection against the unfair commercial use, information and data presented to the authorities for commercial approval; the term of protection is ten years for products that use new chemical or biological entities, five years for all others. Compulsory use of protected information is possible in specific cases, such as public interest or anti-competitive behaviour. Furthermore, undisclosed information in general is protected by Article 195 of the Industrial Property Law, which specifies crimes of unfair competition, including the use of undisclosed information without authorization or by breach of contract.

3.4.5.3 Copyright

3.299. Copyright issues in Brazil are regulated by Law No. 9,610 of 19 February 1998 (Copyright Law), and Law No. 10,695 of July 2003. Law No. 10,695/2003 amended the Criminal Code to include stiffer sanctions for copyright violations and to improve criminal procedures. In the context of this Review, the authorities noted that a draft bill updating and amending Law No. 9,610/1998 is currently under analysis at the Department of Intellectual Property in the Ministry of Culture before being forwarded to Congress.

3.300. Copyright protection is granted for texts of literary, scientific or artistic works, musical compositions, audiovisual works, drawings, paintings, and photographic works. No registration is necessary. The general term of protection is the life of the author plus 70 years.

3.301. In accordance with the Berne Convention, the TRIPS Agreement, and Law No. 9,610/1998, the protection granted to copyrighted works is independent of registration. However, right holders may register their works at accredited institutions, such as the Brazilian National Library; the School of Music or the School of Fine Arts of the Federal University of Rio de Janeiro; the Federal Council of Engineering, Architecture and Agronomy, or the INPI.³¹¹ This registration provides a presumption of authorship which may be helpful, for instance, in judicial procedures; therefore, it is a declaratory registration and does not constitute any right.

3.302. Brazil has several associations for the collective management of copyright: the Central Office for Collection and Distribution; *Associação Brasileira de Música e Artes*; *Associação de Músicos*; *Arranjadores e Regentes*; *Associação de Intérpretes e Músicos*, *Sociedade Brasileira de Autores, Compositores e Escritores de Música*; *Sociedade Independente de Compositores e*

³¹¹ For the complete list of accredited institutions, see: <http://www.cultura.gov.br/site/2008/03/08/orgaos-de-registro-de-obras-intelectuais/>.

Autores Musicais, the Sociedade Brasileira de Administração e Proteção de Direitos Intelectuais; União Brasileira de Compositores; Associação Brasileira de Autores, Compositores, Intérpretes e Músicos; Sociedade Administradora de Direitos de Execução Musical do Brasil; Associação Brasileira de Direitos de Autores Visuais; and Associação Defensora de Direitos Autorais.

3.303. The Copyright Law does not contain provisions with respect to the international exhaustion of rights; decisions are taken on a case-by-case basis. In the context of this Review, the authorities noted that jurisprudence on the subject is not presently available, since there is no final decision by higher courts on the issue. Brazilian law grants copyright holders the right initiate procedures for the prosecution of importers of pirated goods. Decree No. 6,759/2009 provides the legal framework for border measures on goods suspected of piracy.

3.4.5.4 Enforcement

3.304. Brazil responded the questions in the Checklist of Issues on Enforcement with respect to IPRs in 2000.³¹² Articles 183 to 210 of the Industrial Property Law establish civil and criminal offences and procedures for violation of patents, trademarks, industrial designs, geographical indications, and unfair competition. The Brazilian authorities' approach to the issue of enforcement of IPRs is to seek to strengthen the institutional image, raise public awareness regarding the harm of illegal goods, and improve the Brazilian legal framework regarding IPR violations.

3.305. Only State Courts have jurisdiction over criminal acts of infringement of intellectual property rights. Criminal procedures and penalties are available for infringements related to all categories of intellectual property rights, except plant varieties protection. For patent law violations that constitute criminal offences, penalties of imprisonment generally vary from three months to a year, but may be increased according to the infringement and the infringer. In the case of copyright, articles 101 to 111 of the Copyright Law establish acts considered civil offences, while crimes are described in the Criminal Code. Penalties vary from three months to four years of imprisonment and/or a fine. Infringement of software copyright is a civil and criminal offence, punishable with detention from six months to four years, plus a fine depending on the infringement, and possible seizure of the copies produced or commercialized in violation of copyright. Law No. 10,695/2003 reinforced Brazil's enforcement regime by increasing the types of copyright infringement considered as felonies, setting harsher penalties, introducing more stringent provisions with respect to the media through which counterfeit material can be distributed, and reinforcing the power of judges to order, at the request of the affected party, the destruction of the production or reproduction seized in certain circumstances.

3.306. Enforcement efforts have been stepped up through the establishment of a National Council to Combat Piracy and Other Crimes Against Intellectual Property Rights, which gathers together representatives from the Government and the civil society. The Council's main goal is to elaborate and monitor the implementation of the National Plan to Combat Piracy and Other Crimes Against Intellectual Property Rights, which includes a number of actions to fight IPR violations, such as repressive activities, as well as educational and economic activities.

3.307. During 2008-12, the National Council implemented 23 strategic projects to fight piracy and other IPR violations, of which six were given priority: City Free of Piracy; Course for Public Agents; Legal Fair; Commerce Against Piracy; Internet Gateway of the Combat Against Piracy; and Partnerships and Cooperation with Internet Service Providers. The authorities noted that, besides the strategic projects, the Council intends to strengthen its activities by: further developing partnerships with the private sector and other governmental agencies; structuring internal processes related to financial management, human resources, and communication; structuring mechanisms for the search and exchange of information; further developing educational campaigns and institutional marketing; mobilizing and articulating governmental agencies for enforcement; developing innovative solutions to hamper the commercialization of illegal goods; and formulating and managing the policies to combat IPR violations.

3.308. In 2011, the Federal Police Department initiated 8,325 investigations on the smuggling of goods, with 4,130 indictments. As regards piracy, the Department undertook 555 investigations with the same number of indictments. The Federal Police also launched 195 operations to combat IPR violations in 2009, and 186 operations in 2010. Enforcement actions were also undertaken by

³¹² WTO document IP/N/6/BRA/1, 24 March 2000.

the Federal Highway Police Department, which, between 2008 and 2010, apprehended 360,137 litres of illegal beverages, 22.2 million CD/DVD units, 7.85 million packets of cigarettes, 289,969 computers, 1.05 million units of other electronic equipment, and 21.88 million units of medicines. The Department also made 5,116 arrests related to such crimes.

3.309. The Secretariat of the Federal Revenue of Brazil seized, R\$1.275 billion (over US\$600 million) in goods or in financial assets in 2010. The goods with the highest gross share of seizure were electronics, cigarettes, sunglasses, and clothing. In 2010, more than 3,500 tons of goods, totalling R\$353.66 million (over US\$175 million) were destroyed.

3.310. Articles 605 to 610 of Decree No. 6,759/2009 set out the border measures available to right holders for the enforcement of copyrights and trademark rights. The Federal Customs Service is in charge of inspecting and seizing shipments at the national border. The use of border measures must generally be requested by the rights holder, who must provide adequate evidence to satisfy the customs authorities. However, in cases of counterfeiting of the arms, coat of arms or national official badges of any country, the Customs Service has the authority to initiate representation for criminal purposes in order to apply the provisions of Article 191 of Law No. 9,279/1996. The Customs Service retains the suspected goods and notifies the rights holder for the initiation of judicial procedures, if the right holder deems it appropriate. The Customs Service may request that the rights holder provides a guarantee in an amount sufficient to safeguard the alleged infringer and avoid abuses. If procedures are not initiated within ten days of the retention, the Customs Service releases the goods.

3.311. The procedures available for the destruction or other disposal of infringing goods and materials/implements for their production are provided by Decree-Law No. 3,689/1941 as amended by Law No. 10,965/2003, related to the Code of Criminal Procedure.

4 TRADE POLICIES BY SECTOR

4.1 Introduction

4.1. Brazil has a dynamic agriculture sector that plays an important role in its economy. Although it provides a relatively low level of support to its agricultural producers compared with other countries, Brazil maintains several domestic support measures, including preferential credit lines and price support mechanisms. During the review period, new programmes were created to finance farmers. Disbursements with official rural credit continued to rise, along with the expansion of key support programmes such as PRONAF. Brazil maintains a policy of mandatory bank reserve requirements to be allocated to finance agricultural activities. During the period under review, the required rate of mandatory resources was increased twice, bringing it to 34% of demand deposits from 25% prior to November 2008.

4.2. Brazil has a highly diversified manufacturing sector. During the review years, however, the sector lost some dynamism due an erosion of competitiveness, which translated into rising imports and slow-growing exports. In response, the Government has strengthened the importance given to industrial policy, partly through two comprehensive nationwide plans, the Productive Development Policy (2008-10) and the *Plano Brasil Maior* (2011-14). Instruments used to promote the manufacturing sector under these plans include credit lines under favourable conditions, public procurement, fiscal incentives, and border measures.

4.3. Brazil is nearly self-sufficient in primary energy production; although Brazil's energy matrix remains one of the greenest in the world, the participation of renewable sources in total energy production decreased during the review period. On the other hand, petroleum production in Brazil has been expanding steadily: total output reached 768 million barrels in 2011, a 20.5% increase from 2007. Notwithstanding the growing domestic demand, Brazil became a net exporter of crude oil for the first time in 2007 and has significantly expanded its oil trade surplus since then. In 2011, the volume of exports was 1.68 times that of imports. Nevertheless, Brazil's dependency on imports of refined petroleum products has increased due to insufficient refining capacity. Brazil relies on substantial imports of natural gas, although domestic production increased by 41% between 2007 and 2012. PETROBRAS has maintained its dominant position in the production, refining, distribution, and retailing of petroleum and petroleum products in Brazil. In 2011, the state-controlled company accounted for some 90% of the country's total oil production. PETROBRAS also owns 98% of Brazil's total refining capacity.

4.4. During the review period, Brazil retained its position as the world's second-largest producer of ethanol. In April 2010, Brazil reduced its import tariff on ethanol from 20% to 0% to promote consumption and prevent price increases. It has also sought to foster production: in 2012, the federal development bank BNDES launched two new programmes offering credit at attractive conditions to the ethanol sector. Since 2011, the BNDES also finances innovation in sugar-cane biomass technology.

4.5. The regulatory framework for the electricity sector was revamped in early 2013, with the passage of a new law, which now regulates the concession of generation, transmission, and distribution of electricity. The new law extended the regime of concessions for electricity generation and the system of quotas, only once, for a period of up to 30 years. The extension is contingent upon the generator's acceptance of certain conditions, to be set by the regulator ANEEL, including the remuneration tariffs to be applied, a guaranteed supply quota allocation, and quality standards. Quotas will be allocated through contracts and are expected to be revised periodically by ANEEL.

4.6. During the period under review, the authorities continued to display efforts to increase the degree of financial intermediation and lower interest rate spreads. The Government has promoted financial inclusion by, *inter alia*, improving distribution channels, increasing transparency, and adapting the regulation of financial services for low income customers. This has increased the degree of financial intermediation: the credit to GDP ratio rose from 25% in 2003 to more than 50% in 2012. This has been a step in the right direction to correct the insufficient supply of medium and long-term private credit for small and medium-size enterprises, identified in the last TPR of Brazil. However, the role of state banks in medium- and long-term financing remains very important, directly or through equalization initiatives, by which a portion of the interest rate

charged to credit users is taken up by the State. The decline in interest rate spreads has played an important role in increasing financial deepening. The average interest rate spread, considering the credit portfolio as a whole, dropped by almost 10 percentage points during the review period. However, while average interest rate spreads were reduced, they remain wide at over 24 percentage points in 2012. The establishment of new foreign financial institutions requires approval by Presidential Decree. In practice, the establishment of new foreign financial institutions has been allowed, and 17% of assets are in the hands of foreign banks.

4.7. Recent changes to the telecommunications legislation have allowed telecommunication operators more flexibility to offer converged services in line with the international trend and the development of new technologies. Brazil's operators have already made headway in Latin America in terms of deploying triple-play offerings (voice, broadband, and television) and some have plans to offer quadruple-play multi-service packs (adding mobile telephony to the above). This trend has led to further consolidation of Brazil's major telecom groups.

4.2 Agriculture, Forestry, and Fisheries

4.2.1 General features

4.8. Endowed with the fourth-largest agricultural area in the world, Brazil has a dynamic agriculture sector that plays an important role in its economy.¹ The share of agriculture in GDP is relatively modest, at 4-5% in 2012 (Table 1.1). However, its share of employment is much more important: in 2011, agriculture (including fisheries and forestry but excluding processed products) employed 15.7% of the country's workforce. Also, there is substantial value added in agriculture-related activities, and the entire agribusiness chain (including agricultural inputs, as well as processing and distribution activities) contributed 22% of GDP in 2011.²

4.9. During the review period, the agribusiness sector had a crucial role in sustaining Brazil's trade surplus (Charts 1.1 and 1.2). In 2012, the sector's trade balance reached an all-time high, with agri-food products accounting for 39.5% of total exports and only 7.4% of imports (Table 4.1), and countered the trade balance deterioration in other sectors. In 2009, the global economic crisis led to a reduced demand (in value terms) for Brazilian agri-food exports, which fell after almost a decade of uninterrupted growth. Nevertheless, exports have recovered substantially since 2010, reaching a record US\$95.8 billion in 2012, up from US\$58.4 billion in 2007.

Table 4.1 Brazil's agribusiness trade balance, 2007-12

(US\$ billion)

Years	2007	2008	2009	2010	2011	2012
Agribusiness exports	58,420	71,806	64,786	76,442	94,968	95,814
Agribusiness imports	8,719	11,820	9,900	13,391	17,497	16,406
Agribusiness trade balance	49,701	59,987	54,886	63,051	77,471	79,408
Total trade balance	40,032	24,836	25,290	20,147	29,794	19,431

Note: The agribusiness numbers do not include imports of capital goods by agricultural companies.

Source: MAPA online information. Viewed at: <http://www.agricultura.gov.br/internacional/indicadores-e-estatisticas/balanca-comercial>.

4.10. Brazil is a major player in global agricultural trade, accounting for 7.3% of total agricultural exports.³ It is the world's third-largest exporter of agricultural products, only behind the EU and the United States.⁴ In 2010, Brazil was the world's leading exporter of sugar, coffee, orange juice, beef, and poultry.⁵ Brazil's main agricultural exports increased significantly over 2007-12 (Chart 4.1). Soybean products remain the largest export, followed by sugarcane products (sugar and ethanol), meat (especially poultry and beef), coffee and cereals. Together, these commodities accounted for 31.8% of total Brazilian exports in 2012.

¹ OECD (2011).

² University of São Paulo – CEPEA online information. Viewed at: <http://www.cepea.esalq.usp.br/pib/>

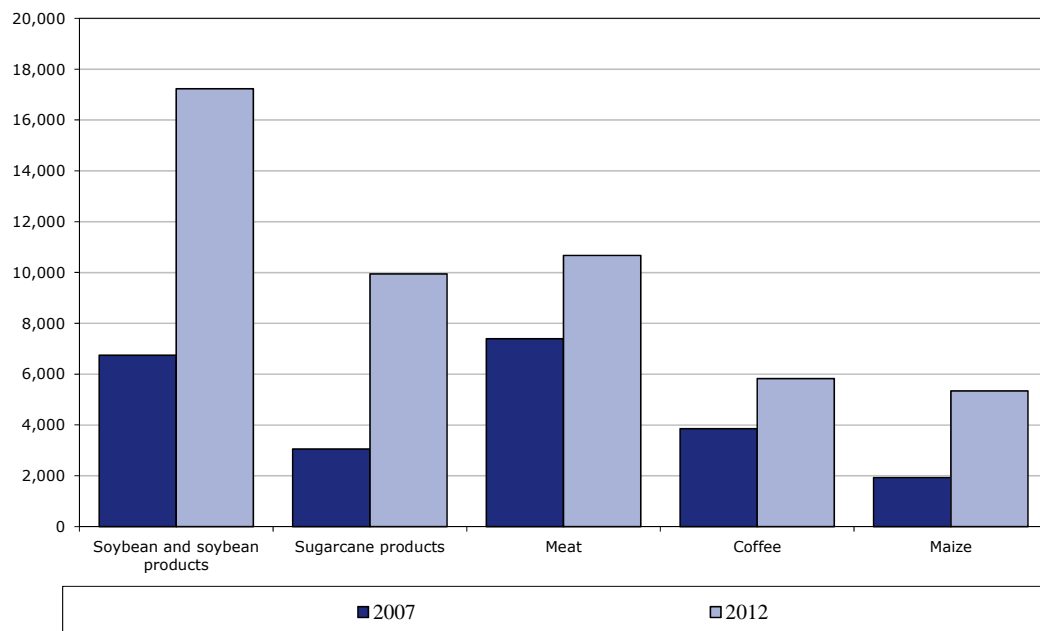
³ MAPA (2011).

⁴ USDA online information. Viewed at: <http://www.fas.usda.gov/country/Brazil/Brazil.asp/>.

⁵ MAPA online information. Viewed at: http://www.agricultura.gov.br/arq_editor/file/Sala%20de%20Imprensa/Publica%C3%A7%C3%B5es/graficos_portugues_corrigido2.pdf.

Chart 4.1 Main agricultural exports, 2007-12

(US\$ million)



Source: MAPA online information. Viewed at: <http://www.agri.gov.br>.

4.11. In 2011, the main destinations for Brazilian agri-food exports were the EU (25.1%), China (17.5%), the United States (7.1%), Russia (4.3%), and Japan (3.7%). The importance of China as a trading partner for Brazilian agribusiness increased substantially during the review period. In 2007, China purchased 8% of Brazilian agri-food exports, which corresponded to some US\$4.7 billion; this amount more than tripled to US\$16.5 billion in 2011.⁶

4.12. Imports of agri-food products increased substantially between 2007 and 2012, from US\$8.7 billion to US\$16.4 billion. Wheat remains the single most important import commodity, accounting for over one third of total agri-food imports. Other major imports include: paper, rubber, dairy products, palm oil, malt, olive oil, and rice.⁷ Brazil also continues to depend on substantial imports of agricultural inputs, in particular fertilizers.

4.13. The general institutional framework for the agriculture sector remains unchanged from the previous review period. Brazil has two ministries in charge of agricultural policies: the Ministry of Agriculture, Livestock and Food Supply (MAPA), and the Ministry of Agrarian Development (MDA). The Secretariat of Agribusiness International Relations in the MAPA (SRI/MAPA) is responsible for foreign trade issues and notifications to the WTO. The MDA is in charge of land reform and family farm policies, including the Programme to Strengthen Household Agriculture (PRONAF). The National Food Supply Company (CONAB), a state trading company linked to the MAPA, is responsible for administering a number of agricultural policies, including those related to strategic storage and minimum price guarantees (Chapter 3.4.3).

4.2.2 Border measures

4.14. The average tariff for agricultural products (ISIC definition) was 7.2% in 2012, considerably below the 11.70% average MFN tariff. Using the WTO definition of agriculture, the average MFN tariff was 10.1%. Tariffs higher than the average apply to: dairy products (18.6%), sugar and confectionary (16.7%), beverages, spirits, and tobacco (16.5%), and coffee and tea (13.7%),

⁶ FIESP online information. Viewed at: <http://www.fiesp.com.br/agronegocio/default.aspx>.

⁷ MAPA online information. Viewed at: <http://www.agricultura.gov.br/internacional/indicadores-e-estatisticas/balanca-comercial>.

while imports of cotton (7.4%) oil seeds, fats and oils and their products (7.8%), and animals and animal products (7.9%), are subject to tariffs lower than the average.

4.15. Brazilian imports of agricultural products may benefit from preferential tariff quotas in accordance with MERCOSUR's rules on temporary measures regarding supply shortages. Under these rules, imports of cotton and jute were subject to a reduced in-quota tariff of zero and palm kernel to an in-quota tariff of 2%. Mexican exports of garlic to Brazil also benefited from a 0% in-quota tariff in 2011 established under Economic Complementation Agreement No. 53 between the two countries.⁸

4.2.3 Domestic support measures

4.2.3.1 General features

4.16. Brazil provides a relatively low level of support to its agricultural producers compared with OECD countries (see below). However, it maintains several domestic support measures, including subsidized credit lines and price support mechanisms (Table 4.2). During the review period, new programmes were created to finance farmers, including the Medium-Scale Agricultural Producer Support Programme (PRONAMP) and the Low Carbon Agriculture Programme (Programa ABC). Disbursements with official rural credit continued to rise, along with the expansion of key support programmes (e.g. PRONAF). Disbursements for price support mechanisms increased significantly in 2009 to R\$3.7 billion, but fell to about R\$1.6 billion in 2011. Programmed resources for market price support, including AGF and public options, rose from R\$4.2 billion in 2009 to R\$1.1 billion in 2011.

Table 4.2 Main agricultural support measures and programmes

(R\$ million and US\$)

Programme	Description	Amount ^a
Official rural credit (total)	Agricultural credit lines subject to the official <i>Rural Credit Manual</i> conditions, which include preferential interest rates fixed by the Government	R\$106,405 (US\$50,700)
Programme to Strengthen Household Agriculture (PRONAF)	Support for small-scale producers with a gross annual income of up to R\$160,000 per family	R\$12,902 (US\$6,144)
Medium-Scale Agricultural Producer Support Programme (PRONAMP)	Financing of agricultural activities for producers with an annual gross income of up to R\$800,000	R\$7,702 (US\$3,668)
Banco do Brasil Credit Line for Agri-Industries (BB-agroindustrial)	Finances the commercialization and processing of agricultural products, as well as the sale and production of agricultural inputs	R\$6,467 (US\$3,080)
BNDES Programme for the Sustainability of Investment in Capital Goods (PSI-BK)	Finances the acquisition and maintenance of machinery and equipment for agricultural production	R\$6,040 (US\$2,876)
Policy of Guaranteed Minimum Prices (PGPM)	Price support mechanisms	R\$1,595 (US\$759) ^b
Low Carbon Agriculture Programme (Programa ABC)	Finances agricultural practices aimed at reducing greenhouse gas emissions	R\$1,516 (US\$722)

a Values refer to harvest year 2011/2012 (July to June).

b This figure refers to gross expenditures (in calendar year 2011) and does not take into account government revenues with the PGPM.

Source: WTO Secretariat, based on online information from MAPA and CONAB. Viewed at: <http://www.agricultura.gov.br/vegetal/estatisticas>, and <http://www.conab.gov.br/conteudos.php?a=1255&t>.

4.17. In 2009, Brazil notified to the WTO that it did not grant export subsidies for agricultural products in calendar years 2002 to 2007. Brazil also reported that it had provided food aid in 2005, 2006, and 2007. Brazilian food aid totalled some 25.9 tonnes in 2007, about half of which was rice.⁹ In October 2012, Brazil informed the Committee on Agriculture that export subsidies had not been granted for agricultural products during calendar years 2008, 2009, and 2010. Food

⁸ Information provided by the Brazilian authorities.

⁹ WTO document G/AG/N/BRA/25, 16 March 2009.

aid to all destinations totalled 47,284 tonnes over the 2008-10 period; in 2009, some 94% was rice.¹⁰

4.18. As at March 2013, Brazil's latest notification on domestic support measures dated from March 2012 and covered the 2006-09 period.¹¹ The Aggregate Measure of Support (AMS) notified was US\$341.8 million for 2006-07, US\$520.4 million for 2007-08, and US\$292.9 million for 2008-09. Thus, the AMS remained below Brazil's committed level of US\$912.1 million throughout the period covered by the notification.

4.19. All of the AMS notified for 2008-09 corresponded to product-specific support targeting wheat (28.86% of the value of production). The measures were taken under the Premium for Product Outflow (PEP), a price support instrument, and through government acquisitions. Brazil reported support measures for a number of other products, but these remained below *de minimis* levels. In the same period, Brazil notified expenditures under production credit, investment credit, input subsidies, and debt rescheduling schemes totalling US\$134 million, US\$705 million, US\$2 million, and US\$29 million, respectively, as "measures exempt from the reduction commitment, special and differential treatment, development programmes".

4.20. Disbursements for measures reported under the Green Box totalled R\$3.6 billion in 2009; domestic food aid (R\$1 billion) was the main type of measure under this category, followed by extension and advisory services (R\$655 million), infrastructural services (R\$593 million), and agrarian organization (R\$503 million).

4.21. According to OECD calculations, Brazil's total support to agriculture averaged 0.55% of GDP in 2008-10, which was lower than the OECD average of 0.88%. In addition, the Producer Support Equivalent (PSE) averaged 5% in the period, significantly below the OECD countries' average of 20%. However, the OECD contends that about two thirds of Brazil's PSE is provided in "the most production and trade distorting forms", especially through price support measures and subsidized credit.¹²

4.2.3.2 Rural credit

4.2.3.2.1 General features

4.22. The provision of credit at fixed interest rates remains one of the most important tools to promote the agriculture sector in Brazil. This policy is employed to offset the country's high market interest rates and to promote the access of credit for farmers who would not obtain it otherwise in the Brazilian financial system. In the previous review period, rural credit policy underwent a shift away from granting credit through public banks towards ensuring that financial resources were channelled to the agriculture sector through private financial institutions. However, during the present review period, the importance of public banks as providers of rural credit grew significantly. At the same time, the Government increased the requirement that commercial banks devote part of their demand deposits for agricultural lending, so as to channel more private sector credit to productive sectors. The authorities consider this requirement necessary to correct a market failure, however, pre-assigning credit may be introducing other distortions in the overall allocation of credit in the Brazilian economy.

4.23. The institutional framework for agricultural credit has its basis in Law No. 4,829 of 5 November 1965, which established the National System of Rural Credit (SNCR) under the control of the Central Bank. The National Monetary Council (CMN) is in charge of issuing regulations for agricultural credit schemes, which are spelled out in the Central Bank's *Rural Credit Manual*. These regulations must be followed by all institutions participating in the SNCR, which includes public banks, cooperatives, and private commercial banks.¹³ In December 2012, 468 financial institutions operated with rural credit, of which 28 were private banks.¹⁴

¹⁰ WTO document G/AG/N/BRA/28, 2 October 2012.

¹¹ WTO document G/AG/N/BRA/27, 1 March 2012.

¹² OECD (2011).

¹³ EMBRAPA (2010).

¹⁴ Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/htms/creditorural/2012/rel61.pdf>.

4.24. Between 2008 and 2012, the share of rural credit provided through public banks increased, marking a shift away from the trend observed in the previous review period (2004-07), when it dropped from 60% to 48.1%. In 2012, public banks provided 57.5% of total rural credit, followed by private banks (32.5%), and cooperatives (10%).¹⁵

4.25. According to the general rules for rural credit programmes, beneficiaries must reside in Brazil, but they are not required to be Brazilian nationals. In the case of rural credit lines operated by majority government-owned financial institutions, financing may not be granted to companies headquartered abroad or companies whose voting capital is majority-owned by foreigners.¹⁶

4.26. Rural credit stems from a variety of sources: banks' demand deposits (mandatory resources), rural savings, constitutional funds, credit lines managed by the BNDES, free resources, the Brazilian Coffee Fund (FUNCAFE), the Worker's Support Fund (FAT), as well as other funds and sources. During the period under review, the share of rural credit financed with mandatory resources declined substantially, while sources such as rural savings, constitutional funds, and BNDES programmes rose in importance (Table 4.3).

Table 4.3 Sources of rural credit, 2007-12

(%)

Year	Mandatory resources	Rural Savings	Constitutional Funds	BNDES	Free resources	FUNCAFE	FAT	Other resources
2007	55.5	17.9	7.6	4.6	3.8	3.2	4.0	3.4
2008	47.4	26.0	8.8	5.8	4.8	2.9	1.3	3.0
2009	48.3	26.1	7.3	7.0	4.2	2.2	1.2	3.7
2010	46.8	30.2	7.9	6.6	2.0	1.9	1.2	3.4
2011	47.3	30.8	7.6	6.8	2.8	1.6	1.3	1.8
2012	34.3	32.1	8.5	8.6	4.5	1.6	1.2	9.8

Source: WTO Secretariat, based on Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/htms/CreditoRural/2012/rel5121.pdf>.

4.27. Under Brazilian Law, public and private banks participating in the SNCR are required to allocate a certain proportion of their demand deposits (mandatory resources) to the agricultural sector.¹⁷ The proportion is fixed at the discretion of the CMN. Alternatively, banks are allowed to transfer an equivalent amount to the Central Bank at zero interest.

4.28. In response to a credit crisis, the CMN increased the required rate of mandatory resources to 30% of demand deposits in November 2008, up from 25% at the time of the previous Review.¹⁸ Despite this intervention, the share of rural credit financed with mandatory resources did not recover to previous levels and even faced a sharp decline in the first half 2012. The authorities indicated that this was due to the economic slowdown and the subsequent contraction of demand deposits. The Government reacted by announcing a new rate of 34%, in force from 1 July 2012.¹⁹

4.29. Rural credit lines operated by banks with capital deriving from mandatory resources are subject to the rules laid out in the *Rural Credit Manual*. These include fixed interest rates, which were lowered to 5.5% per annum in 1 July 2012, down from 6.75%. The rate remains below average market rates for non-earmarked credits.²⁰ In addition, a substantial part of rural credit from mandatory resources must be channelled to specific purposes: 20% must be granted to cooperatives; 10% to operations under the PRONAF; and since 1 August 2011, 10% to credit lines under the newly created PRONAMP. Rural credit granted with free resources is also subject to the rules spelled out in the *Rural Credit Manual*.²¹

¹⁵ Central Bank online information. Viewed at: <http://www.bcb.gov.br/htms/CreditoRural/2012/rel51411.pdf>.

¹⁶ Central Bank of Brazil (2012).

¹⁷ Article 21 of Law No. 4,829 of 5 November 1965.

¹⁸ Central Bank of Brazil Resolution No. 3.623 of 14 October 2008.

¹⁹ Central Bank of Brazil Resolution No. 4.096 of 20 June 2012.

²⁰ For instance, the SELIC, a comparable benchmark for non-earmarked credits, was at 7.25% in March 2013, down from 13.75% in September 2008.

²¹ *Rural Credit Manual* (in Portuguese). Viewed at: <http://www.bcb.gov.br/?RED-MANUMCR>.

4.30. Under the equalization principle, resources from the National Treasury are used to cover the difference between market rates and those applied to certain rural credit operations. However, this equalization principle is not used in the case of mandatory resources; the equalization principle applies only to resources from rural savings, the BNDES, and cooperative banks. To access these resources, beneficiaries must have credit insurance, such as PROAGRO and rural insurance, to prevent losses to public and private banks.

4.31. The authorities have noted that the Brazilian rural credit system aims at correcting a market failure which results in insufficient credit allocation to medium-, small and micro-produce farmers. As this policy is responsible for financing a major share of food production for internal consumption, they consider it important for the country's food security. However, although it provides benefits to its recipients and aims to correct a market failure in the allocation of credit to the rural sector, the Brazilian rural credit system may be creating other distortions in overall credit allocation by limiting credit for other productive sectors, or making it more expensive. It may also be limiting commercial banks' policy options, as over one third of their demand deposits are now constrained by mandatory resources rules. The OECD notes that reforms could reduce the misallocation of resources and lower average interest rates. Such improvements could benefit, in particular, medium-sized farmers and firms that are neither eligible for subsidized credit programmes, nor in a position to borrow on international markets.²²

4.32. In addition to rules on mandatory resources, the *Rural Credit Manual* contains special provisions on rural savings schemes maintained by public banks (Banco do Brasil, Banco da Amazônia, Banco do Nordeste) and cooperatives. Since 1 July 2011, these institutions must allocate 68% of rural savings to rural credit operations (previously 65%). However, the rate is set to be reduced to 66% in July 2014.²³ The resources from rural savings that are allocated to rural credit operations may be offered at market interest rate or at preferential interest rates in a proportion that depends on the magnitude of resources addressed to equalization as decided by the authorities in each crop year. Rural savings are becoming an increasingly important source of rural credit in Brazil (see Table 4.3). In addition to the change in the percentage required to be redirected to rural credit, this increase can be explained by the rise in the amount of deposits made in rural savings schemes, which reached R\$93.9 billion in May 2012, up from R\$77 billion in November 2010.²⁴

4.33. The Constitutional Funds are aimed at reducing regional inequalities through the financing of productive sectors, including agriculture. They consist of three regional funds: the FNO (North Region), the FNE (North-East), and the FCO (Centre-West) (see Chapter 3.4.2.3.4). The funds are administered by Banco da Amazônia, Banco do Nordeste, and Banco do Brasil, respectively, and are capitalized with federal resources deriving from the Tax on Industrial Products (IPI) and the Income Tax (IR).²⁵ There are a number of conditions attached to the application of these funds to rural credit, including a requirement that 10% of the credit be used in agrarian reform programmes.²⁶ In 2012, the Constitutional Funds channelled R\$9.5 billion to agriculture.²⁷

4.34. As part of its efforts to counter the effects of the global economic crisis and promote the growth of agricultural production, the Government announced modifications to the rural credit system in 2012. The Agricultural and Livestock Plan for 2012/13 introduced lower interest rates and higher volumes of investment credit. The interest rate applied to most rural credit programmes was reduced from 6.75% to 5.5% per annum, with the exception of the ABC programme, for which it was lowered from 5.5% to 5%, and the PRONAMP, for which it was lowered from 6.25% to 5%.²⁸

²² OECD (2011).

²³ Central Bank of Brazil Resolution No. 3,705 of 26 March 2009 and Resolution No. 4,097 of 28 June 2012.

²⁴ Federal Government online information. Viewed at: <http://www.brasil.gov.br/noticias/arquivos/2010/12/6/poupanca-mantem-saldo-positivo-ha-19-meses-seguidos> and <http://www.brasil.gov.br/noticias/arquivos/2012/06/08/numero-de-depositos-da-poupanca-teve-o-melhor-resultado-da-historia-para-maio/print>.

²⁵ Law No. 7,827 of 27 September 1999.

²⁶ Law No. 12,249 of 11 June 2010.

²⁷ Central Bank online information. Viewed at: <http://www.bcb.gov.br/htms/CreditoRural/2012/re15121.pdf>.

²⁸ MAPA (2012).

4.35. During 2007-12, rural credit continued to grow in both nominal and real terms.²⁹ The Government foresees credits worth R\$133 billion in the 2012/13 harvest year, of which R\$115 billion for commercial agriculture and R\$18 billion for family agriculture.³⁰

4.36. The high value of rural debt remains an important challenge in Brazil. A major renegotiation took place in 2008, covering contracts worth some R\$75 billion. This value accounted for 85% of the total stock of rural debt (R\$87.5 billion), part of which dates back to the 1980s and 1990s. The renegotiation involved reduced interest rates, and extended repayment terms as well as discounts for anticipated payment.³¹

4.2.3.2.2 Government rural credit programmes

4.37. The Federal Government Loan (EGF) programme is used to finance the storage of agricultural products covered by the Policy of Guaranteed Minimum Prices (PGPM, see below). It allows farmers to withhold the sale of products for up to 240 days in anticipation of higher price levels. Agricultural products are used as collateral and must be stored in warehouses accredited by the CONAB. The annual interest rate for EGF loans was lowered (from 6.75%) to 5.5% per annum for harvest year 2012/13. The maximum credit is fixed by product and may reach up to R\$1.6 million for producers or up to 50% of production capacity for agro-industries.³² This programme is complemented by the Special Marketing Credit Line (LEC), which operates under similar conditions. In contrast with the EGF, however, the LEC may apply to products not covered by the PGPM and need not use the minimum price as a parameter for calculating the amount to be financed.³³

4.38. During the review period, the Government discontinued the Rural Employment and Revenue Generation Programme (Rural PROGER), which provided credit to small producers with an annual income of less than R\$80,000. In 2010, the programme was replaced by the Medium-Scale Agricultural Producer Support Programme (PRONAMP), which established a higher threshold of eligibility.³⁴ The programme is financed by several sources, including mandatory resources, rural savings, and BNDES funds. The Government foresees credits worth R\$11 billion for the PRONAMP in harvest year 2012/13, up from R\$5 billion disbursed in 2010/11.³⁵

4.39. Also in 2010, the Government launched the Plan for Low Carbon Emissions in Agriculture (Plano ABC), which comprises a credit line organized under the ABC programme (see below). Disbursements worth R\$3.4 billion are foreseen for this programme in harvest year 2012/13.

4.2.3.2.3 BNDES credit lines

4.40. The BNDES plays a major role in the financing of Brazilian agriculture, providing large sums of investment credit both directly to farmers and through accredited financial institutions (including public and private banks). The bank operates eight Federal Government programmes for agriculture; loans granted under these programmes totalled R\$8.6 billion in harvest year 2011/12, which accounted for 8% of official rural credit (Table 4.4). Under three of these programmes (PRONAMP, Programa ABC, and PRONAF), automatic access is facilitated by meeting certain domestic production requirements.

²⁹ BCB online information. Viewed at: <http://www.bcb.gov.br/?id=RELRURAL&ano=2010>.

³⁰ MAPA online information. Viewed at: <http://www.agricultura.gov.br/vegetal/estatisticas>.

³¹ Agencia Brasil online information. Viewed at: <http://agenciabrasil.ebc.com.br/noticia/2008-08-06/camara-aprova-mp-que-renegocia-parte-da-divida-dos-produtores-rurais>.

³² Banco do Brasil online information. Viewed at: http://www.bb.com.br/portalbb/page100,107,2913,9,1,1,2.bb?codigoMenu=417&codigoRet=2089&bread=40_3.

³³ MAPA (2012).

³⁴ MAPA online information. Viewed at: <http://www.agricultura.gov.br/politica-agricola/noticias/2011/07/cmn-aprova-mudancas-para-credito-rural>.

³⁵ MAPA online information. Viewed at: <http://www.agricultura.gov.br/vegetal/estatisticas>.

Table 4.4 Federal Government agricultural credit programmes administered by the BNDES, harvest year 2011/12

Programme/description	Financial conditions	Disbursements (2011/12)
Agricultural Cooperatives Capitalization Programme (PROCAP-Agro)		
Finances agricultural cooperatives by acquiring capital shares. Limit of R\$50 million per cooperative.	Annual interest rate: 9.5% for financing working capital and 5.5% for other operations. Repayment period: 2 years for working capital and 6 years for other operations.	R\$2.5 billion
Medium-Scale Agricultural Producer Support Programme (PRONAMP)		
Provides credit for investment in goods and services aimed at increasing productivity and income. Up to 100% of the product/project value may be financed. Beneficiaries must have annual gross income up to R\$800,000, at least 80% from agricultural activities.	Annual interest rate: 5%. Repayment period: up to 8 years. For credits aimed at the acquisition of machinery and equipment, goods must be manufactured in Brazil and meet the following criteria: For automatic access: New items: must have at least 60% domestic content in both value and weight terms. Used items: must be certified as products made in Brazil. ^a	R\$2.1 billion
Low Carbon Agriculture Programme (ABC Programme)		
Finances projects to reduce greenhouse gas emissions from agricultural activities. ^b Grants credits of up to R\$1 million per farmer/cooperative.	Annual interest rate: 5%. Repayment period: up to 5-15 years, depending on the project. For automatic access to credit for acquisition of machinery and equipment, goods must be manufactured in Brazil. ^c	R\$1.5 billion
Programme to Strengthen Household Agriculture (PRONAF)		
Provides credit to small-scale producers with annual income up to R\$160,000 per family. The BNDES operates six credit lines under this programme, focusing on: agri-industry; women; organic and agro-ecological production systems; environmental technologies; productivity increase; and debt restructuring.	Annual interest rate: 1% or 2%, depending on the credit line and the amount of credit requested. Repayment period: up to 10 years (generally). To access credit for acquisition of machinery and equipment, goods must be manufactured in Brazil. Credit for new machinery and equipment with less than 60% domestic content is limited to R\$5,000 per item. ^d	R\$1.4 billion
Programme for the Modernization of Agriculture and the Conservation of Natural Resources (MODERAGRO)		
Finances projects to improve production systems and revitalize soil and pastures. Credit up to R\$600,000 per producer, or R\$1.5million per cooperative.	Annual interest rate: 5.5%. Repayment period: up to 10 years.	R\$512 million
Cooperative Development Programme for the Enhancement of Agricultural Value Added (PRODECOOP)		
Aimed at promoting efficiency gains in agribusiness cooperatives by financing studies, projects, works, acquisition of national and imported equipment, and working capital for investment. Credit up to R\$100 million per cooperative. ^e	Up to 90% of the project value may be financed. Annual interest rate: 5.5%. Repayment period: up to 12 years.	R\$410 million
Incentives Programme for Irrigation and Storage (MODERINFRA)		
Finances irrigation and storage projects of up to R\$1.3 million per farmer or R\$4 million per cooperative.	Annual interest rate: 5.5%. Repayment period: up to 12 years.	R\$228 million
Tractor Fleet Modernization Incentives Programme (MODERFROTA)		
Grants credit for purchase of tractors, combine harvesters, and self-propelled sprayers. Finances up to 100% of the products value.	Annual interest rate: 5.5%. Repayment period: up to 4 years.	R\$14 million
Total		R\$8.6 billion

a Circular Sup/Agris No. 26 of 23 July 2012.

b The ABC programme finances projects aiming at: recovering degraded pastures; implementing organic agriculture; no-till farming; integrating crop, livestock and forestry activities; planting and managing commercial forests; adjusting to environmental legislation; treatment of animal residues; palm (dendê) oil forests; and nitrogen fixing.

c Circular Sup/Agris No. 49 of 2 October 2012.

d Circular Sup/Agris No. 37 of 22 August 2012.

e Projects related to processing products for human consumption run by central cooperatives may receive up to R\$200 million.

Source: BNDES online information. Viewed at: <http://www.bndes.gov.br>; data on disbursements based on MAPA online information. Viewed at: <http://www.agricultura.gov.br/vegetal/estatisticas>.

4.41. As of October 2012, the BNDES operated, in addition to Federal Government programmes, four credit programmes targeted at agriculture: the Warehouse Incentive Programme for Domestic Cereal Producers (Cerealistas), the Programme of Support to the Renewal and Expansion of Sugarcane Fields (PRORENOVA), the Programme for the Revitalization of Companies (Revitaliza) and the Programme of Support to the Sugar and Ethanol Sector (PASS). In harvest year 2011/12, credit offered was R\$30.6 million for beneficiaries of the Cerealistas programme and R\$1.47 billion for the Revitaliza programme. There were no disbursements under the PRORENOVA and PASS programmes.

4.42. The agriculture sector may also benefit from general BNDES credit lines such as FINEM, BNDES Automatic and the BNDES Card. In 2009, credit lines aimed at the acquisition of agricultural machinery and equipment were centralized under the Programme for the Sustainability of Investment in Capital Goods (PSI-BK), which offers easier financial conditions. The PSI-BK grants credit at an interest rate of 2.5% per annum and allows a repayment period of up to ten years.³⁶ In harvest year 2011/12, the programme disbursed R\$6 billion in credit for the purchase of agricultural capital goods.³⁷ Automatic access to the PSI-BK is granted for products produced in Brazil which must have a domestic content of 60% in both value and weight terms or meet the Basic Productive Process (PPB). If this is not the case, the request is examined before approval is granted. In addition, companies under the control of foreign capital may only benefit if they undertake activities considered to be of high national interest.³⁸

4.2.3.3 Minimum price guarantees

4.43. Brazil operates several programmes based on minimum price guarantees, which support the production of a wide range of commodities, including corn, rice, cotton, and wheat. According to OECD estimates, price support schemes accounted for more than half of transfers granted to farmers during 2008-10. Their overall effect, however, appears to be modest, as annual budgets are limited and partly targeted at less developed regions and low-income farmers.³⁹

4.44. The policy of guaranteed minimum prices (PGPM), launched in 1966, remains an important pillar of Brazilian agricultural policy. The PGPM is aimed at supporting producers when market prices fall to levels deemed harmful to their income stability. The policy is implemented by the National Food Supply Company (CONAB) through two types of schemes: commercialization instruments (which may involve the direct purchase of products by the CONAB), such as the AGF, PEP, VEP, PEPRO, COV and PROP (Table 4.5); and credit lines to finance the storage of goods covered by minimum price guarantees, such as the EGF and LEC (see rural credit). The PGPM cost the Treasury an average of R\$1.6 billion a year during 2008-11.⁴⁰ Most of the costs were linked to operations aimed at forming public stocks, which are sold when conditions are deemed convenient by the Government. As of 2011, the CONAB administered a network of 1,535 warehouses, with a storage capacity of 20,428,920 tonnes.

4.45. Revenues from the sale of public stocks are channelled to the Treasury or to bodies responsible for storage.⁴¹ Normally, annual costs under the PGPM exceed revenue collected with the sale of stocks. During the global economic crisis, net PGPM expenses increased significantly, reaching R\$3.5 billion in 2009. In 2011, however, revenue exceeded costs, due to high market prices for agricultural products and the Government's efforts to reduce accumulated public stocks. The Government adopted a policy of stepping up stock sales in order to counterbalance the increase in domestic prices caused by atypical climate features. As a result, total revenue for 2011 was R\$1.7 billion and expenses reached R\$1.2 billion for public buffer stocks and R\$0.3 billion for guaranteed minimum prices. Total revenue for 2012 (up to November) was R\$1.3 billion, while expenses for public stocks totalled R\$0.9 billion and disbursements to guarantee minimum prices reached R\$0.2 billion. Net revenue in both years reached some R\$0.4 billion.

³⁶ BNDES Circular No. 55 of 6 September 2012.

³⁷ MAPA online information. Viewed at: <http://www.agricultura.gov.br/vegetal/estatisticas>.

³⁸ Activities considered of high national interest are set out in Decree No. 2,233 of 23 May 1997, and include the automotive, energy, and electronics industries.

³⁹ OECD (2011).

⁴⁰ CONAB online information. Viewed at: <http://www.conab.gov.br/conteudos.php?a=1255&t=>.

⁴¹ CONAB (2012).

Table 4.5 Price support programmes, 2012

Price Support Programme/Description	Use/Cost
Policy of Guaranteed Minimum Prices (PGPM) Regulated by Decree No. 57,391 of 12 December 1965 and Decree-Law No. 79 of 19 December 1966. The PGPM fixes minimum guaranteed prices annually for some of Brazil's main crops. Prices are promulgated by the National Monetary Council (CMN) through portarias (previously through decrees). Portaria No. 701 of 30 July 2012 fixes minimum prices for a number of products for the 2012/13 summer harvest. When determining minimum prices, the CMN takes into account production costs in the different regions, as well as several factors affecting domestic and international market prices. The PGPM is implemented through credit lines (EGF and LEC); and commercialization instruments (AGF, PEP, VEP, PEPRO, COV and PROP; see below).	The PGPM programme cost the Treasury about R\$1.6 billion in 2011. However, the Government raised some R\$1.66 billion in revenues by selling out its stocks, which resulted in a net surplus of R\$60 million. Products covered by minimum prices in the 2010-11 harvest included: rice, wheat, sisal, and beans.
Federal Government Acquisition Programme (AGF) The AGF allows producers and cooperatives to sell their products to the CONAB at a guaranteed minimum price, so as to support farmers' income stability and form public stocks. The instrument is applied on specific products and regions, for up to 100% of a farmer's production. Products purchased under the AGF must be stored in warehouses accredited by the CONAB.	In 2011, the AGF was used to purchase rice beans, corn, and wheat. The Government acquired 596,870 tonnes, of which 396,327 tonnes was rice. Subsidies totalled R\$340 million in 2011.
Premium for Product Outflow (PEP) The CONAB grants an equalization premium to wholesalers who agree to pay farmers a reference price. The premium is determined in public auctions and generally reflects the difference between the reference price and the market price. In addition to guaranteeing minimum prices for producers, the PEP is used to shift the supply of agricultural products across regions, so as to avoid shortages and prevent the accumulation of stocks. In theory, all products included in the PGPM can participate in the PEP; however, the programme has been used for only a few products so far, mainly cotton, corn, wheat, sisal, beans, rice, and wine.	Premiums paid under PEP totalled was R\$279.5 million in 2011, of which R\$190.6 million for rice, R\$58.3 million for wheat, and R\$30.6 million for sisal.
Outflow of Product Value (VEP) As in the PEP, the VEP consists of payments of equalization premiums to buyers who agree to pay a minimum price to agricultural producers. The premiums are also determined in public auctions. However, in contrast with the PEP, where wholesalers acquire products from private stocks, the VEP is used to dispose of government stocks.	In 2011, the VEP was used only for corn: 221,112 tonnes of corn were sold through auctions for a value of R\$19.3 million.
Public Option Contracts (COV) The Government offers option contracts to producers and cooperatives through public auctions. Winning bidders acquire the right to sell their products to the Government at a future date, for a pre-determined "execution price" (a minimum price plus storage and financial costs). If the execution price is lower than the market price on the due date, the option contract is not used. When it deems convenient, the Government may transfer its obligation to buy to another party. The scheme may be used for any product covered by the PGPM.	In 2011, this instrument was used for rice, when 36,400 contracts, covering some 982,800 tonnes, were negotiated for a value of R\$574.9 million.
Private Option Risk Premium (PROP) Similar to the COV; the main difference is that the offer of option contracts comes from private entities. To limit the private-sector risk, the Government offers a risk premium. The value of the premium is determined in public auctions, with a maximum price set by the Government. Winning bidders are those willing to accept the lowest premium value.	The PROP was only granted for corn in crop year 2008/09 of the review period. The amount granted was US\$11.3 million benefiting 12,442 contracts.
Agricultural Products' Sale Option Private Premium (PEPRO) This scheme offers producers and cooperatives the possibility to sell their product at a premium, equal to the difference between reference and market prices, fixed through an auction. In contrast to the PEP, premiums are paid directly to producers.	In 2011, the Government granted premiums for 64,300 tonnes of rice and 52,727 tonnes of wheat, for a total of R\$10.5 million.

Source: Law No. 11,775 of 17 September 2008; CONAB online information. Viewed at: <http://www.conab.gov.br/conteudos.php?a=1255&t=>; and CONAB (2012), *Relatório De Gestão 2011*. Viewed at: <http://www.conab.gov.br/conteudos.php?a=23&t=1>.

4.46. The Brazilian Government also grants minimum price guarantees to family farmers. Since 2010, they are entitled to 20% of the PGPM's budget.⁴² The resources are channelled through the Price Guarantee Programme for Family Farming. While this programme affects the production of several commodities, it appears to have a small effect on agricultural prices.⁴³

⁴² MDA (2010).

⁴³ OECD (2011).

4.2.3.4 Measures to promote family farming

4.47. Support for family farming is an increasingly important component of Brazilian agricultural policy. According to the Food and Agriculture Organization (FAO), Brazil is among the countries providing the highest support to family agriculture in the Latin American and Caribbean region.⁴⁴ Brazil has a ministry devoted especially to family farming and agrarian reform, the MDA (see above). Support measures for family farmers include preferential credit lines, rural extension, preferential rules in public procurement, rural insurance, and price guarantees (Table 4.6).

Table 4.6 Budget allocated to family farming programmes and measures, harvest year 2012/13

Programme	Description	Budget
Programme to Strengthen Household Agriculture (PRONAF)	Subsidized credit to small-scale producers with a gross annual income of up to R\$160,000 per family.	R\$18 billion
Food Purchase Programme (PAA)	Support for commercialization of food products from family farms. The Government may buy directly from producers, to form strategic public stocks, supply public institutions or make donations to vulnerable population. It may also finance the storage of food products by family farming organizations, so as to allow later commercialization in more favourable conditions.	R\$1.2 billion
National School Feeding Programme (PNAE)	Transfer of Federal Government funds to support the supply of free meals in public schools. At least 30% of the amount transferred by the Federal Government under the PNAE must be used to acquire food products from family farmers.	R\$1.1 billion
Rural Extension and Technical Assistance (ATER)	Provision of free educational services aiming at raising the income of family farmers by improving production systems and promoting access to services and resources.	R\$542 million
Family Farming Insurance Programme (SEAF)	Guarantees for small farmers taking out credit for production activities under the PRONAF. The insurance covers 100% of the credit acquired plus the interest rates charged. To benefit from the programme, the loss must account for more than 30% of expected revenues. Indemnities are up to a maximum R\$7,000 per farmer per harvest year.	R\$480 million
Harvest Guarantee Programme (Garantia-Safra)	Guarantees to family farmers affected by droughts or excessive rain in north-eastern Brazil. Insurance payments are fixed at R\$680 and transferred in five instalments. The number of insured farmers is set annually by the Managerial Committee.	R\$412 million
Price Guarantee Programme for Family Farming (PGPAF)	An indexation of the credit taken out by family farmers under the PRONAF, through which the price is fixed when the credit is granted. Upon repayment of the PRONAF's credit, if the price of the product financed has decreased, the farmer benefits from a discount from the amount due, equivalent to the difference between the product's market price and the price set in the programme's index. The limit for the PGPAF bonus per farmer is R\$7,000 each year. The programme covers 49 products, including corn, cotton, rice, milk, and oranges.	R\$90 million
Support for rural production activities under the Brazil Without Extreme Poverty Plan	Provision of technical assistance, seeds, and direct cash transfers to family farmers living in extreme poverty (with a family income of less than R\$70 per capita). Cash transfers are limited to R\$2,400 per family and must be used in rural production activities.	R\$81 million
Total budget		R\$22.3 billion

Source: MDS online information. Viewed at: <http://www.mds.gov.br/segurancaalimentar/fomento-a-producao-e-a-estruturacao-produtiva-1/fomento-as-atividades-produtivas-rurais>; CAIXA online information. Viewed at: <http://www.caixa.gov.br/voce/Social/Transferencia/fomento/index.asp>; MDA online information. Viewed at: <http://comunidades.mda.gov.br/portal/saf/programas/>, and MDA (2010), *Plano Safra da Agricultura Familiar 2010-2011*. Viewed at: http://www.agricultura.pr.gov.br/arquivos/File/deral/psafra_ag_familiar_2010_11.pdf.

4.48. To benefit from government programmes targeted at family farmers, producers must meet various criteria, including: residing in the rural establishment or nearby; not holding a property of

⁴⁴ FAO (2012).

more than four fiscal modules⁴⁵; employing predominantly their own family labour; and deriving at least half of their income from economic activities performed at the rural establishment. In addition, according to the rules for harvest year 2012/13, their annual gross income must not exceed R\$160,000 per family (up from R\$110,000 in 2011/12).⁴⁶

4.49. The provision of credit at fixed interest rates is the main policy instrument for the support of family farming in Brazil. The Programme to Strengthen Household Agriculture (PRONAF) provides an umbrella for 16 credit lines, operated by public and private banks, including the BNDES. Interest rates applied under the PRONAF range from 0.5% to 4% and are among the lowest rates in the Brazilian financial system.⁴⁷ During the review period, the Government expanded the PRONAF by increasing credit limits, lowering interest rates, and raising thresholds for eligibility to its credit lines. As in other family farming programmes, the general income limit for participating in the PRONAF was raised to R\$160,000 for harvest year 2012/13. Some beneficiaries (agrarian reform settlers and low-income farmers) are divided into special groups, which are entitled to easier financial conditions.⁴⁸ For instance, families with an annual income of up to R\$10,000 are eligible for microcredit operations, which offer an annual interest rate of 0.5%.⁴⁹ Credit limits under the PRONAF vary from R\$2,500 (for microcredit) to R\$40 million (for agri-industry cooperatives). In 2012, 1.8 million lending operations were completed under the PRONAF, for a total of R\$15.9 billion.

4.50. The Family Agriculture Plan for harvest year 2012/13 foresees investments worth R\$22.3 billion in family agriculture programmes, of which R\$18 billion for credit under the PRONAF.⁵⁰

4.51. In addition to providing credit lines, insurance schemes, technical assistance, and price guarantees, the Government has other measures to facilitate market access for family farmers. For instance, under the Food Purchase Programme (PAA), launched in 2003, the Government purchases products from family farmers with a view to supplying public institutions and making donations to low-income citizens. In addition, since 2009, as part of the National School Feeding Programme (PNAE), primary schools integrating the public education system must use food purchased from family farmers when supplying student meals. In both the PNAE and the PAA, purchase prices are determined by the Government and procurement procedures are exempt from tendering requirements.⁵¹ The Government has also taken steps to promote access for family farmers to the biodiesel market, under the Social Fuel Seal initiative (Chapter 4.4.3).

4.2.3.5 Other domestic support measures

4.52. The Rural Product Certificate (CPR), created in 1994, is a financial instrument that allows producers to sell their crops prior to the harvest and thus obtain resources to finance rural activities. The CPR may be issued by producers or cooperatives, who assume the obligation to deliver a certain amount of commodities at a future date. The "CPR Financeira" allows for

⁴⁵ The size of a fiscal module depends on the geographic region in which it is located. One module varies from 0.5 hectares in Southern Brazil to 100 hectares in the Amazon.

⁴⁶ Central Bank of Brazil (2012).

⁴⁷ MDA online information. Viewed at: <http://www.mda.gov.br/plano-safra/xowiki/quadro>.

⁴⁸ Group A comprises agrarian reform settlers, Group B consists of families with an annual gross income of up to R\$10,000 (eligible for microcredit) and Group A/C comprises agrarian reform settlers who have already received credit under group A.

⁴⁹ The eligibility threshold for microcredit was increased from R\$6,000 in 2011/2012.

⁵⁰ MDA online information. Viewed at: http://www.mda.gov.br/portal/noticias/item?item_id=10368071

⁵¹ Law No. 11,977 of 16 June 2009 and Resolution No. 39 of 26 January 2010. Product prices for the PAA are calculated according to the methodology defined in Resolution SESAN/MDS No. 39, of 26 January 2010. They vary according to the type of product: for grains they are based on the official average price received by producers; for vegetables, on the average price in the wholesale market; and for processed goods on the average price prevailing in the local wholesale market, or if this is not possible, in the regional wholesale market. Where data are not available, prices will be defined through documented research on the prices paid to farmers by three local retailers. The reference purchase prices under the PNAE are the prices paid under the PAA. For localities where there is no PAA price, the methodology defined under Resolution CD/FNDE No. 38, of 16 July 2009 applies. In this case, prices vary according to the total value of the purchase, and may be based on prices paid to farmers by local retailers; average prices in the wholesale market; or prices verified in public bidding processes.

liquidation in cash and is often used as collateral for acquiring credit. Farmers may obtain guarantees for the CPR at Banco do Brasil and other banks.⁵²

4.53. Farmers and cooperatives who sell their products in the futures market may access credit lines by discounting a rural promissory note (NPR) or a rural duplicata (DR), which allow them to receive proceeds from the sale before the harvest. This type of credit can be obtained at Banco do Brasil or other financial institutions. Up to 7% of mandatory resources to finance rural credit may be used by banks to discount NPRs and DRs.⁵³

4.54. The Brazilian Government seeks to promote the private rural insurance market by "equalizing" (covering the difference between a fixed premium and market rates) insurance premiums on agricultural production.⁵⁴ Since 2005, Brazil has operated the Programme of Support to Rural Insurance Premiums (PSR), through which it may cover up to 70% of the insurance policy value contracted by producers. Equalization payments may be up to R\$96,000 per beneficiary.⁵⁵ The area covered by the programme increased to 5.58 million hectares in 2011, from 2.28 million in 2007. Payments disbursed through the PSR reached R\$253.5 million in 2011, benefiting 40,109 producers with an average equalization cost of R\$6,319 per producer.⁵⁶ Soybeans received the highest level of support, followed by corn, apples, wheat, and grapes. In 2010, Congress approved the creation of a new fund for additional coverage of insurance risks, to be financed with resources from the Federal Government.⁵⁷

4.55. The Government's Agricultural Livestock Guarantee Programme (PROAGRO) covers losses related to natural disasters, plagues or diseases affecting livestock. To benefit from the PROAGRO, producers must pay a premium fee, set at 2% for the family farmers with PRONAF, and 3% for other producers. Since 2004, the Government has included a new modality in the programme, the PROAGRO MAIS, which targets family farmers. Indemnities through the PROAGRO to producers (including family farmers) reached R\$675 million in 2008/09, fell to R\$61 million in 2009/10⁵⁸, rising again to R\$239 million in 2010/11, and R\$770 million in 2011/12. Producers benefiting from the PROAGRO may not receive subvention through the PSR scheme.

4.56. In 2007, the Government opened the Brazilian reinsurance market to international reinsurers, so as to stimulate competition and reduce premium values (section 4.5.2.2).⁵⁹ Previously, this market was monopolized by the *Instituto de Resseguros do Brasil* (IRB), a majority state-owned company.⁶⁰

4.57. The Brazilian Coffee Fund (FUNCAFE), established by Decree Law No. 2,295 of 21 November 1986, finances research, infrastructure projects, rural extension, and the promotion of Brazilian coffee abroad. The fund may also be used to support prices and provide subsidized credit to coffee producers. The National Monetary Council defines the conditions for credit lines financed with FUNCAFE resources through periodic resolutions. Resolution CMN No. 4,099 of 28 June 2012 reduced interest rates to 5.5% a year, down from 6.75%. The credit limit is set at R\$800,000 per producer. In 2011, the FUNCAFE had a total budget of R\$2.7 billion, of which R\$2.1 billion was channelled to subsidized credit lines.⁶¹

4.3 Manufacturing

4.58. Brazil hosts a highly diversified manufacturing sector. During the review years, partly in response to a loss of dynamism of the sector, increasing imports and slow-growing exports, the Government gave strong priority to industrial policy through two comprehensive nationwide plans, the Productive Development Policy (2008-10) and the *Plano Brasil Maior* (2011-14). Instruments

⁵² MAPA (2008).

⁵³ Central Bank of Brazil (2012).

⁵⁴ Official support to rural insurance schemes is regulated by Law No. 10,823 of 19 December 2003, which allows the Government to grant subsidies for insurance premiums on agricultural production.

⁵⁵ Decree No. 7,059 of 29 December 2009.

⁵⁶ MAPA (2012).

⁵⁷ Supplementary Law No. 137 of 26 August 2010.

⁵⁸ BCB online information. Viewed at: http://www.bcb.gov.br/htms/proagro/PROAGRO_Relatorio_Circunstanciado_1999-2010.pdf.

⁵⁹ Supplementary Law No. 126 of 15 January 2007.

⁶⁰ MAPA (2008).

⁶¹ MAPA (2012).

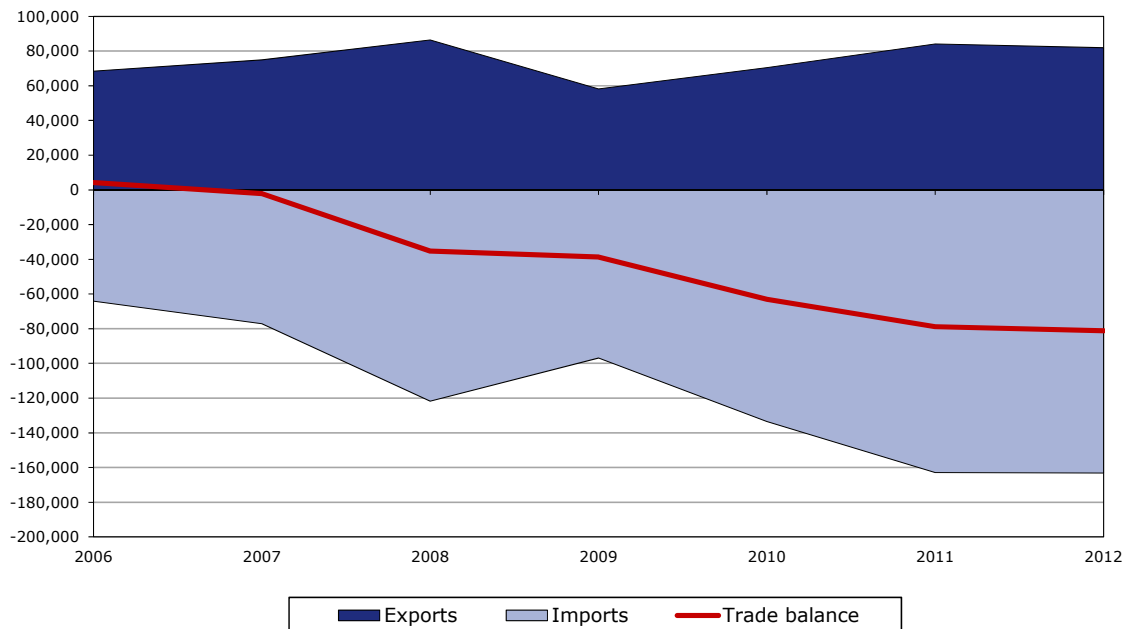
used to promote the manufacturing sector under these plans include credit lines under favourable conditions, public procurement, fiscal incentives, and border measures.

4.59. The manufacturing sector employs over 12 million people. In 2009, the foods and beverages industry was the largest employer, with 19.5% of workers in the sector, followed by apparel and accessories (15.6%), and textiles (7.5%).⁶² The contribution of manufacturing to GDP decreased during the review period, from 14.6% in 2007 to 11.3% in 2012 (Table 1.1).

4.60. After a period of surplus during 2003-06, the trade balance for the manufacturing sector registered a deficit in 2007, and this has been deteriorating rapidly in recent years (Chart 4.2). Although total trade in manufactured products increased by 61.2% in 2007-12, most of this growth was led by imports: exports increased by only 9.3% in the period, while imports more than doubled, to US\$163.2 billion in 2012. Machinery and transport equipment remained the largest import subsector (Table AI.2). The manufacturing sector's trade balance registered a record deficit of US\$81.3 billion in 2012.⁶³

Chart 4.2 Trade in manufactured products, 2006-12

(US\$ million)



Source: WTO Secretariat, based on UNSD Comtrade database.

4.61. Domestic demand has expanded strongly in the last decade, and the market share of imports of manufactured products has been increasing and capturing a significant part of the growth in consumption. According to a recent study conducted by the National Industry Confederation (CNI), the import coefficient of the manufacturing sector (i.e. the participation of imported products in the domestic consumption of industrialized goods, including the consumption of intermediary inputs in industrial activities) doubled between 2003 and 2011, to 20.7%.⁶⁴

4.62. The industrial production sector grew more slowly than GDP in 2007-11, at an annual average of 1.4%. Although output grew relatively rapidly in 2007-08, the economic crisis led to a sharp decline of 7.3% in 2009. Despite a strong recovery in 2010, industrial production stagnated in 2011, and fell by 3.6% in the first three quarters of 2012.⁶⁵ Brazil's low output figures reflect several structural issues that have lowered the competitiveness of Brazilian manufactured products *vis-à-vis* international competitors (Chapter 1.6).

⁶² MDIC (2012).

⁶³ UNSD, Comtrade database.

⁶⁴ CNI (2012).

⁶⁵ Central bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/?INDECO>.

4.63. In May 2008, the Government adopted the Productive Development Policy (PDP) as a framework policy for the manufacturing sector. The PDP established four macroeconomic targets to be met by 2010: to increase the participation of fixed investment in GDP from 17.4% (in 2007) to 21%; to increase Brazil's share in world exports from 1.18% to 1.25%; to raise corporate spending in R&D from 0.51% to 0.65% of GDP; and to increase by 10% the number of small and medium enterprises engaged in exports. In order to achieve these goals, the Government implemented a wide range of measures, including fiscal incentives, the provision of credit, the simplification of customs procedures, and technical assistance to export companies.⁶⁶

4.64. The Government notes that the PDP was launched during favourable economic conditions, both domestically and abroad. However, due to the negative effects of the economic crisis, only one of the PDP goals was met by 2010 (Brazil's participation in world exports). Nevertheless, in the Government's evaluation, the PDP was essential to increase the resilience of Brazilian industry in a period of crisis and intense market competition.⁶⁷

4.65. In August 2011, as a response to the continued effects of the economic crisis and the growing trade deficit in the manufacturing sector, the Government launched the *Plano Brasil Maior*, with the goal of sustaining growth in the face of an adverse global context. The Plan is more comprehensive than its predecessor (the PDP), having set ten targets to be met by 2014.⁶⁸ The following priorities have been established under the *Brasil Maior*: to build and strengthen competencies in the national economy; to enhance productivity and technology density within value chains; to expand domestic and external markets for Brazilian companies; and to ensure socially inclusive and environmentally sustainable growth.⁶⁹

4.66. The *Plano Brasil Maior* comprises a wide range of measures, some of which may have an effect on trade. For instance, in procurement policy, the Government introduced preferential margins of up to 25% for certain domestic goods and services, including several manufactured products (Chapter 3.4.4). Other measures include border measures, provision of credit at attractive conditions, and fiscal incentives.

4.67. Many of the measures announced under *Plano Brasil Maior* were designed to support sectors suffering from a loss of competitiveness. The INOVAR-AUTO programme, effective from 2013, seeks to promote technological development in the Brazilian automotive industry, which faced intense competition during the review period, both in domestic and international markets. Between 2007 and 2012, imports of automotive products grew 131%, while Brazilian exports increased by around 5%. As a result, Brazil's trade balance in automotive products reached a deficit of US\$10.4 billion in 2012, down from a surplus of US\$4.8 billion in 2007.⁷⁰

4.68. Under plan, the Government has adopted significant fiscal incentives to help the domestic auto industry recover from the effects of the global crisis. In December 2011, it increased the IPI tax on automotive products (48 tariff lines) to between 30% and 55%, and simultaneously granted a 30% IPI reduction to products originating in Brazil and in some of its preferential trade partners (MERCOSUR and Mexico). To benefit from these tax breaks, companies had to prove more than 65% of regional content. In addition, they had to invest in R&D and perform a minimum number of production steps in Brazil. These tax breaks were effective until 31 December 2012.⁷¹

4.69. From 1 January 2013, the automotive sector's fiscal regime was superseded by the INOVAR-AUTO programme, established by Law No. 12,715 of 7 September 2012; the previous tax breaks no longer apply. Companies eligible for the programme may benefit from an IPI tax

⁶⁶ MDIC online information. Viewed at: <http://www.mdic.gov.br/pdp/index.php/sitio/conteudo/index/3>.

⁶⁷ Federal Government online information. Viewed at: http://www.pdp.gov.br/Relatrios/Resumo%20Executivo_vers%C3%A3o%20final.pdf.

⁶⁸ The *Plano Brasil Maior* set targets on: fixed capital formation; Brazilian participation in world exports; spending on R&D, number of exporting companies; educational level of industrial workers; national value-added in manufacturing (value-added/turnover ratio); proportion of knowledge-intensive manufacturing in total industrial production (value added of high-tech manufacturing/ total manufacturing value added); energy intensity; ratio of value-added in gross turnover of energy goods manufacturing; and household access to broadband internet connection.

⁶⁹ MDIC online information. Viewed at: <http://www.brasilmaior.mdic.gov.br/images/data/201205/ac36870491379be10d85230b0a3bf526.pdf>.

⁷⁰ WTO Secretariat, based on UNSD Comtrade database.

⁷¹ Decree No. 7,567 of 15 September 2011, as amended by Decree No. 7,604 of 10 November 2011.

reduction of up to 30% on automotive products. Decree No. 7,819 of 3 October 2012 outlines a number of general and specific conditions under which three categories of eligible companies may benefit from fiscal incentives: companies that (i) manufacture, (ii) commercialize or (iii) plan to manufacture products listed in Annex I of the Decree (covering 52 tariff lines) in Brazil. In order to qualify for the INOVAR-AUTO, vehicle manufacturers must comply with energy-efficiency requirements and meet at least three of the following four conditions: perform a minimum number of manufacturing steps in Brazil for at least 80% of vehicles produced; invest a minimum percentage of the company's gross revenues in R&D activities in Brazil; invest in engineering, basic industrial technology, and supplier training; and participate in the Brazilian vehicle tagging programme (PBEV) for a minimum percentage of the company's output. These requirements are set to increase gradually, beginning in 2013 (Table 4.7).

Table 4.7 Timetable for compliance with INOVAR-AUTO Programme requirements (manufacturing companies)

Requirement	2013	2014	2015	2016	2017
Minimum manufacturing steps in Brazil					
Light vehicles	6 out of 12	7 out of 12	7 out of 12	8 out of 12	8 out of 12
Heavy vehicles	8 out of 14	9 out of 14	9 out of 14	10 out of 14	10 out of 14
Minimum local investment in R&D (% of gross revenues (after-tax))					
	0.15	0.3	0.3	0.5	0.5
Engineering, basic industrial technology and supplier training (% of gross revenues (after-tax))					
	0.5	0.75	1	1	1
Tagging (% of vehicles produced)					
	36	49	64	81	100

Source: Decree No. 7,819 of 3 October 2012.

4.70. Companies planning to start new industrial projects after 2013 will be subject to similar requirements as manufacturers currently established in Brazil; however, the timetable for compliance will be shifted according to the year of entry into the programme. Moreover, each new industrial project will be subject to approval by the Ministry of Development, Industry and Foreign Trade (MDIC), which analyses the investment projects with respect to the requirements.

4.71. Companies that only trade automotive products are not subject to the requirement on minimum manufacturing steps in Brazil; however, to qualify for the programme, they must meet the three other conditions (investment in R&D; tagging; and engineering, basic industrial technology and supplier training).⁷² Companies that comply may benefit from an IPI tax reduction of up to 30% on imported vehicles, for a maximum of 4,800 units per year.⁷³ Companies that do not have plans to manufacture automotive products in Brazil may still benefit from the incentives, provided they meet the above-mentioned criteria. There is an additional IPI tax reduction for imports, based on previous performance, for a maximum of 4,800 units per year on a MFN basis.

4.72. Until 31 July 2016, companies that manufacture or plan to manufacture automotive products in Brazil may benefit from a 30% IPI tax reduction on imports of vehicles originating from MERCOSUR and Mexico.⁷⁴

4.73. On 20 September 2012, in the context of the Committee on Trade-Related Investment Measures, Australia and the European Union submitted questions on several aspects of the INOVAR-AUTO programme and raised concerns about the apparent incompatibility of some of its provisions with WTO rules.⁷⁵ On 5 October 2012, Brazil provided clarifications and indicated that new regulations on the programme would be issued in the coming months.⁷⁶

⁷² Article 6 of Decree No. 7,819 of 3 October 2012.

⁷³ Article 22 of Decree No. 7,819 of 3 October 2012.

⁷⁴ Article 21 of Decree No. 7,819 of 3 October 2012.

⁷⁵ WTO document G/TRIMS/W/110, 20 September 2012.

⁷⁶ WTO document G/TRIMS/W/114, 5 October 2012.

4.74. As of late November 2012, six companies had been accepted into the INOVAR-AUTO.⁷⁷ The programme will be in force until 31 December 2017.

4.75. In addition to automotive products, the Government has announced tax incentives to Brazilian manufacturers of a wide range of manufactured goods under the *Plano Brasil Maior*. The fiscal measures include IPI tax reductions on several consumer and capital goods and the substitution of employers' social security contributions by a (lower) tax applied to corporate revenues, which will benefit 31 industrial segments.⁷⁸ The total value of tax reductions to be granted under the plan is estimated at R\$44.2 billion in 2012, R\$46.1 billion in 2013, and R\$46.2 billion in 2014, mainly to the manufacturing sector.

4.76. The *Plano Brasil Maior* has also amplified a number of programmes aimed at providing support to producers and exporters of manufactured products. The BNDES Programme for the Sustainability of Investment (PSI) was extended until 31 December 2012 and its budget was increased to R\$227 billion.⁷⁹ The PSI finances the production, acquisition, and export of capital goods through four different subprogrammes (Capital Goods, Innovation, Export Pre-shipment, and Knowledge-intensive Projects). The BNDES' PROGEREN, a programme to finance working capital for companies in a wide range of sectors, was expanded to include producers of automobile parts, furniture, and wood articles. The PROGEREN had resources of up to R\$14 billion until 31 December 2012, when it was due to be terminated.⁸⁰ The termination date was later rescheduled to 31 March 2013. The BNDES' REVITALIZA, providing credit to sectors negatively affected by the appreciation of the real, was widened to support some 19 industrial segments.⁸¹ The programme, with a total budget of R\$6.7 billion, is scheduled to be in force until 31 December 2013.⁸²

4.77. Brazilian exporters of manufactured products are eligible for a number of export finance programmes run by Banco do Brasil (PROEX) and the BNDES (EXIM, REVITALIZE EXPORTS) (Chapter 3.3.5).

4.78. The average MFN applied tariff for manufacturing products (ISIC definition) was 12.0% in 2012, up from 11.8% in 2008. A considerable proportion of the 100 tariff lines whose applied rates were increased in 2012 are manufactured goods. Clothing, textiles, and transport equipment benefit from the highest tariff protection among WTO categories of products, with average MFN applied tariffs of 35.0%, 22.7%, and 18.8%, respectively. Besides tariff hikes, the Government has taken a number of border measures to boost the domestic manufacturing industry under the *Plano Brasil Maior*, such as increasing the number of manufactured products that require non-automatic import licensing, and strengthening trade defence mechanisms (Chapter 3.2).

4.79. In addition to the measures launched under the PDP and the *Plano Brasil Maior*, manufacturing benefits from a wide range of support initiatives granted at the federal and sub-federal levels. These include: fiscal incentives granted to manufacturers established in the Manaus Free Trade Zone (ZFM)⁸³; the Programme of Support to the Technological Development of the Semiconductors Industry (PADIS), which provides tax incentives to IT companies that invest at least 5% of domestic revenues in R&D⁸⁴; and the BNDES PROFARMA, which finances the pharmaceutical sector.⁸⁵ Some support programmes are linked to Basic Productive Process (PPB)

⁷⁷ MDIC online information. Viewed at: <http://www.desenvolvimento.gov.br/sitio/interna/noticia.php?area=2¬icia=11993>.

⁷⁸ Federal Government online information. Viewed at: http://www2.planalto.gov.br/imprensa/noticias-de-governo/Novos_Setores_Beneficiados_com_a_desoneracao.pdf.

⁷⁹ Law No. 12,712 of 30 August 2012.

⁸⁰ BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Noticias/2012/todas/20120605_progeren.html.

⁸¹ The BNDES REVITALIZA supports manufacturers of: textiles; clothing; leather articles; shoes; wood products; wood, cork and plaiting material; fertilizers and pesticides; ceramics; electronic equipment; IT equipment; medical materials; batteries for vehicles; automotive parts; furniture; and toys.

⁸² BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Noticias/2011/todas/20110802_brasil_maior.htm.

⁸³ SUFRAMA online information. Viewed at: <http://www.suframa.gov.br/suframa-publicacoes-cartilha-incentivos-fiscais.cfm>.

⁸⁴ APEX online information. Viewed at: <http://www.apexbrasil.com.br/portal/publicacao/engine.wsp?tmp.area=509&tmp.texto=5241>.

⁸⁵ BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Areas_de_Atualizacao/Inovacao/Profarma/index.html.

criteria, which constitute agreed manufacturing steps established to recognize the degree of national industrialization of a product (Chapter 3.4.2).

4.4 Energy

4.4.1 Overview

4.80. Following the discovery of major reserves in 2007-08, Brazil's regulatory framework for oil and gas exploration and production (E&P) was amended in 2010 with a view to allow for an increased state participation in E&P activities. Exclusive rights were granted to state-controlled PETROBRAS in designated geographic blocks, and a production-sharing regime was introduced for strategic blocks and blocks located in the "pre-salt" polygon. Oil and gas E&P activities remain subject to local-content requirements. In 2009, Brazil adopted a new Gas Law introducing tendering for concessions in the downstream segment of the natural gas sub-sector. Private-sector participation in the electricity market has been expanding through government auctions and concessions, but state-owned companies still play an important role. Brazil remains the world's second-largest producer of ethanol, but was outperformed by the United States as top exporter in 2011. After a decline in biofuel exports between 2009 and 2011, the Brazilian Government introduced new programmes offering subsidized credit for the ethanol production chain.

4.4.2 General features

4.81. Brazil is nearly self-sufficient in primary energy production; in 2011, it produced 256.8 tonnes of oil equivalent (toe), which accounted for 94.3% of its energy needs. The Brazilian energy matrix remains one of the greenest in the world, but the participation of renewable sources in total energy production decreased during the review period.

4.82. Under the National Constitution, Brazil's hydro-energy sources and mineral resources (including petroleum and gas), whether they are found in the subsoil, the continental shelf or in the exclusive economic zone, are the exclusive property of the Brazilian State.⁸⁶

4.83. In March 2010, the Federal Government launched the second phase of the Growth Acceleration Programme (PAC2), aimed at increasing both private and public investments in infrastructure. It is expected that R\$461.6 billion will be invested in the energy sector between 2011 and 2014 under PAC2, up from an estimated R\$275 billion in the first phase of the programme (2007-10). According to the authorities, PAC2 investments in the energy sector amounted to R\$33.8 billion in 2011.⁸⁷

4.84. The Ministry of Mines and Energy (MME) defines the general policy for the energy sector and presides over the National Energy Policy Council (CNPE), which formulates policies and regulations pertaining to hydrocarbons, biofuels, and electricity.⁸⁸ Policy for the ethanol and sugar industry is also determined by the Inter-Ministerial Council for Sugar and Alcohol (CIMA).⁸⁹ There are two autonomous regulatory agencies linked to the MME: the National Agency for Petroleum, Natural Gas and Biofuels (ANP), which regulates hydrocarbons and biofuels (except for state-level distribution of natural gas); and the National Agency for Electrical Energy (ANEEL), responsible for regulating and overseeing the electricity sector. In the downstream segment, all activities involving petroleum products, as well as the transportation, processing, storage, liquefaction and re-gasification of natural gas, remain subject to ANP authorization, while importation and exportation are subject to authorization by the MME.

⁸⁶ Article 20 of the Brazilian Constitution.

⁸⁷ MME online information. Viewed at: http://www.mme.gov.br/se/noticias/destaque_foto/destaque_0084.html.

⁸⁸ The CNPE is composed of representatives from nine ministries, including the MME, as well as representatives from the federative states, civil society, and the Energy Research Company (EPE).

⁸⁹ The CIMA is composed of representatives of the Ministries of Agriculture, Livestock and Food Supply (MAPA); Mines and Energy (MME); Finance (MF); and Industry, Development and Foreign Trade (MDIC). Decree No. 3,546 of 17 July 2000.

4.4.3 Hydrocarbons

4.4.3.1 Market features

4.85. In 2011, 8.6% of total FDI inflows to Brazil (over US\$24 billion) were channelled into oil and gas E&P, making it the second most important destination of inward FDI.⁹⁰ Petroleum production in Brazil has been expanding steadily: total output was 768 million barrels in 2011, a 20.5% increase from 2007. Notwithstanding the growing domestic demand, Brazil became a net exporter of crude oil for the first time in 2007 and has significantly expanded its oil trade surplus since then. In 2011, the volume of exports was 1.68 times that of imports, with 203 million and 121 million barrels, respectively. Nevertheless, Brazil's dependency on imports of refined petroleum products has increased. Although domestic refining capacity grew by 9% in 2007-11, imports of refined products grew by 90% (in volume terms) in the same period. The authorities noted that Brazilian refineries were built to refine light imported oil, while most of the oil extracted in Brazil is heavy oil, and not well suited to be refined in those refineries. Hence, Brazil exports its heavy crude oil in order to import light crude oil for refining. PETROBRAS has been working to adapt its refineries to process heavy oil produced locally, but as yet does not have capacity to refine its full production of heavy oil. Furthermore, while PETROBRAS is responsible for most of Brazil's crude oil production, other producers may export all their production of heavy oil, since there is no obligation to sell it to refineries in Brazil.

4.86. Brazil also relies on substantial imports of natural gas; although domestic production increased 41% between 2007 and 2012, imports still accounted for around 45% of the country's needs. In 2012 (up to November), Brazil imported 11.9 billion cubic meters of natural gas, mostly from Bolivia (77% of total natural gas imports).⁹¹

4.87. As in the previous review period, PETROBRAS has maintained its dominant position in the production, refining, distribution, and retail market of petroleum and petroleum products in Brazil. In 2011, the state-controlled company accounted for some 90% of total oil production.⁹² PETROBRAS also owns 98% of Brazil's total refining capacity (12 of the 16 refineries). Although the company faces more competition in the distribution and commercialization of petroleum products, it remains a market leader in both segments. In 2011, it accounted for 30% of gasoline and 40% of diesel distribution.⁹³ Also, it is the only company to have service stations across the entire Brazilian territory, with 20% of the total number of stations.⁹⁴ In 2012, PETROBRAS accounted for 67.4% (in value terms) of all imports of petroleum-based products; the corresponding figure for exports was 77.6%. As of late 2012, Brazil hosted 9,489 km of gas pipelines, 69.3% of which were operated by TRANSPETRO, a subsidiary of PETROBRAS. The remaining pipelines were operated by three private companies, two of which have PETROBRAS among its shareholders.

4.88. PETROBRAS is a publicly traded joint-stock corporation; by law, the Federal Government's participation in its voting capital must be at least 50% plus one share.⁹⁵ Although foreign and Brazilian private investors retain the majority of PETROBRAS' capital stock, the Government has increased its participation in the company since Brazil's last Review. In September 2010, PETROBRAS conducted a major public share offering, raising R\$120 billion.⁹⁶ In this process, the Brazilian Government increased its capital stock ownership from 40% to 48%. The Government also increased its voting shares to 64% in 2011, up from 55.7% in 2008.⁹⁷

4.89. Since 2002, fuel prices in Brazil must be set freely by the market.⁹⁸ However, in practice, PETROBRAS has a quasi-monopoly over Brazil's refining capacity and can therefore define

⁹⁰ Information provided by the Brazilian authorities.

⁹¹ Information provided by the Brazilian authorities; and ANP (2012).

⁹² PETROBRAS online information. Viewed at: <http://www.investidorpetrobras.com.br/en/presentations/petrobras-at-a-glance.htm>.

⁹³ ANP (2012).

⁹⁴ PETROBRAS online information. Viewed at: <http://www.investidorpetrobras.com.br/en/presentations/petrobras-at-a-glance.htm>.

⁹⁵ Article 62 of Law No. 9,478 of 6 August 1997.

⁹⁶ PETROBRAS (2011).

⁹⁷ PETROBRAS online information. Viewed at: <http://www.investidorpetrobras.com.br/en/presentations/petrobras-at-a-glance.htm>.

⁹⁸ ANP online information. Viewed at: <http://www.anp.gov.br/?pg=8358>.

ex-factory prices. Having kept gasoline refinery prices virtually unchanged since June 2009, PETROBRAS increased them by 10% in November 2011 and 7.83% in June 2012.⁹⁹ On both occasions, the Government simultaneously reduced the Contribution for Intervention in the Economic Domain (CIDE)¹⁰⁰, a levy applied to gasoline, so as to maintain consumer prices unaltered.¹⁰¹

4.90. Since 2007, PETROBRAS has announced the discovery of major oil and gas reserves in the "pre-salt" layer, where oil deposits can reach a depth of 7,000 meters below the sea surface. Some of these discoveries have been confirmed and added to Brazil's proven reserves, contributing to a 19% growth in oil reserves and a 26% growth in natural gas reserves in 2007-11. As of 31 December 2011, proven reserves of crude oil amounted to 15 billion barrels, while those of natural gas reached 459 billion cubic meters. If other recent discoveries are confirmed by the ANP, Brazil's proven oil reserves could more than double in volume terms.¹⁰²

4.4.3.2 Regulatory framework

4.91. The Brazilian Constitution confers to the State exclusive rights over the exploration, production, refining, transportation, exportation, and importation of oil and gas and their derivatives. The ANP may, on behalf of the State, grant authorizations and/or concessions for specific activities to private companies and consortia incorporated under Brazilian law, with headquarters and management in Brazil. This is applicable to the entire sector. Authorizations are necessary for the refining, liquefying, re-gasifying, processing, treating, transport, and stocking of fuels, and for activities related to the national distribution of fuels.¹⁰³ Besides creating the appropriate entities in Brazil, foreign companies must comply, *inter alia*, with technical-capacity and financial-standing requirements.

4.92. Brazil's main legislation with respect to the regulation of the hydrocarbons sectors comprises Law No. 9,478 of 6 August 1997; Law No. 12,276 of 30 June 2010; Law No. 12,304 of 2 August 2010; and Law No. 12,351 of 23 December 2010.

4.93. In 2010, Brazil discontinued its exclusive use of the concession regime for the exploration and production of oil and natural gas, regulated by Law No. 9,478 of 6 August 1997. Two parallel regimes (transfer of rights and production-sharing) were introduced for selected exploration blocks (Table 4.8). Until discontinuation of the regime, the ANP held 10 bidding rounds for E&P of oil and natural gas on blocks. Any bidder, national or foreigner, who complied with the required qualifications, could participate, without exclusion for any area or block.

⁹⁹ PETROBRAS online information. Viewed at: <http://fatosedados.blogspot.com.br/2011/04/26/preco-gasolina-litro-desde-2009/> and <http://fatosedados.blogspot.com.br/2011/10/28/reajuste-nos-precos-de-gasolina-e-diesel/>.

¹⁰⁰ The CIDE is applied on the importation and commercialization of petroleum and natural gas, their derivatives, and ethanol. Its proceeds may be channelled to different uses, including subsidies for fuel transportation. The CIDE rate on gasoline was reduced to R\$0.091 per litre in November 2011 and to zero in June 2012.

¹⁰¹ Agencia Brasil online information. Viewed at: <http://agenciabrasil.ebc.com.br/noticia/2011-10-31/decreto-que-reduz-aliquota-da-cide-para-evitar-elevacao-de-precos-de-combustiveis-e-publicado-hoje> and <http://agenciabrasil.ebc.com.br/noticia/2012-06-22/petrobras-anuncia-aumento-da-gasolina-e-do-diesel-nas-refinarias-mas-preco-nao-sobe-nas-bombas>.

¹⁰² ANP online information. Viewed at: <http://www.anp.gov.br/?pg=59301&m=reservas&t1=&t2=reservas&t3=&t4=&ar=0&ps=1&cachebust=1343380230569>.

¹⁰³ The main requirements for authorization are: not to be involved in any fiscal or judicial procedures brought by the Government; to be registered to carry out the specific activity; to demonstrate adequate financial capacity to carry out the planned activity; and to have proper environmental and security licences. The ANP is in charge of analysing requests and, if necessary, carrying out *in situ* inspections. When granted, authorizations are published.

Table 4.8 Regulatory framework for oil and gas exploration and production

	Transfer of rights regime	Production-sharing regime	Concession regime
Legislation	Law No. 12,276 of 30 June 2010.	Law No. 12,351 of 23 December 2010; Law No. 12,304 of 2 August 2010.	Law No. 9,478 of 6 August 1997.
Coverage	Seven designated "pre-salt" blocks granted in September 2010.	Blocks located in the "pre-salt" polygon ^a and strategic blocks; the CNPE may extend the list of blocks covered.	All remaining blocks (98% of Brazil's sedimentary basins).
Exclusive rights transferability	Not transferable.	Transferable upon MME authorization.	Transferable upon ANP authorization.
PETROBRAS participation in E&P contracts	Holds exclusive rights for exploration and production, initially up to a total of 5 billion barrels of oil equivalent; once the 5 billion barrel limit is reached, blocks will be granted under the production-sharing regime.	The consortium administers 50% of the project and the Federal Government the other 50%. The consortium's part is divided in two: up to 70% for private investors and at least 30% for PETROBRAS, who may compete on equal footing with private companies in bidding rounds to raise its participation.	Possibility of 100% participation; competes on equal footing with private companies in bidding rounds.
Federal Government participation in E&P contracts	Not possible.	Possible through specific fund created by law; may participate in investments. PPSA represents the Government's interests in the Operational Committee as the PSC manager.	Not possible.
Private sector participation in E&P contracts	Not possible.	Winning bidders in E&P auctions can have up to 70% participation in the consortium's share.	Winning bidders in E&P auctions may have up to 100% participation in a consortium.
Local content	Exploration phase: an overall minimum of 37%, with item-specific minimums between 5% and 85%; Development phase: an overall minimum of 55% to 65% (depending on the year production began), with item-specific minimums between 29% and 100%.	Thresholds to be defined.	Exploration phase: 37% to 80% overall, with item-specific minimums between 5% and 90%; Development phase: 55% to 85% overall, with item-specific minimums between 10% and 100%. ^b
Government revenue from E&P contracts	Signing bonus of R\$74.8 billion; royalties for production of hydrocarbons (10% of gross revenues).	Signing bonus; royalties.	Signing bonus; royalties for production of hydrocarbons (5% to 10% of gross revenues, depending on the concession contract); "special participation" fee on large/very profitable blocks (10-40% of net income).

a The geographical coordinates of the "pre-salt polygon" are defined in the Annex to Law No. 12,351.

b Figures from the latest bidding round (round 9) that auctioned both onshore and offshore blocks.

Source: Information provided by the Brazilian authorities.

4.94. The production-sharing regime is regulated by Law No. 12,304 of 2 August 2010 and Law No. 12,351 of 23 December 2010. According to the authorities, adoption of the production-sharing model reflects the low exploration risk of the corresponding blocks, as well as the rise in oil prices

relative to their levels when the concession model was originally implemented (1997).¹⁰⁴ This regime is also aimed at achieving greater state control over oil production and a more equal distribution of its proceeds among Brazilians. To this end, government revenues arising from production-sharing contracts are to be channelled to a social fund to finance education, poverty reduction, and environmental initiatives.¹⁰⁵

4.95. In 2010, besides introducing the production-sharing regime, the Federal Government introduced a transfer of rights regime, through Law No. 12,276 of 30 June 2010. This law granted to PETROBRAS an area with 5 billion barrels of oil equivalent in exchange for more shares of the company. In September 2010, new shares were issued in order to further capitalize the company, and the Federal Government and other state bodies increased their share ownership from 39.8% to 47.7%. Brazil's probable oil and gas reserves located in the pre-salt polygon, including the seven blocks under the transfer of rights regime, are estimated at 15 to 35.1 billion barrels of oil equivalent.

4.96. Along with the adoption of the production-sharing regime, the Government created a state-owned enterprise, Pré-sal Petróleo S.A. (PPSA)¹⁰⁶, to represent its interests in the consortia performing E&P operations and to manage the commercialization of the state's share of output produced.¹⁰⁷ The company may also act as an arbiter in cases where pre-salt and strategic reserves extend into blocks licenced under a different regulatory regime.¹⁰⁸ Unlike for PETROBRAS, the capital stock of PPSA must be entirely owned by the Federal Government.

4.97. Under the production-sharing regime, the Federal Government administers 50% of a project and a consortium the remaining 50%. Private-sector participation in a consortium is limited to 70%, to be offered in bidding rounds; the first such round is yet to be scheduled.¹⁰⁹ In March 2013, the authorities indicated that the first bidding round may take place in November 2013, but the areas were still to be defined. Any winner of a bid must establish a consortium with PETROBRAS, in which the state company has at least 30% participation. PETROBRAS may also bid on an equal footing to private companies with a view to increasing its participating interest in a production-sharing contract. The production-sharing regime does not exclude the possibility of direct contracts with PETROBRAS, without bidding procedures, in order to preserve national interests or achieve other energy policy goals. The selection of winning bids is to be based on the portion of hydrocarbon output (*excedente em óleo*) to be shared between the Government and the contractor, after deducting a percentage of the total production volume to cover royalties and costs incurred by the contractor.

4.98. Under the concession regime in place since August 1997, and regulated by Law No. 9,478 of 6 August 1997, the ANP has the authority to carry out bidding rounds for the concession of blocks for E&P activities. Since 1999, the ANP has granted concessions in nine such rounds, the most recent of which was completed in June 2009.¹¹⁰ At end 2011, 61 foreign and domestic concessionaries were conducting E&P activities in Brazil; explorations were under way

¹⁰⁴ Federal Government online information. Viewed at: http://www.brasil.gov.br/energia-en/pre-salt/contractual-arrangements/br_model1?set_language=en.

¹⁰⁵ Article 46 of Law No. 12,351 of 23 December 2010.

¹⁰⁶ Law No. 12,304 of 2 August 2010.

¹⁰⁷ PPSA is not responsible for carrying out, directly or indirectly, exploration, development, production, or commercialization activities. Its responsibilities for the management of production-sharing contracts are, *inter alia*, to: defend the interests of the State in consortia and their respective operations committees; carry out technical and economic evaluations of exploration, development and production plans, and enforce contractual requirements relating to local content; monitor and audit the implementation of exploration, appraisal, development and production projects; monitor and audit costs and investments related to production sharing contracts. For the management of commercialization contracts, PPSA may: enter into such contracts on behalf of the State; verify contractors' compliance with the commercialization policy for the State share of output derived under production-sharing contracts; and monitor vending operations, sale costs, and prices of for oil, natural gas, and other hydrocarbon fluids.

¹⁰⁸ Article 4 of Law No. 12,304 of 2 August 2010, and Federal Government online information. Viewed at: http://www.brasil.gov.br/energia-en/pre-salt/contractual-arrangements/br_model1?set_language=en.

¹⁰⁹ Federal Government online information. Viewed at: http://www.brasil.gov.br/energia-en/pre-salt/contractual-arrangements/br_model1?set_language=en.

¹¹⁰ The eleventh bidding round, originally scheduled for September 2011, was postponed until further notice.

at 324 blocks, of which 92 were being explored by PETROBRAS and 94 by consortia with PETROBRAS participation.¹¹¹

4.99. Local-content commitments have been among the selection criteria in all concession rounds carried out to date. Since October 2005, the ANP has set item-specific minimum local-content thresholds for bidders' overall local-content offers (Table 4.8). Since November 2007, concessionaries are required to present to the ANP certificates of local content issued by accredited institutions.¹¹² Concessionaries that fail to fulfill their local-content commitments are subject to fines, which vary according to the shortfall. In 2011, the ANP levied fines totaling R\$59 million to nine companies, including PETROBRAS, for not meeting their respective local-content commitments made in the fifth and sixth bidding rounds.¹¹³

4.100. The transfer of rights regime stipulates local-content requirements under conditions similar to those of the concession regime; the relevant items and thresholds may differ. Activities under production-sharing contracts are also subject to local-content requirements, as well as to the payment of signature bonuses and royalties. Law No. 12,734 of 30 November 2012 introduced a royalty of 15% of gross revenues for production-sharing contracts. The production-sharing contracts are not subject to special participation fees.

4.101. In its acquisitions related to E&P projects, PETROBRAS has traditionally set a minimum local-content threshold for goods and services delivered by its Brazil-based suppliers. To this end, it has applied the ANP methodology for the calculation of local content. In 2011, PETROBRAS elaborated an internal local-content policy, which extended the same practice to other areas of operation.¹¹⁴

4.102. Concessionaries are eligible for a Special Customs Regime (REPETRO)¹¹⁵, which suspends the application of all federal and state taxes on specific equipment and spare parts imported for direct use in E&P activities.¹¹⁶ The REPETRO also allows for the "fictitious exportation" and subsequent importation, under the temporary admission customs regime, of goods produced in Brazil and sold in foreign currency to an entity domiciled abroad for use in the exploration of petroleum and natural gas in Brazil (Chapter 3.4.2.7).¹¹⁷ The list of eligible goods was modified in 2008 to include, *inter alia*, equipment and tools intended for rescue, accident prevention, fire fighting, and protection of the environment.¹¹⁸ The regime waives all import taxes until 31 December 2020. The REPETRO may be applied to E&P activities under the transfer of rights and production-sharing regimes.

4.103. The Special Incentive Regime (REPENEC) suspends all federal taxes on imported or domestically acquired machinery, equipment, and construction materials intended for infrastructure work in: petrochemicals, oil refining, and ammonia and urea production from gas.¹¹⁹ Eligible projects must be located in the north, north-east and mid-west regions; the suspension of import tariffs on construction assets and inputs is conditional upon no similar national products being in existence. Federal tax suspension is converted into zero-rate duty upon proof that the inputs were used in accordance with Article 3 of Law 12.249 of 11 June 2010, which established the REPENEC.

4.104. In 2009, Brazil adopted a new Gas Law (*Lei do Gás*)¹²⁰ that introduces the possibility of tendering for concessions in specific cases, including transportation via newly built pipelines

¹¹¹ ANP (2012).

¹¹² ANP Resolution No. 36 of 13 November 2007.

¹¹³ The fines were levied on ten companies: PETROBRAS, Shell, Sonangol-Starfish, Statoil, Maersk, Petrogal, Partex, Petroxynergy, Quantra and Aurizônia.

¹¹⁴ PETROBRAS (2012).

¹¹⁵ Law No. 9,478 of 6 August 1997 and Decree No. 3,161 of 26 September 1999.

¹¹⁶ Admission to the REPETRO is reserved for legal entities authorized by the Secretariat of Federal Revenue of Brazil (RFB).

¹¹⁷ Inputs used in domestic manufacture of goods eligible for "fictitious exportation" under the REPETRO may be imported under the drawback regime.

¹¹⁸ RBF Normative Ruling No. 844 of 9 May 2008. Available at: http://www.regimerepetro.com.br/documentos/legislacao/IN_RFB_844.pdf.

¹¹⁹ Law No. 12,249 of 11 June 2010.

¹²⁰ Law No. 11,909 of 4 March 2009.

considered of "general interest"¹²¹, and storage in hydrocarbon reservoirs returned to the State. Concessions for transportation of natural gas are granted for a period of 30 years; they are transferable and renewable for a maximum of 30 additional years. Prospective operators' bids are assessed on the basis of the lower annual service fee sought and, where applicable, the payment offered for use of auxiliary facilities belonging to the State. The duration of the concession for storage activities is not established by law, but the MME, after consulting with the ANP, may establish a period of exclusivity for the company whose contracted capacity enabled or helped to enable the construction/operation of a storage facility.

4.105. Distribution and commercialization transactions involving natural gas, other than state-level distribution, are subject to registration with the ANP; details on the origin and characteristics of the contracted natural gas volumes may be requested. The Gas Law authorizes private entities to build customized distribution facilities if the distribution operator of the respective State cannot respond to their specific needs.¹²² Ownership of any such infrastructure must be transferred (against compensation) to the State; its operation and maintenance must be entrusted to the state distribution operator.

4.4.3.3 Biofuels

4.106. During the review period, Brazil retained its position as the second-largest producer of ethanol in the world.¹²³ However, in 2011, the United States overtook Brazil as the world's largest exporter of ethanol. After reaching a historic high of 5.1 million cubic meters in 2008, Brazilian ethanol exports dropped to 2.5 million cubic meters in 2012, partly due to unfavourable weather conditions and rising international prices of sugar, which encouraged a production switch at the expense of ethanol.¹²⁴

4.107. In April 2010, Brazil reduced its import tariff on ethanol from 20% to 0%.¹²⁵ Moreover, in October 2011, in an attempt to curb domestic demand in the light of lower production levels, the Brazilian Government reduced the blending ratio of ethanol in gasoline from 25% to 20%.¹²⁶ Nonetheless, the average retail price for ethanol in 2011 reached a high of R\$1.8 per litre.¹²⁷ The authorities indicated that the price of ethanol is expected to decline with the April 2013–March 2014 sugarcane harvest.

4.108. In 2012, the BNDES launched two new programmes offering credit to the ethanol sector at attractive conditions. The BNDES PRORENOVA programme grants credit to sugarcane producers totalling up to R\$4,350 per hectare planted. The programme was scheduled to be in force until 31 December 2012, with a total budget of R\$4 billion.¹²⁸ The BNDES PASS programme finances the storage of ethanol, offering up to R\$50 million per beneficiary. The programme, with a total budget of R\$2.5 billion, was set to expire in 28 February 2013.¹²⁹

4.109. Since 2011, the BNDES has also financed innovation in sugarcane biomass technology through PAISS, a programme run in partnership with the state-owned company *Financiadora de Estudos e Projetos* (FINEP). Between 2011 and 2014, PAISS may disburse up to R\$1 billion in the

¹²¹ This regime does not apply to natural gas pipelines covered by international treaties; an authorization regime, administered by the ANP, applies in this case.

¹²² Under the Constitution, the states forming the Brazilian Federation have exclusive rights over the local distribution and sale of piped natural gas; concessions for these activities are regulated and granted at sub-federal level.

¹²³ US Department of Energy online information. Viewed at: http://www.afdc.energy.gov/data/#tab/fuels-infrastructure/data_set/10331.

¹²⁴ Brazilian ethanol production comes entirely from sugarcane (ANP, 2012).

¹²⁵ MDIC online information. Viewed at: <http://www.mdic.gov.br/sitio/interna/noticia.php?area=1¬icia=9708>. The authorities indicated that the reduction was consistent with the objective of removing all tariff and non-tariff barriers to the international trade of ethanol.

¹²⁶ Agencia Brasil online information. Viewed at: <http://agenciabrasil.ebc.com.br/noticia/2011-08-29/governo-reduz-percentual-de-etanol-que-e-misturado-gasolina>.

¹²⁷ ANP (2012).

¹²⁸ BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/Programas_e_Fundos/prorenova.html.

¹²⁹ BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/Programas_e_Fundos/pass.html.

form of credit instruments, equity participation, and economic support.¹³⁰ The PAISS programme is focused in developing new technologies for second-generation biofuels and better use of biomass as a source of clean energy.

4.110. Brazil has also put in place mechanisms to promote domestic demand and supply of biodiesel. In the framework of the National Programme for Biodiesel Use and Production (PNPB), in force since 2004, Brazil increased the mandatory biodiesel blending ratio to 5% as from January 2010, three years ahead of schedule.¹³¹ Since 2005, the ANP has held "reverse auctions" for domestically produced biodiesel, setting the volume of government purchases and a maximum price that suppliers must underbid. Until August 2012, bids took place every three months, since then bids take place every two months. The entire volume auctioned is bought by PETROBRAS, which resells the product to distribution companies. Between 2008 and 2012, 10.5 million cubic meters of biodiesel were purchased through reverse auctions.¹³² Under the auction rules, at least 80% of the total volume purchased must come from producers certified by the "Social Fuel Seal".¹³³ To obtain this certification, biodiesel producers must purchase a minimum share of raw materials from family farmers registered under the PRONAF (Chapter 4.2). Minimum shares differ by region: 15% in the north and mid-west; 30% in the south-east, north-east and the semi-arid area; and 35% in the South.

4.111. The reverse auction mechanism was originally conceived as a transitional support measure for the biodiesel production chain, to be abandoned once the market is consolidated. However, a later assessment of the biodiesel market led the authorities to extend the reverse-auction mechanism, since they considered it to be an efficient way to guarantee the participation of small farmers in the biodiesel production chain. The interagency commission that oversees the implementation of the biodiesel programme is considering a change in the law, to establish a minimum volume to be purchased from producers certified with the "Social Fuel Seal", which will pave the way for transitioning away from the auctions. Until the new law is approved, auctions will continue. In May 2012, following allegations of price agreements between biodiesel producers, the ANP announced new auction rules to prevent the formation of cartels.¹³⁴ The Federal Police initiated an investigation on the matter.¹³⁵

4.112. National biodiesel production reached 2.7 million cubic meters in 2011, up from 69 million in 2006. Brazil is a major world market for biodiesel, together with the United States and Germany. PETROBRAS is the largest producer, accounting for about one quarter of national biodiesel output.¹³⁶ According to MME information, the PNPB helped reduce imports of conventional diesel by some US\$5.3 billion over 2004-11.¹³⁷

¹³⁰ BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Areas_de_Atualizacao/Inovacao/paiss/.

¹³¹ The PNPB is regulated by Law No. 11,097 of 13 January 2005.

¹³² Until mid-2012, the MME usually set the volume of purchases, considering short-term diesel demand perspectives. However, as from the second half of 2012, auctions' rules were improved in order to foster greater competition among biodiesel producers and improve the relationship between producers and distribution companies. The main feature in this new auction model is that buyers are no longer passive in the process of selection of the best deals. They choose plants according to their needs and in consultation with their clients (distribution companies), who also participate actively in the process. In the new model, the volume is no longer set by the MME, but is exclusively a purchaser decision. The ANP only sets a maximum price, which suppliers must underbid for each region, based on production costs.

¹³³ MME online information. Viewed at: <http://www.mme.gov.br/programas/biodiesel/menu/biodiesel/pnpb.html>.

¹³⁴ Agência Brasil Online information. Viewed at: <http://agenciabrasil.ebc.com.br/noticia/2012-05-11/modelo-de-leiloes-para-aquisicao-de-biodiesel-muda-para-evitar-combinacao-de-precos>.

¹³⁵ Folha de São Paulo online information. Viewed at: <http://www1.folha.uol.com.br/mercado/1086268-policia-federal-investiga-fraude-em-venda-de-biodiesel.shtml>.

¹³⁶ PETROBRAS online information. Viewed at: <http://www.petrobras.com.br/pt/noticias/investiremos-us-2-5-bi-em-biocombustiveis-ate-2015/>.

¹³⁷ MME online information. Viewed at: <http://www.mme.gov.br/programas/biodiesel/menu/biodiesel/pnpb.html>.

4.4.4 Electricity

4.4.4.1 Market features

4.113. Between 2008 and 2011, Brazil's installed capacity and power generation output grew faster than electricity consumption. In 2011, Brazil had 117 GW of installed capacity for electricity generation, generated 532 TWh of electricity, and consumed 480 TWh; these figures represented increases of 13%, 15%; and 12%, respectively from 2008 levels. Hydroelectric sources accounted for over 70.4% of installed capacity, followed by thermal (26.7%), nuclear (1.7%), and wind (1.2%) sources. Brazil's electricity imports in 2011 accounted for 6.8% of domestic supply, down from 8.5% in 2008.¹³⁸ Electricity produced in Itaipu and imported from Paraguay accounts for most of Brazil's imports.¹³⁹ In 2011, Brazil imported 37.725 GWh from Paraguay and 705 GWh from Venezuela, and exported 2.338 GWh to Argentina and 206 GWh to Uruguay.

4.114. The Federal Government owns 54.46% of voting shares in ELETROBRAS, which continues to play a major role in the electricity sector. In 2010, the company accounted for 36% of Brazil's installed generation capacity, as well as 55% of its transmission lines.¹⁴⁰ Private investors, mostly foreign, hold roughly 35% of the company's total capital stock.¹⁴¹ Electricity distribution is provided by 64 companies, including state- and privately-owned enterprises.¹⁴²

4.115. After rising by more than 35% between 2003 and 2007, electricity prices have stabilized and increased well below inflation rates. During 2007-10, the average price for electricity rose by just 3% to reach R\$264 per MWh¹⁴³; over the same period, cumulative inflation was 20.6%.¹⁴⁴ Nevertheless, Brazilian consumers continue to pay a relatively high price for electricity. According to a survey of 27 countries conducted by the Federation of Industries of the State of Rio de Janeiro (FIRJAN), Brazil had the fourth highest electricity price for industrial consumers¹⁴⁵; some 48.6% of that price was attributable to federal and state-level taxes (PIS/COFINS and ICMS), as well as to sector-specific charges.¹⁴⁶ In 2013, the sector's regulator introduced new tariffs, which are estimated to have led to a 20.2% reduction in energy prices. For households, the minimum reduction will be of 18%, while tariffs for high-intensity consumers could be up to 32% lower. The reductions have resulted from the adoption of Law No. 12,783 of 11 January 2013, which established the renewal of generation and transmission concessions due to expire by 2017, as well as the enactment of Provisional Measures No. 591/2012 and 605/2013. The main measures introduced by Law No. 12,793/13 which allowed a reduction in energy prices include: a) the establishment of an average energy price of R\$32.81/MWh for energy quotas provided by generators with renewed concessions; b) reductions of transmission prices; c) lower federal sector-specific taxes; and d) higher National Treasury direct contributions.

4.4.5 Regulatory framework

4.116. The electricity sector was reorganized in early 2004 under a new model.¹⁴⁷ The institutional framework comprises: the MME and the CNPE, the main decision-making bodies; the regulatory agency (ANEEL); the Accredited Sectoral Standardization Bodies (ONS), which coordinate and control the National Integrated Grid (SIN); the Energy Research Enterprise (EPE), established to conduct studies to inform energy policy-making; the Electric Energy Commercialization Chamber (CCEE), a non-profit private entity that manages electricity trading; and the Electricity Industry Monitoring Committee (CMSE), which monitors the continuity and safety of electricity supply.

¹³⁸ EPE (2012).

¹³⁹ Itaipu is jointly administered by Brazil and Paraguay; each country has rights on half of its capacity.

¹⁴⁰ ELETROBRAS online information. Viewed at: <http://www.eletrabras.com/elb/data/Pages/LUMIS59BAE5EBITEMIDPTBRIE.htm>.

¹⁴¹ ELETROBRÁS (2010).

¹⁴² ANEEL online information. Viewed at: <http://www.aneel.gov.br/area.cfm?idArea=48&idPerfil=2>.

¹⁴³ ANEEL Online information. Viewed at: http://www.aneel.gov.br/area.cfm?id_area=91.

¹⁴⁴ Brazilian Central Bank information. Viewed at: <http://www.bcb.gov.br/Pec/metas/TabelaMetaseResultados.pdf>.

¹⁴⁵ FIRJAN (2011).

¹⁴⁶ The sector-specific charges finance a variety of programmes, including for cross-subsidization of regions and consumers, safety of the electricity system, research and development, alternative energy sources, and energy conservation. These charges are incorporated in the end-user electricity tariffs.

¹⁴⁷ WTO document WT/TPR/S/140, 1 November 2004.

4.117. The ANEEL grants concessions for electricity generation, transmission, and distribution through authorizations or public tender procedures; the latter may involve auctions, which are organized by the ANEEL or the CCEE.¹⁴⁸ Setting-up thermoelectric plants with a capacity of more than 5 MW requires ANEEL authorization; the same applies to hydroelectric plants with a capacity greater than 1 MW but equal to or lower than 50 MW.¹⁴⁹ Hydroelectric projects with capacity greater than 50 MW require public-provider concessions in order to trade part of their electricity via auctions. Authorizations for building and operating new thermoelectric generators and certain hydropower plants are granted for 30 years, non-renewable. A renewable period of 35 years is envisaged for new hydroelectric generators. Concessions for building hydropower plants greater than 50MW are granted for 35 years, non renewable.

4.118. Under the regime applicable until January 2013, generation concessions granted before 11 December 2003 lasted for up to 35 years and could be extended for up to 20 years. Concessions awarded after that date also lasted for up to 35 years, but could no longer be extended.¹⁵⁰ Distribution and transmission concessions were for up to 30 years, with the possibility of extension for the same period.¹⁵¹ All this changed with Law No. 12,783 of 11 January 2013 (see below). As of the first semester of 2010, the ANEEL had awarded concessions through tender procedures for almost 39,000 km of transmission lines, attracting investments of some R\$31.5 billion, from national and foreign investors.¹⁵² A large number of concession contracts, comprising 58 generating plants, 78,000 km of transmission lines, and 41 distribution companies, are due to expire between 2015 and 2017.

4.119. Brazil's electricity model is organized around two trading environments: the Regulated Contracting Environment (ACR) and the Free Contracting Environment (ACL). In the ACR, distribution companies hold the exclusive right to supply electricity to captive consumers. These companies may not operate in the ACL, where large consumers (above 3MW/year) may purchase energy from generating or trading companies through freely negotiated bilateral contracts.¹⁵³ As a general rule, generating companies may sell electricity in both environments; however, those registered as self-producers (i.e. generating energy for their own consumption) may sell their surplus electricity only to distribution companies in the ACR, under a transaction-specific authorization from the ANEEL.¹⁵⁴ In August 2012, the size of the ACL market was estimated at 27.2% of domestic electricity consumption, with 1,427 entities registered as free consumers at the CCEE.¹⁵⁵

4.120. Public auctions are the main procurement mechanism for distribution companies to acquire energy from generating companies. Under auction rules, all distribution companies buy energy at the same price.¹⁵⁶ The tariffs charged to the final consumer are regulated by the ANEEL and vary depending on operational and other costs incurred by the distribution company. Between 2004 and 2010, a total of 31 energy purchase auctions were conducted. Up to April 2010, some 57,000 MW of new capacity were contracted by distribution companies, with contracts ranging from 15 to 30 years.¹⁵⁷ Imports and exports of electricity may only take place through the national grid (SIN) and require ANEEL authorization; they may take place under free contracts or in the regulated market. Authorizations are non-automatic and are granted through the integrated foreign trade system SISCOMEX (Chapter 3.2).¹⁵⁸

¹⁴⁸ ANEEL may delegate its responsibility for conducting energy auctions to the CCEE.

¹⁴⁹ Thermoelectric and hydroelectric power plants with generation capacities of up to 5 MW and 1 MW, respectively, need only be registered with ANEEL.

¹⁵⁰ Law No. 10,848 of 15 March 2004.

¹⁵¹ Law No. 9,047 of 7 July 1995.

¹⁵² ANEEL online information. Viewed at: <http://www.aneel.gov.br/area.cfm?idArea=54&idPerfil=5> and http://www.aneel.gov.br/area.cfm?id_area=57.

¹⁵³ Since 2006, consumers that demand over 500kW/year and have the ability to purchase energy from alternative sources may also participate in the ACL.

¹⁵⁴ Decree No. 5,163 of 30 July 2004.

¹⁵⁵ CCEE online information. Viewed at: http://www.ccee.org.br/portal/faces/pages_publico.

¹⁵⁶ The price is set by auction. Generators must offer quotas of energy to be sold at decreasing prices until the sum of the quotas equals total demand by the distributors. At this point, an average price for all quotas offered is calculated; this price is the single price to be paid by all distribution companies in their purchases of quotas.

¹⁵⁷ World Bank (2011).

¹⁵⁸ SRF Normative Instruction No. 649 of 28 April 2006.

4.121. The regulatory framework of the electricity sector was revamped in early 2013, with the passage of Law No. 12,783 of 11 January 2013. This law, which now regulates electricity generation, transmission, and distribution concessions, modified Laws No. 9,427 of 26 December 1996; 9,648 of 27 May 1998; 10,438 of 26 April 2002; 10,848 of 15 March 2004; and 12,111 of 9 December 2009; and repealed Law No. 8,631 of 4 March 1993. The law extended the regime of concessions for electricity generation and the system of quotas, indicating that as from 12 September 2012, the generation concessions of hydropower granted under Article 19 of Law No. 9,074 of 7 July 1995 may be extended at the discretion of the Government, only once, for up to 30 years, in order to ensure the continuity and efficiency of the service provided as well as low electricity tariffs. The extension is contingent upon the generator's acceptance of certain conditions to be set by the ANEEL, including the remuneration tariffs to be applied, a guaranteed supply quota allocation, and quality standards. Quotas will be allocated through contracts and they are expected to be revised periodically by ANEEL.

4.122. The new law also applies to auto generation: hydroelectric generation concessions with power of up to 50 MW may be extended once for up to 30 years. Generators may sell any non-consumed surplus in the spot market. Generators not linked to the SIN are not bound by the 50MW threshold.

4.123. In the case of thermo-electric power generation, Law No. 12,783 allows the renewal of concessions for up to 20 years. The renewal must be requested by the concessionary at least 24 months prior to the expiration of the concession.

4.124. Concessions for transmission and distribution of electricity are also allowed to be extended once for up to 30 years as of 12 September 2012. In the case of transmission, revenue will be fixed by ANEEL. The generation, transmission, and distribution of electrical energy concessions that are not renewed, will be granted in a competitive auction, for up to 30 years.

4.125. The 2013 Law also authorized the Federal Government to acquire the claims held by ELETROBRAS in Itaipu, and grant them to the Energy Development Fund (CDE), created by Law No. 10,438 of 26 April 2002. The Law allowed for the transfer of the Global Reversion Reserve (RGR) resources to the CDE.¹⁵⁹ The CDE's role was redefined to: promote the development of energy in the Brazilian states, while promoting the universality of electrical energy service in the whole Brazilian territory, the competitiveness of energy produced from sources such as wind, photovoltaics, solar, small hydro power plants, biomass, other renewable sources, and natural gas, and guaranteeing the resources needed to provide subsidies for low-income consumers. The CDE is financed through annual fees paid by all agents commercializing electric energy, fees paid for the use of the distribution and transmission systems, fines paid to ANEEL, and Federal Government credits. The CDE is managed by ELETROBRAS.

4.126. Notwithstanding the encouraging developments in the electricity sector, including price stability and growing generation capacity, Brazil continued to experience power failures during 2009-12. In November 2009, a major blackout affected 18 Brazilian states, leaving consumers without electricity for nearly four hours, on average.¹⁶⁰ Following investigations, ANEEL applied fines totalling some R\$46 million to six companies for failures in the operation and maintenance of transmission lines.¹⁶¹

4.127. The Light for Everyone (*Luz Para Todos*) programme, aimed at promoting universal access to electricity, has been in operation since 2003. As of May 2009, the programme had brought electricity to 10 million households in remote areas. Originally intended to terminate in 2011, the programme was extended to 2014, after the 2010 Census revealed that 2.2% of the Brazilian

¹⁵⁹ The CDE is authorized to contract credit operations, in order to cover any need to compensate electricity concessionaries in case of reversion of concessions, or to limit tariff increases. The RGR was created by Law No. 5,655, of 20 May 1971, and had functions similar to the CDE's.

¹⁶⁰ Brazilian Chamber of Deputies News Agency online information. Viewed at: <http://www2.camara.gov.br/agencia/noticias/ECONOMIA/144188-GOVERNO-INSISTE-QUE-A-CAUSA-DO-APAGAO-EM-NOVEMBRO-FOI-O-MAU-TEMPO.html>.

¹⁶¹ ANEEL online information. Viewed at: http://www.aneel.gov.br/aplicacoes/noticias/Output_Noticias.cfm?Identidade=4303&id_area=90.

population did not have access to electricity.¹⁶² The Government also offers subsidized electricity tariffs to low-income families, with discounts ranging from 10% to 100%.¹⁶³

4.5 Services

4.5.1 Banking, finance, and insurance

4.5.1.1 Overview

4.128. The degree of financial intermediation in Brazil increased during the period under review. The authorities indicated that macroeconomic stability has contributed directly to financial inclusion, which the Government has promoted by, *inter alia*, improving distribution channels, increasing transparency, and adapting the regulation of financial services for low-income customers. As a result, all 5,565 Brazilian municipalities are currently served by the financial system, and the number of individuals with an active relationship with financial institutions grew 31% to 121 million between 2007 and 2012. There has been a substantial increase in the credit to GDP ratio, from 25% in 2003 to more than 50% in 2012. This has been a useful step towards correcting the insufficient supply of medium and long-term private credit for small and medium-size enterprises, identified in the last Review of Brazil. However, the role of state banks in medium- and long-term financing remains very important, directly or through equalization initiatives, by which a portion of the interest rate charged to credit users is taken up by the State.

4.129. The decline in interest rate spreads has played an important role in increasing financial deepening. The average interest rate spread considering the credit portfolio as a whole dropped by almost 10 percentage points during the period under review. However, while average interest rate spreads were reduced, they remain wide, at over 24 percentage points in 2012.

4.130. The establishment of new foreign financial institutions requires approval by Presidential Decree. In practice, the establishment of new foreign financial institutions has been allowed, and 17% of assets are in the hands of foreign banks. Brazil participated in the WTO negotiations on financial services; although it has not ratified the Fifth Protocol, amendments made to its insurance legislation in 2007 may make this possible. Among other things, the amendments allow, under certain conditions, the cross-border supply of insurance services, which was previously forbidden.

4.131. In 2012, Brazil's financial sector was subjected to the IMF and the World Bank Financial Sector Assessment Program (FSAP). The FSAP found that from 2002 to 2012, Brazil's financial system had "grown in size, diversification and sophistication, hand in hand with the country's economic progress": financial sector assets had doubled, driven by macroeconomic stabilization, and there had been significant gains in financial inclusion, while securities and derivatives markets had expanded. It was noted that financial sector oversight and infrastructures were strong, but there was room for improvement in some areas to stay ahead of the rapidly evolving system. Due to appropriate policy responses and built-in financial-system buffers, the financial system had weathered the global crisis remarkably well.¹⁶⁴ The FSAP report also noted that the banking sector remained dominated by domestic financial institutions, with public banks having a significant share, while international investors had important roles in the capital and derivatives markets. The FSAP report noted that, although systemic risk is currently low, the Brazilian financial system operates in a challenging environment, and recommended that policies be geared toward encouraging the development of private long-term finance. The report also noted that: "interest rates are well above those in comparable countries, most debt instruments are indexed to the overnight interest rate, and domestic investments are concentrated in short-term or indexed instruments", and that this limits capital market development and potential growth. Further

¹⁶² MME online information. Viewed at: http://luzparatodos.mme.gov.br/luzparatodos/Asp/o_programa.asp.

¹⁶³ MDS online information. Viewed at: <http://www.mds.gov.br/falemds/perguntas-frequentes/bolsa-familia/programas-complementares/beneficiario/tarifa-social-de-energia>.

¹⁶⁴ Among the measures applied, the following are mentioned: fiscal and monetary stimulus, the latter mainly through significant release of bank reserves to preserve market liquidity; a quasi-fiscal stimulus through the national development bank (BNDES); other public banks expanding lending; foreign exchange intervention; and measures to channel liquidity to small and medium-sized banks facing stress (IMF, 2012).

progress requires promoting the development of longer-term private finance, maintaining macroeconomic stability, and improving the business environment.¹⁶⁵

4.5.1.2 Main features

4.132. Financial intermediation and insurance accounted for 6.1% of GDP in 2012, down from 6.6% in 2007.¹⁶⁶ Financial services grew 3.9% in 2011, below the 7.2% average growth obtained from 2009 to 2011. Brazil ran a trade surplus for financial services in 2010, 2011, and 2012 (of US\$0.4 billion, US\$0.861 billion, and US\$0.71 billion, respectively). The insurance balance, however, ran deficits of US\$1.1 billion, US\$1.2 billion, and US\$1 billion, respectively.

4.133. There were 1,866 financial institutions in Brazil in December 2012¹⁶⁷, while, in total, 2,088 institutions were supervised by the Central Bank.¹⁶⁸ Assets in the Brazilian financial system totalled R\$5.06 trillion in November 2012, some 115% of GDP. Credit cooperatives and other non-bank financial institutions hold less than 1% of the assets.

4.134. Apart from the above-mentioned institutions, the Brazilian financial system (SFN) comprises 118 insurance companies, 19 capitalization (investment plan) companies, 25 open pension fund societies, 12 local reinsurers, and 29 admitted reinsurers. This is an increase of around 11% over the number of institutions operating in December 2009.¹⁶⁹ Insurance industry assets totalled R\$461.7 billion in December 2012.

4.135. The main regulators of the SFN are the National Monetary Council (CMN) and the National Council of Private Insurance (CNSP), presided over by the Minister of Finance. The CMN was created by Law No. 4,595/64, to set policies and regulations for financial institutions, following recommendations from the regulatory institutions, such as the Central Bank of Brazil, the Brazilian Securities Exchange Commission (CVM), and the Superintendence of Private Insurance (SUSEP). Resolutions by the CMN apply to all SFN institutions.

4.136. The Central Bank authorizes financial institutions, and supervises deposit-taking financial institutions, other financial institutions, financial intermediaries, and auxiliary institutions. The Central Bank and the CVM concurrently supervise securities brokers and dealers, investment brokers, foreign investor portfolios, and the clearing and settlement system. The CVM supervises stock and futures exchanges, mutual funds, securities issuers, portfolio managers, broker/dealers, and individuals operating in the securities markets. The Central Bank supervises prudential aspects and financial operations, and the CVM capital market operations.

4.137. The Superintendence of Private Insurance (SUSEP) supervises insurance, capitalization (investment plans), open private pension funds, reinsurance operations, and the licensed brokers. The SUSEP supervises both prudential and conduct issues of these industries.

4.138. The National Complementary Welfare Superintendence (PREVIC), under the Ministry of Social Security, supervises closed entities offering complementary pensions. The National Regulatory Agency for Private Health Insurance and Plans (ANS), under the Ministry of Health, is responsible for supervising the health insurance business.

4.139. Conditions for the participation of foreign capital in financial institutions remain unmodified since the last Review of Brazil. Under Article 192 of the Federal Constitution and Article 52 of the

¹⁶⁵ IMF (2012).

¹⁶⁶ As measured by the IBGE.

¹⁶⁷ The financial system comprises: multiple banks (137), commercial banks (22), development banks (4), savings banks (1), investment banks (14), exchange banks (2), consumer finance companies (CFI, 58), security brokerage companies (CTVM, 94), exchange brokerage companies (CC, 57), security distribution companies (DTVM, 118), leasing companies (SAM, 30), real estate credit companies and savings and loans associations (SCI & APE, 12), mortgage companies (CH, 7), development agencies (16), credit unions (1,254), and micro-financing institutions (SCM, 40). Central Bank online information at: <http://www.bcb.gov.br/htms/deorf-i/d201301/Chart%2001%20-%20Quantity%20of%20institutions%20by%20type.pdf>.

¹⁶⁸ Total supervised institutions comprise the SFN plus consortium management companies (222), which are not considered financial institutions, despite the fact that the Central Bank regulates and supervise them.

¹⁶⁹ In December 2009, the insurance market comprised: 114 insurance companies, 17 capitalization (investment plan) companies, 28 open pension fund societies, 6 local reinsurers, and 21 admitted reinsurers. SUSEP online information at: <http://www.susep.gov.br/download/menususep/gestao/RGe2009.pdf>.

Transitory Provisions, until the conditions of foreign investments are defined, the establishment of new agencies of financial institutions domiciled abroad is not permitted, and foreign individuals and entities may not invest in the capital of Brazilian financial institutions. However, Article 52 also determines that these restrictions may be lifted through a Presidential Decree if an investment is deemed of national interest. The establishment and increase of capital of domestic and foreign banks was recognized as a matter of national interest by Ministry of Finance Statement of Principles No. 311 in 1995. Presidential decrees allow the Central Bank to authorize the establishment of new foreign financial institutions. Moreover, restrictions do not apply if authorizations are granted under international agreements or reciprocity conditions.

4.140. In order to obtain Central Bank approval, financial institutions must fulfil the conditions contained in CMN Resolution No. 4,122 of 2 August 2012 and in Central Bank Circular No. 3,317 of 29 March 2006. The President of the Republic grants authorization upon recommendation by the CMN, which is contingent upon recommendation by the Central Bank. Applications by foreign investors must specify, *inter alia*, the amount of foreign participation in the total capital, the investor's existing activities in the Brazilian financial system, and the benefits to the Brazilian economy.

4.141. Domestic and foreign financial institutions operating in Brazil must comply permanently with minimum capital requirements specified by the Central Bank, ranging from R\$200,000 (US\$96,000) for micro-entrepreneur credit societies to R\$17.5 million (US\$8.4 million) for commercial banks and multiple banks with commercial portfolio. In the latter case, actual minimum capital requirements depend upon the types of portfolios held. Financial institutions that request installation of more than ten branches must add 2% paid-in capital and net equity per branch in the states of Rio de Janeiro and São Paulo, and 1% per branch in other states.¹⁷⁰

4.5.1.3 Banking

4.5.1.3.1 General features and market development

4.142. The number of institutions participating in Brazilian banking remained stable during the review period. In June 2012, there were 138 multiple banks (137 in December), of which 55 were controlled by foreign capital, 15 had foreign capital participation, and 68 were domestic. Additionally, there were 22 commercial banks (6 branches of foreign banks, 3 under foreign control, and 2 with foreign capital participation), 4 development banks, 15 investment banks, and 1 savings bank. There was partial or total foreign ownership in 36% of financial institutions.¹⁷¹ The top 50 banks increased their share of total banking assets from 86.6% in March 2008 to 95.5% in June 2012, while their share of deposits grew from 91.7% to 95.7%. Twenty of them are foreign-controlled private banks, 21 are domestic private, and 9 are government-owned, 4 of which federally owned and 5 owned by the states. In November 2012, 44.1% of the total assets of the Brazilian banking system were controlled by public institutions, 38.7% by private domestic institutions, and foreign participation was 17.2%. The largest bank is the Banco do Brasil, whose share of total assets increased from 14.4% in 2007 to 16.9% in November 2012.¹⁷²

4.143. The Credit Guarantee Fund (FGC) was established in 1995 as a private, not-for-profit entity to administer a compulsory deposit insurance scheme and contribute to the financial system's stability. The FGC is financed by contributions from its associated financial institutions, which must contribute 0.0125% of the balance of the accounts guaranteed (current accounts, savings accounts, and term deposits). Credits of up to R\$70,000 (approximately US\$34,500) per person per financial institution are eligible for FGC coverage. Deposits totalling R\$1.36 trillion were covered by the FGC in June 2012, representing around 40% of existing credit.¹⁷³

4.144. During the period under review, financial intermediation maintained an upward trend, although at a slower pace from 2011 onwards as a consequence of new macro prudential measures. The stock of credit operations totalled R\$2.3 trillion or 52.6% of GDP

¹⁷⁰ Central Bank of Brazil (2012).

¹⁷¹ Central Bank of Brazil (2012).

¹⁷² Central Bank of Brazil online information. Viewed at: <http://www4.bcb.gov.br/fis/TOP50/ingl/Top50I.asp>.

¹⁷³ Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/fis/fgc/estat/arquivos/Resumo/FGC-Resumo-semestral-062012.pdf>.

in November 2012, up from 37% in July 2008. Continued credit growth is partially explained by the reduction of interest rates by public banks in order to stimulate demand, which in turn has given government-owned banks a larger share in the total credit portfolio, at 47% as of November 2012. Earmarked credit represented 36% of total credit and 19.4% of GDP in 2012. In November 2012, defaults comprised 3.7% of total credits, "normal" risk credit represented 92.1% of total credit, and provisions for losses were 5.7%. The Government has sought to guarantee credit availability during and after the international financial crisis through official banks, particularly the BNDES, and through the provision of liquidity to the banking system by reducing reserve requirements (although these were raised in 2012). Earmarked credit delivered by state-owned banks remains an important tool in the Brazilian economy.¹⁷⁴

4.145. The banking system's return on equities dropped from around 16% in June 2009 to 14.4% in June 2012. Brazil's banking system maintained capital ratios and Basel Index scores well above requirements throughout the period under review, in spite of the stricter capital requirements introduced in 2012 (10.2% and 16.4%, respectively in June 2012). Stress tests carried out by the Central Bank indicate that the Brazilian banking system is capable of withstanding shocks resulting from a severe deterioration in macroeconomic conditions lasting up to four consecutive quarters, as well as abrupt changes in the level of default, interest rates or exchange rates.¹⁷⁵

4.146. Interest rate spreads have continued to drop as a result of public banks' reduced interest lending rates and despite lower savings rates. Lower market rates have followed the decline of the monetary policy interest rate SELIC (from 12.5% in August 2011 to 7.25% in October 2012) and benefited from progress on the de-indexation of the Brazilian economy, especially the elimination of a fixed minimum interest rate stipulated by legal regulation for savings accounts (*caderneta de poupança*). The process has been helped by Central Bank regulations to improve the comparability of bank services and the portability of credit operations in order to foster competition.¹⁷⁶ The average lending rate fell from 42.9% in October 2008 to 28.9% in November 2012, while the average savings rate fell from 14.5% to 7.36%. As a result, the average spread hit a historical low of 21.6% in November 2012; the spread for individuals, at 27.3%, remains substantially higher than for companies (14.7%).¹⁷⁷ The average spread for 2012 was 24.3%.

4.147. According to the IMF, fiscal responsibility, a successful inflation targeting regime, and exchange rate flexibility have helped to reduce interest rates substantially. Moreover, the SFN weathered the global crisis remarkably well thanks to an adequate policy response and built-in financial buffers. However, currently available credit is generally still of short duration and at relatively high interest rates, which biases the financial market towards consumer finance at the expense of long-term investment finance. Consequently, developing private long-term finance at competitive interest rates remains a challenge, which will entail continued macroeconomic stability, further financial reform, and rethinking the role of state-owned banks.¹⁷⁸

4.5.1.3.2 Legal and regulatory framework

4.148. The legal framework for banking in Brazil remained largely unmodified during the review period. The banking sector, as well as other financial services, is regulated at the federal level. The main legislation includes Article 192 of the Federal Constitution, Article 52 of the Temporary Constitutional Provisions Act, Law No. 4,595 of 31 December 1964, Law No. 4,728 of 14 July 1965, Law No. 6,024 of 13 March 1974, Law No. 7,492 of 16 June 1986, Law No. 9,613 of 3 March 1998, and Supplementary Law No. 105 of 10 January 2001, and Resolution No. 3,040/2002. The Central Bank's *Manual of Norms and Instructions* contains most banking regulations, which issue from the National Monetary Council.¹⁷⁹

4.149. With the enactment of the current Brazilian Constitution of 1988, the inflow of foreign capital in the SFN became subject to the provisions in the Act of Transitory Provisions of the

¹⁷⁴ Central Bank of Brazil (2010).

¹⁷⁵ Central Bank of Brazil (2012).

¹⁷⁶ In 2012, the National Monetary Council issued regulations concerning the Cadastro Positivo, an expanded credit bureau that will register the history of payments of credit operations, utilities' bills, and other debts of households and enterprises. When fully implemented, the Cadastro will provide information to help banks identify good borrowers, which is expected to lead to further spread reductions.

¹⁷⁷ Information provided by the Brazilian authorities.

¹⁷⁸ IMF (2012).

¹⁷⁹ Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/?MANUMCR>.

Constitution, which prevents the establishment, in Brazil, of new branches of foreign financial institutions and the increase in participation of foreign individuals or legal entities in the equity of national financial institutions, until the conditions for the participation of foreign capital in these institutions is determined, by means of a supplementary Law. However, the same constitutional provision admits exceptions in case of authorizations resulting from international agreements, reciprocity, or of national interest. The manifestation of such interest has been interpreted to mean an authorization by Presidential Decree, and such is currently the practice. In order to engage in banking activities, foreign banks must be established as a subsidiary or branch, and are in principle subject to the same prudential requirements as domestic banks. These are set by the CMN and include capital requirements, prudential regulations, and specific qualifications for the administrators of the institution, who need not be Brazilian nationals; however, those directly responsible for the administration of the institution must be Brazilian residents.

4.150. Representation within Brazil of financial institutions headquartered abroad requires prior authorization by the Central Bank of Brazil, as regulated by Resolution No. 2,592 of 25 February 1999 and its complementary regulations. Local representatives must be natural or legal persons domiciled in Brazil. Representative offices are prohibited from taking deposits or undertaking any other financial transaction. Cross-border supply of banking services is not permitted in Brazil. Consumption of banking services abroad is not regulated.

4.151. The National System of Rural Credit (SNCR) aims to guarantee access to public and private credit for farmers. Banks must allocate resources (mandatory resources and rural savings) to farmers and their cooperatives, in accordance with the conditions set by the CMN. Rural credit is intended to stimulate investment in agricultural production, improve productivity, facilitate production financing, develop forestry and fishing, and increase profit for smallholders. Rural credit through mandatory resources is available at an annual interest rate ranging from 1% to 5.5%, up to a R\$800,000 limit. Conditions for credit operations that do not come from "controlled" resources may be set freely between the parties.¹⁸⁰

4.152. In March 2009, the Central Bank published Resolution CMN No. 3,704¹⁸¹, establishing the gradual reduction of mandatory resources that banks must set aside for the agriculture sector: from 30% of demand deposits and a specific savings account called *poupança rural* until June 2010, to 25% starting June 2014. Despite this intervention, the share of rural credit financed with mandatory resources did not recover to previous levels and the Government announced a new rate of 34%, in force from 1 July 2012.¹⁸² The legal basis for agricultural credit is Law No. 4,829, of 5 November 1965, and Law No. 8,171 of 17 January 1991, as amended most recently by Law No. 11,718, of 20 June 2008; regulations are contained in the Central Bank's *Rural Credit Manual* (MCR).¹⁸³

4.153. Brazil adopted the Basel III framework recommendations on banking supervision ahead of schedule, starting in July 2012, as indicated in Communique No. 20,615 of 17 February 2011. The main changes relate to capital and liquidity requirements and leverage ratio; the minimum overall Basel Index increased from 8% to 13%. Brazil's existing capital adequacy requirements, established in 2007, were already more stringent than required by Basel II, since they ranged from 11% to 17% according to the type of financial institution. In February 2012, the Central Bank called for a public hearing to evaluate the conditions for compliance as described in Edict No. 40/2012.¹⁸⁴ The final regulations were issued on 1 March 2013 and comprised four resolutions by the National Monetary Council and 15 circulars by the Central Bank of Brazil. The resolutions covered: redefinition of capital; new capital requirements and introduction of capital buffers for institutions in general; optional simplified new capital requirements and capital buffers for single credit cooperatives; and the scope of consolidation of accounting statements of financial institutions. The circulars redefined the methodology of calculation of risk-weighted assets (RWAs)

¹⁸⁰ Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/?RED-CREDITORURAL> FAQ.

¹⁸¹ Central Bank of Brazil online information. Viewed at: http://www.bcb.gov.br/pre/normativos/res/2009/pdf/res_3704_v1_O.pdf.

¹⁸² Central Bank of Brazil Resolution No. 4.096 of 20 June 2012.

¹⁸³ The last modification to the MCR (*Atualização* No. 554) was introduced on 26 November 2012. For the complete MCR see Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br>.

¹⁸⁴ Central Bank of Brazil online information. Viewed at: <http://www.bcb.gov.br/textonoticia.asp?codigo=3413&idpai=NOTICIAS>.

for credit risk, market risk, and operational risk for institutions that use the standardized approaches or the advanced approaches of capital calculation.

4.154. The authorities indicated that Brazil is committed to implementing Basel III gradually and that its adoption is not expected to imply a significant capitalization effort for the financial system, since Basel III establishes minimum capital requirements of 10.5% (8% requirement + 2.5% conservation buffer), which is lower than the Brazilian requirements.

4.155. According to the IMF, banking supervision already had a high level of compliance with Basel Core Principles, and has been strengthened further due to an intrusive, sophisticated, and risk-based approach. In addition, the early implementation of Basel III, including countercyclical capital and surcharges for domestic systemically important banks (D-SIBs), will provide additional tools to boost the resilience of the system.

4.156. Brazil currently has information-sharing agreements with the financial supervisory authorities of 15 countries: Argentina, the Bahamas, the Cayman Islands, China, Germany, Indonesia, Italy, Mexico, Panama, Paraguay, Portugal, South Africa, Spain, Uruguay, the, and the United States. Informal arrangements are in place with the United Kingdom, with whom a formal agreement is been negotiated, as well as with Austria, Korea, and Switzerland.

4.5.1.4 Insurance

4.157. Insurance activities account for an estimated 3.76% of GDP. In December 2012, the total market value of premiums, investment plan income, and receipts from open private pension contributions was around R\$147.18 billion (some US\$73 billion).¹⁸⁵ Total premiums were R\$129.3 billion, 55.3% for life, 19.3% for motor vehicle insurance, and the rest for fire, transportation, and other risks. There were 118 insurance companies in operation, as well as 19 investment plan companies, and 25 open private pension fund societies.¹⁸⁶

4.158. Competition in Brazil's reinsurance market continued to improve during the period under review. In late 2012, 102 reinsurance companies were authorized to operate, compared with 21 in August 2008. Of the 102 authorized companies, 12 were local, 29 were registered as admitted and 61 as occasional.¹⁸⁷ Until 2007, IRB-Brasil Resseguros was the sole provider of reinsurance in Brazil.

4.159. The Federal Government has responsibility for formulating private insurance policy, as well as for establishing standards and overseeing operations in the domestic market. The Brazilian national insurance system (SNSP) is composed of the National Council of Private Insurance (CNSP), the Superintendence of Private Insurance (SUSEP), insurance and reinsurance companies, and insurance brokers. The CNSP is the main body responsible for setting policies for the private insurance industry, including fixing the characteristics of the various insurance contracts, and for the regulation of the national insurance system. SUSEP, an autonomous body under the organizational structure of the Ministry of Finance, has responsibility for the control and supervision of insurance, reinsurance, open private pension funds, and capitalization (investment plans) and brokerage operations. SUSEP executes the CNSP policies.

4.160. The provision of insurance services in Brazil is governed by Decree Law No. 73 of 21 November 1966, as modified by Decree No. 60,459 of 13 March 1967, Decree Law No. 261 of 28 February 1967, Law No. 10,190 of 14 February 2001, Supplementary Law No. 109 of 29 May 2001, Supplementary Law No. 126 of 15 January 2007, and Law No. 12,249 of 11 June 2010. CNSP Resolutions and SUSEP Circulars regulate the industry's operational activities. Insurance companies that provide only health insurance are subject to ANS regulations.

4.161. Supplementary Law No. 126 of 15 January 2007 amended Brazilian legislation to open the reinsurance market, thus ending the reinsurance monopoly held by IRB Brasil Re. According to the

¹⁸⁵ National Federation of Insurance Services Providers (FENASEG) online information. Viewed at: <http://www.fenaseg.org.br/lumis/portal/file/fileDownload.jsp?fileId=485C88E73B63259A013B764633F04705>.

¹⁸⁶ SUSEP online information. Viewed at: <http://www.susep.gov.br/menu/informacoes-ao-publico/mercado-supervisionado/entidades-supervisionadas>.

¹⁸⁷ National Federation of Insurance Services Providers (FENASEG) online information. Viewed at: <http://www.fenaseg.org.br/lumis/portal/file/fileDownload.jsp?fileId=8A8184D33B197757013B1A36D2AE4807>.

law, reinsurance and retrocession operations may be carried out by local, admitted, and occasional reinsurers. Local reinsurers must be incorporated under Brazilian law and be headquartered in Brazil. Admitted reinsurers are domiciled abroad, but maintain a representative office in Brazil and are registered with SUSEP. Occasional reinsurers are foreign companies without a representative office in Brazil and which are registered with SUSEP. Supplementary Law No. 126 also allows reinsurance and retrocession transactions to be conducted in foreign currency, subject to legislation governing such transactions, and to the rules set by the CMN, CNSP, and SUSEP. The law also provides for exceptions to the general rule that risks that take place in Brazil must be insured domestically. In this respect, Law No. 126 allows the contracting of insurance abroad by natural persons resident in Brazil or legal persons established in Brazil to: cover risks for which there is no provision of insurance in Brazil, provided that this represents no violation of existing legislation; cover risks abroad where the insured is a natural person resident in Brazil, for which the term of the insurance contract is limited exclusively to the period in which the insured person is abroad; insurance policies that are the subject of international agreements ratified by Brazil; and insurance contracted abroad before the date of publication of the Supplementary Law. The law allows Brazilian legal persons to contract insurance abroad to cover risks abroad, provided this is notified to the SUSEP.

4.162. Law No. 12,249 of 11 June 2010 expanded the coverage of the supervisory fee to include reinsurance companies (*Taxa de Fiscalização dos Mercados de Seguro e Resseguro, de Capitalização e de Previdência Complementar Aberta*).¹⁸⁸ Hence all insurance, and reinsurance, investment plan and private pension fund companies are subject to the fee, with the exception of health insurance companies.

4.163. Annex I to Law No. 12,249 contains a table of fees that increase in accordance with the margin of solvency.¹⁸⁹ Insurance companies must pay a (higher) fee for the head office and for each subsidiary or agency. For reinsurance, there is a single fee per supplier.

4.164. Insurance companies are precluded by law from engaging in other financial activities. They may, however, provide more than one type insurance service and may hence be composite (life and non-life). The only exceptions apply to export credit insurance and health insurance companies, which must be specialized; life insurance companies, which may deal in open pension funds; and reinsurance companies. Foreign insurance companies providing insurance of any kind, except reinsurance, are required to be incorporated under Brazilian law, in the form of a corporation.¹⁹⁰

4.165. Establishment of a foreign life or non-life insurance company requires prior approval from the SUSEP. Authorizations to operate are granted directly by the SUSEP. Once a foreign company is authorized to operate in Brazil, national treatment is granted.

4.166. Minimum capital requirements vary according to the region of operation, the company's internal risk-management model, and the type of activity, as per CNSP Resolution No. 282/2013.¹⁹¹ For insurance companies and open pension funds that only operate in micro-insurance the minimum capital requirements are defined by CNSP Resolution No. 263/2012. There

¹⁸⁸ Law No. 12,249. Viewed at: http://www.planalto.gov.br/ccivil_03/_Ato20072010/2010/Lei/l12249.htm.

¹⁸⁹ The calculation of the margin of solvency varies in accordance with the type of insurance provided: for life insurance with capitalization, private pension funds or investment funds, the fee is 8% of all technical provisions and funds related to their activity; for other types of insurance to persons or covering damages, the fee is the higher of 20% of the net premiums of the last 12 months or 33% of the annual average net claims in the past 36 months.

¹⁹⁰ WTO document GATS/SC/13/Suppl.3, 26 February 1998.

¹⁹¹ In accordance with CNSP Resolution No. 282/2013, insurance companies must maintain as capital base not less than R\$1.2 million in fixed capital plus a variable amount up to R\$13.8 million according to the geographic area of operation. They must maintain a capital of R\$15 million if they wish to operate in the whole country. Capitalization companies and open pension funds must maintain R\$1.8 million and R\$1.2 million, and R\$10.8 million and R\$7.2 million, respectively. Insurance companies, capitalization companies and open pension funds must maintain anytime the highest amount among the capital base, the required risk-based capital and the solvency margin. The required risk-based capital is established by CNSP Resolutions Nos. 228/2010, 280/2013, 283/2013, and 284/2013.

are no barriers to the internal trade of insurance services as long as a company complies with these minimum capital requirements.¹⁹²

4.167. Insurance brokers must be registered at the SUSEP after passing a technical exam. New insurance products do not require pre-approval from the SUSEP, but should be submitted for analysis and filing before being commercialized. Exceptions to this are life insurance products that offer survivor coverage and annuities, capitalization plans, and open pension products, which all require prior approval from the SUSEP. Also, the SUSEP may forbid the commercialization of any product considered incompatible with the industry's regulatory framework or specific provisions thereof, or deemed to be not technically feasible or badly structured.

4.168. Since 2007, the reinsurance business has been open to private reinsurance companies, including foreign-owned and foreign-based. Reinsurance and retrocession may be held with a local reinsurer (established as a corporation, with the sole object of conducting operations of reinsurance and retrocession); an admitted re-insurer (based abroad, with a representative office in Brazil, registered in the SUSEP to carry out reinsurance and retrocession); or an occasional re-insurer (foreign reinsurance company based abroad without a representative office in Brazil, also registered as such in the SUSEP).

4.5.1.5 Securities

4.169. The São Paulo Stock Exchange (BM&F BOVESPA) is the most important Brazilian institution to intermediate equity market transactions and the only securities, commodities, and future markets. The BM&F BOVESPA is a Brazilian company, created in 2008, through the integration of the São Paulo Stock Exchange (*Bolsa de Valores de São Paulo*) and the Brazilian Mercantile & Futures Exchange (*Bolsa de Mercadorias e Futuros*). The BM&F BOVESPA is the largest stock exchange in Latin America; in December 2012, 521 companies were registered in the BM&F BOVESPA, with a market value of US\$1.15 trillion¹⁹³, equivalent to some 50% of Brazilian GDP.

4.170. The Brazilian Securities Exchange Commission (CVM), an independent government entity under the organizational structure of the Ministry of Finance, is in charge of supervising the securities markets in Brazil, with the exception of government bonds and private bonds, which are regulated by the Central Bank. The CVM has the power to issue complementary rules to laws and CMN resolutions, including instructions and deliberations.¹⁹⁴ The CVM is empowered to discipline and regulate the activities of all market participants. Stock exchanges and other market associations have been granted self-regulatory power and are considered as auxiliary entities of the CVM. However, the CVM has the authority to suspend trading, issuance, or distribution of securities as well as authority stock exchange operations.

4.171. The main laws that guide the securities market are Law No. 6,385/76, as amended (the Securities Law); and Law No. 6,404/76 (the Corporation Law). Law No. 10,303 of 31 October 2001 and Law No. 10,411 of 26 February 2002 modified the previous two laws, especially regarding minority shareholding rights. Law No. 11,638 of 28 December 2007 introduced further modifications, particularly regarding public disclosure of financial accounts.

4.172. CVM registration and authorization is required for the distribution of securities issues on the market; the purchase of securities for resale; intermediation or brokerage on operations involving securities; and the clearing and settlement of such operations. Only authorized agents registered with the CVM may engage in securities mediation or brokerage activities outside the stock exchange. Issuers of publicly distributed securities must be incorporated in Brazil as publicly held companies.

4.173. Foreign investors have access to all the investment products available to domestic investors, including forward, futures, and options contracts of farm products, in accordance with Resolution CMN No. 2,689/2000.¹⁹⁵ Funds brought into Brazil under the terms of Resolution No. 2,689/2000 must be declared and registered at the Central Bank. Foreign entities may invest in Brazilian capital markets through authorized investment companies or using

¹⁹² SUSEP online information. Viewed at: <http://www.susep.gov.br/menumercado/capitalmin.asp>.

¹⁹³ BOVESPA online information. Viewed at: <http://www.bovespa.com.br/indexi.asp>.

¹⁹⁴ CVM online information. Viewed at: <http://www.cvm.gov.br/ingl/indexing.asp>.

¹⁹⁵ BOVESPA online information. Viewed at: <http://www.bovespa.com.br/>.

depository receipts.¹⁹⁶ Non-resident individual investors must appoint a Brazilian resident as their representative responsible for registration procedures with the Central Bank and the CVM. Overseas transfers of custody positions between non-resident investors are only allowed in cases of mergers, incorporations, spinning-off processes, and other restructuring, or hereditary succession; they require prior authorization from the CVM. Non-resident investors may not acquire or sell securities of publicly listed companies across non-organized, over-the-counter markets or organized by entities not authorized by the CVM. Foreign investors receive national tax treatment in relation to operations in the financial and capital markets.

4.5.2 Communication services

4.5.2.1 Main features

4.174. The Brazilian telecommunications market continued to grow rapidly during the review period, driven in particular by the expansion of mobile data services and broadband internet access. At the time of writing this report, total telecom revenues were expected to reach some US\$120 billion in 2012¹⁹⁷, up from US\$78 billion in 2007.¹⁹⁸ Investments in the telecommunication sector increased from R\$18.9 billion in 2008 to R\$21.7 billion in 2011.¹⁹⁹

4.175. The mobile telephony market boomed during the review years: the number of mobile telephone subscriptions increased by 74% between 2008 and December 2012 to reach 261.8 million, with teledensity rising to 132.8 mobiles lines per 100 inhabitants over the same period; some 80.5% of the mobile lines are pre-paid.²⁰⁰ Internet usage reported impressive growth spurred by increased broadband access across the country, following initiatives by the Government to expand access and make-broadband connections cheaper under the National Broadband Plan (see 4.5.2.2. below). In December 2012, the total number of active internet users was estimated at 52.5 million.²⁰¹ The deployment of 3G networks in the whole of Brazil has significantly expanded mobile broadband access in recent years. Also, the number of fixed broadband subscriptions has shown solid growth. In late 2012, there were 19.8 million fixed broadband connections (equivalent to almost 10 connections per 100 inhabitants).²⁰² On the other hand, the number of fixed telephone lines in service grew slowly during the review years, with only a slight increase in the teledensity level, to 22 lines per 100 inhabitants in 2011 (21.6 lines per 100 inhabitants in 2008). In December 2012, there were 16.2 million pay-TV subscriptions, of which 38% were using cable technology.²⁰³

4.176. Brazil's telecommunication sector was privatized in 1998 and further liberalized in the early 2000s. The former state-owned monopoly, Telebrás, was dismantled and the country's territory was divided into geographical areas: four areas for incumbents of the fixed switched telephone service (STFC), and ten for incumbents of cellular mobile service, currently named personal mobile service (PMS). In each region, the legislation established a duopoly between the privatized state monopoly entity and a "mirror" company in the case of fixed telephony, and between two new licensed operators in the case of mobile telephony.²⁰⁴ Following the end of the transition period for the liberalization of the fixed telephony market in 2002, new authorizations were granted for local, national, and international long-distance services. By the end of 2012, there were 170 licensed fixed telephony service providers and five concessionaries (Embratel, Oi, Telefonica, CTBC, and Sercomtel).²⁰⁵ The restriction precluding incumbents from operating in more than one of the

¹⁹⁶ Resolution CMN No. 2,763 of 9 August 2000 contains provisions on Brazilian Depository Receipts.

¹⁹⁷ Research and Markets online information. Viewed at: http://www.researchandmarkets.com/research/ad392be6/Brazil_telecoms.

¹⁹⁸ WTO (2009).

¹⁹⁹ Telco online information. Viewed at http://www.telebrasil.org.br/saibamais/O_Desempenho_do_Setor_de_Telecom_Series_Temporais_2011_v3.pdf.

²⁰⁰ Anatel online information. Viewed at: <http://sistemas.anatel.gov.br/SMP/Administracao/Consulta/TecnologiaERBs/tela.asp>.

²⁰¹ Information provided by ANATEL.

²⁰² Information provided by ANATEL.

²⁰³ Anatel online information. Viewed at: <http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=276484&assuntoPublicacao=Consolidaçãodo%20dos%20Serviços%20de%20TV%20por%20Assinatura%20-%20Jan./Mar.%202012%20&caminhoRel=Início-BibliotecaApresentação&filtro=1&documentoPath=276484.pdf>.

²⁰⁴ WTO (2009).

²⁰⁵ Information provided by the Brazilian authorities.

authorized regions was removed in 2008. As regards mobile telephony, there were between three and six service providers competing in each region in late 2012.

4.177. Brazil's telecommunication sector is fully open to competition and continues to attract new entrants. Nevertheless, the bulk of the market is divided between three leading telecom groups: Telefónica (Spain), América Móvil (Mexico), and Oi/Telemar (Brazil and Portugal). The State maintains a strategic stake in Oi through BNDES and the pension funds of state-owned enterprises.²⁰⁶ In 2012, the leaders of the fixed-line telephone market were Oi/Telemar with a 42% market share²⁰⁷, Telefónica Brasil with 23.78%²⁰⁸, Embratel (América Móvil) with 21.9%, and GVT with 8.21%.²⁰⁹ In the mobile market, the largest operator was Vivo (owned by Telefónica), with a 29% market share; followed by Tim (Telecom Italia) with 26.8%; Claro (América Móvil) with 24.9%; and Telemar with 18.8% (December 2012). Another three operators shared the remaining 0.31% of the mobile market.²¹⁰ The fixed broadband sector was led by Oi, accounting for 31.5% of the market in December 2012; its closest competitor was NET Serviços (operating in partnership with Embratel; both owned by América Móvil) with a 28.4% market share.²¹¹ Other fixed broadband operators were Telefónica Brasil, Sercomtel and CTBC. The major operators in the pay-TV market included Net Serviços, Sky Brasil, Embratel, Telefónica Brasil, and Oi TV.

4.178. Recent changes to the telecommunications legislation (see 4.5.2.2 below) have allowed telecommunication operators more flexibility to offer converged services. Brazil's operators have already made headway in Latin America in terms of deploying triple-play offerings (voice, broadband, and television) and some have plans to offer quadruple-play multi-service packs (adding mobile telephony). This has led to further consolidation of Brazil's major telecom groups.

4.179. Strong market competition and regulation have led to improvements in the quality of service and to reductions in tariffs. It is estimated that the average price per minute of mobile phone calls in Brazil fell 44% (from R\$0.39 to R\$0.22) from the first quarter of 2009 to March 2011.²¹² Broadband prices have also dropped considerably in recent years, in part reflecting the Government's measures and investments aimed at reducing the cost of broadband connections in order to spread broadband access countrywide.²¹³ According to the International Telecommunications Union's ICT Price Basket (IPB) index, in 2010 Brazil's average prices for telecom services (fixed-telephony, mobile cellular telephony, and fixed broadband services) represented 4.8% of GNI per capita (6.8% in 2008); prices for fixed broadband services decreased by over 50% between 2008 and 2010.²¹⁴

4.180. Brazil's telecommunications regulator, ANATEL, is responsible for controlling the prices of fixed telephony services provided under a concession. In February 2012, ANATEL ordered the reduction of the retail price of a call from a fixed line to a mobile phone from R\$0.546 (US\$0.311) per minute to R\$0.487 (i.e. a 10.7% reduction). The regulator also ordered similar reductions for 2013 and 2014.²¹⁵ Under new regulations, groups holding significant market power in the mobile network interconnection market must also gradually reduce their interconnection charges.

²⁰⁶ Oi online information. Viewed at: [http://publisher.mzweb.com.br/oi/web/images/Oi_Composicao_Acionista_20120413_eng.gif#__utma=1.1491249028.1335946962.1335946962.1335946962.1&__utmb=1.247.1335947134682&__utmc=1&__utmz=1.1335946962.1.1.utmcsr=en.wikipedia.org|utmccn=\(referral\)|utmcmd=referral|utmct=/wiki/Oi_\(telecommunications\)&__utmv=-&__utm=76542485](http://publisher.mzweb.com.br/oi/web/images/Oi_Composicao_Acionista_20120413_eng.gif#__utma=1.1491249028.1335946962.1335946962.1335946962.1&__utmb=1.247.1335947134682&__utmc=1&__utmz=1.1335946962.1.1.utmcsr=en.wikipedia.org|utmccn=(referral)|utmcmd=referral|utmct=/wiki/Oi_(telecommunications)&__utmv=-&__utm=76542485) [2 May 2012].

²⁰⁷ In early 2008, the concessionaire Oi acquired the concessionaire Brasil Telecom.

²⁰⁸ Up until October 2011, Telefonica Brasil was named Telesp.

²⁰⁹ Information provided by ANATEL.

²¹⁰ Information provided by ANATEL.

²¹¹ ANATEL online information. Viewed at: <http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=275705&pub=original&filtro=1&documentoPath=275705.pdf>.

²¹² Data from Teleco consultancy, quoted in Telecompaper online article "Average mobile prices in Brazil drop 44% in two years", 11 June 2011. Viewed at <http://www.telecompaper.com> [2 May 2012].

²¹³ Under the National Broadband Plan, the Government has issued a list of the cities covered by low-cost fixed broadband services from some major operators, which are reportedly offering internet access capped at R\$35 (US\$19.9) per month.

²¹⁴ ITU (2011).

²¹⁵ ICT Statistics Newslog. Viewed at <http://iconnect.wto.org/IITU-D/ict/newslog/,DanaInfo=.awxyCmy0Gqw3+Antel+Or> [8 February 2012].

4.5.2.2 Regulatory framework

4.181. The Ministry of Communications, through the Secretariat of Telecommunications, is the federal body responsible for policy formulation and planning for the sector. As defined in the legislation, the main policy objectives are to provide telecom services at affordable prices; to implement universal services; to foster competition, and to promote the sector's development in accordance with the country's social development goals.²¹⁶ The Ministry of Communications is also responsible for policy formulation for radio and TV broadcasting.

4.182. The sector's regulator is the National Telecommunications Agency (ANATEL). The agency, which is administratively independent and financially autonomous, is responsible for implementing the national telecommunications policy, licence regulation, overseeing incumbents' operations, managing the electromagnetic spectrum, certifying telecommunications equipment, and protecting consumers' rights. ANATEL has the legal authority to review and control retail prices of fixed telephony services provided by concessionary companies under the public regime. Moreover, ANATEL is responsible for approving mergers in the telecommunication sector from a regulatory perspective, while competition issues are analysed by CADE (the competition authority) (Chapter 3.4.1).

4.183. The main legislation governing the sector is the General Telecommunications Law (LGT) of 16 July 1997 (Law No. 9,472), which regulates all telecommunication networks and services, except audiovisual services. Law No. 12,485 of 12 September 2011 provides a unified regulatory framework for pay-TV services regardless of the technology used. In October 2008, ANATEL published the General Plan for Updating Telecommunications Regulations, which sets out principles for reviewing the regulatory framework and implementing short, medium, and long-term reforms.²¹⁷ The main issues under consideration include reviewing the fixed telephony regulations, implementing unbundling, regulating the resale of services, making radio frequencies available so as to facilitate wide broadband access, increasing convergence services, quality standards, and universal service goals. Action on some of these issues has already been taken or is in progress. The National Broadband Plan was instituted in May 2010 (see below) and the General Plan for Universalization Goals (2011-15) was approved in June 2011. In November 2010, ANATEL issued a regulation enabling the supply of resale-based mobile telecommunications services through mobile virtual network operators.²¹⁸ ANATEL has also taken initial steps to regulate 4G mobile services²¹⁹, and has announced plans to auction certain radio-electric spectrum for commercial mobile telecom services (see below).

4.184. Under the LGT, telecom services are divided into two regimes: the public regime, which covers the incumbent operators of fixed telephony; and the private regime, encompassing all other telecommunications services. In order to provide telecommunication services, a concession or authorization must be obtained from ANATEL. Concessions apply to incumbent operators of fixed telephony under the public regime²²⁰, while authorizations are required for the provision of the telecom services under the private regime, including mobile telephony and broadband services. Concessions are subject to more stringent conditions than authorizations (e.g. universal service obligations, accountability, and tariff controls); they are granted for 20 years, and may be extended once for the same period. All concessions were renewed in January 2006. Authorizations do not have a time-limit, but permits for the use of radio frequency by authorization-holders are limited to a maximum of 20 years, renewable only once. There are no limits to the number of new authorizations that may be granted in the country as a whole, or by region.

4.185. Authorizations are service-specific: a personal mobile service (SMP) authorization is required for the provision of mobile telephony services; and a multimedia communication service (SCM) for convergence services integrating voice, data, and images (e.g. providers of broadband services). An authorization is also required for the provision of pay-TV services.

4.186. Value-added services are not deemed telecommunication services and therefore do not require an authorization. However, the provision of value-added services must be coupled with a

²¹⁶ General Telecommunications Law (LGT) No. 9,472 of 16 July 1997.

²¹⁷ ANATEL Resolution No. 516 of 30 October 2008.

²¹⁸ ANATEL Resolution No. 550 of 22 November 2010.

²¹⁹ ANATEL Resolution No. 544 of April 2011.

²²⁰ However, fixed telephony may also be rendered under the private regime.

telecommunication service regulated by ANATEL; e.g. the provision of broadband services requires an authorization for the telecom service supporting the connection, irrespective of the technology used. Voice over internet protocol (VoIP) services are treated as voice telephony services, but are not regulated if merely peer-to-peer. Providers of VoIP services do, however, need an authorization if they access the public switched telephone network (PSTN).²²¹

4.187. The LGT confers on the Executive Branch the right to limit foreign participation in telecom service operators²²², and Federal Decree 2,167 of 1998 establishes that concessions and authorizations may be granted only to companies established in Brazil under domestic law. Nevertheless, the legislation in force makes no distinction between foreign and domestic capital, and there are currently no restrictions on foreign participation in the telecom companies (except in radio and TV broadcasting, which are not covered by the LGT).

4.188. Law No. 12,485 of 12 September 2011 removed the limit on foreign investment in cable TV services.²²³ Another important change under this law was the elimination of the prohibition on fixed-line telephony operators to provide cable TV services.²²⁴ Law No. 12,485 also allowed all telecom operators to provide pay-TV services anywhere in Brazil, without regional limitations.²²⁵ However, to encourage the development of Brazil's audio-visual industry, the law established a quota system imposing a minimum number of channels with Brazilian content and a minimum number of hours of Brazilian content on other channels; these restrictions will apply during the first 12 years that the law is in force.²²⁶

4.189. Under the LGT, ANATEL has the authority to review and control the retail prices of fixed telephony services rendered by the companies operating under the public regime, i.e. those provided by the incumbents.²²⁷ The agency establishes maximum rates for the basic service plan, although concessionaries may still offer alternative plans on a non-discriminatory basis. Prices for local, and national and international long-distance calls are subject to specific regulations.²²⁸ Cross-subsidization between different services or users markets is prohibited.²²⁹ Telecom operators under the private regime are free to set retail prices for their services. There are no retail price caps for mobile telephony or for fixed telephony provided under the private regime. The cost of wholesale (carrier-to-carrier) leased lines up to certain capacities is also regulated by ANATEL as well as certain interconnection charges.

4.190. Network interconnection is mandatory for the provision of public telecom services, under non-discriminatory conditions and at reasonable rates.²³⁰ Any provider of telecom networks and services has the right and obligation to negotiate interconnection terms with other telecom operators. The regulation on interconnection forbids cross-subsidisation, discriminatory discounts, abusive behaviour, and other anti-competitive practices.²³¹ ANATEL sets the interconnection prices for telecom services under the public regime, while interconnection tariffs for services under the private regime are negotiated freely, but subject to control by ANATEL. All interconnection agreements, including the tariff conditions, must be notified to ANATEL and made public. Under Decree No. 4,733, interconnection prices must be based on costs and calculated through cost-

²²¹ If only incoming to the PSTN, an SCM authorization is required. If incoming and outgoing with respect to the PSTN, a switched fixed telephony licence is required.

²²² Law No. 9,472 (Article 18).

²²³ Formerly, under Law No. 8,977 of 6 January 1995 (Cable Law), for pay-TV services provided via cable, at least 51% of the capital of the companies had to be owned by Brazilians or foreigners having had Brazilian citizenship for the preceding ten years. Law No. 12,485 of 12 September 2011 replaced the relevant provisions of Law No. 8,977.

²²⁴ This change has allowed fixed-line incumbent Embratel to take control of its subsidiary Net Serviços.

²²⁵ Previously, by means of Resolution No. 551 of 3 December 2010, ANATEL had removed the limitation on the number of cable TV operators that could offer services in Brazil's cities.

²²⁶ Regulations are expected from Brazil's national audiovisual authority, ANCINE, with respect to mandatory minimum percentages of national content to be exhibited in pay-TV services.

²²⁷ Law No. 9,472 (Article 19, VII).

²²⁸ See ANATEL Resolution No. 423 of 6 December 2005 (modified by Resolution No. 432 of 23 February 2006), and Resolution No. 424 of 6 December 2005.

²²⁹ Law No. 9,472 (Article 103).

²³⁰ Law No. 9,472 (Articles 146, 147 and 152).

²³¹ General Regulation on Interconnection, annexed to ANATEL Resolution No. 410 of 11 July 2005.

based methodologies. ANATEL is empowered to apply a cap to interconnection prices charged by operators deemed to have significant market power.²³² However, this has not yet occurred.

4.191. When telecom operators fail to reach agreement on interconnection terms within a 60-day period, any of the parties involved may request ANATEL to arbitrate under the administrative procedures established in the legislation. The agency is empowered to order interconnection and the corresponding price and conditions. Such decisions may be challenged before federal courts.

4.192. ANATEL regulates the use of telephone numbers and network identifying codes. Number portability was allowed in 2007²³³, and implemented throughout 2008 and 2009. A private association, hired through public bidding, manages the central reference databank for number portability.

4.193. In matters of competition law enforcement involving the telecommunications sector, ANATEL cooperates with CADE (the competition tribunal). Under the LGT, ANATEL is responsible for approving mergers in the telecommunications sector. Under the new competition law (Law No. 12,529 of 2011) ANATEL is still responsible for approving mergers in the telecommunication sector, but only from a regulatory perspective, while competition issues are now analysed exclusively by CADE. Over the past few years, CADE has considered cases of both merger and anti-competitive practices in the telecommunication sector. For example, in February 2012, CADE opened an investigation of telecoms company Oi over allegations it abused its dominance and used discriminatory practices against rival internet service providers. At the time of writing CADE had not yet render a decision on this case.

4.194. The General Plan of Competition Goals, approved by ANATEL in October 2012, established asymmetric obligations on groups deemed to have significant market power (SMP) in identified relevant markets. In the relevant market of network access for data transmission (through copper and coaxial cable in transmission rates of less than 10 Mbps), identified groups with SMP have the obligation to share their networks. In addition, under the General Plan of Competition Goals, groups holding SMP in the mobile network interconnection market must reduce gradually the value of their interconnection charges to R\$0.33 in 2013; R\$0.25 in 2014; and R\$0.16 in 2015.

4.195. The LGT established the legal basis for local loop unbundling (LLU). The General Plan of Competition Goals, includes new rules on unbundling.

4.196. The National Broadband Plan (PNBL) was instituted by Decree No. 7,175 of 13 May 2010 with the aim of boosting access to broadband services across the country and bridging the digital divide, in collaboration with private operators. The same decree tasked the former state-monopoly Telebrás to administer the plan and take over the national optical fibre backbone network, which is to be extended to more than 30,000 kilometres and reach 4,424 municipalities by 2017.²³⁴ The network will carry low-cost traffic flow to local broadband providers. Other actions under the PNBL include: spectrum auctions to increase mobile broadband coverage; agreements between the Ministry of Communications, ANATEL and several telecommunication companies to offer connections of 1 Mbps at R\$35 per month to consumers; and a special tax regime to stimulate investment in the networks. Under the National Broadband Program Special Taxation Regime (REPBNL), created by Law No. 12,715 of 17 September 2012, projects for the implementation, expansion or modernization of telecommunications networks that support access to broadband internet are exempt from federal taxes on the purchase of domestic equipment and for contracting deployment of networks, including building materials. Furthermore, tax exemptions and reductions have been established for smartphones, machine-to-machine communications, networks using the 450 Mhz spectrum, and satellite stations.²³⁵

4.197. Under the Brazilian procurement law, Law No. 12,349 of 15 December 2010, procurement contracts dealing with information and communication technology systems deemed strategic may

²³² Criteria for defining "significant market power" are established in ANATEL Resolution No. 438 of 10 July 2006, and No. 458 of 8 February 2007.

²³³ ANATEL Resolution No. 460 of 3 March 2007.

²³⁴ In September 2012, the PNBL covered 1,842 municipalities (MC online information. Viewed at: <http://www.mc.gov.br/aco-es-e-programas/programa-nacional-de-banda-larga-pnbl/municipios-atendidos> [September 2012]).

²³⁵ Information provided by the Brazilian authorities.

be restricted to goods and services developed in Brazil and produced in accordance with the so-called Basic Productive Process (PPB).

4.198. In June 2012, ANATEL auctioned radio spectrum in the 450 Mhz and 2.5 Ghz bands for commercial mobile services. The notice required that winning bidders commit to purchase goods, products, equipment, and systems for telecommunications and data networks with national technology, and ensure that, after five years, 50% of the equipment, telecommunications systems, and networks be produced locally (regardless of the origin of capital), and 20% be produced with technology developed in the country. These conditions may be waived by ANATEL under certain circumstances. Upon request by some WTO Members, the Committee on Trade-Related Investment Measures (TRIMS) considered the matter at its meetings of May and October 2012. Questions were addressed to Brazil regarding the local-content provisions in the auction bid.²³⁶ Brazil provided written replies to those questions.²³⁷

4.199. Universal service obligations apply to telecommunication operators under the public regime (i.e., the incumbents of local fixed telephony services), which must meet the universal goals set by Presidential Decree No. 7512/2011. The Universal Service Plan (PGMU) for 2011-15 was approved in February 2010.²³⁸ It established plans for the installation of public telephones in all rural schools and rural health posts across Brazil, among other objectives. Some R\$2.1 billion are expected to be invested in infrastructure and maintenance under the PGMU over the six-year period.²³⁹ The Universal Telecommunications Service Fund (FUST), managed by ANATEL to support universalization efforts, is funded, *inter alia*, by the federal budget and by compulsory contributions from all telecom operators, equal to 1.0% of the total operating income. The authorities indicated that in November 2012 the fund totalled around R\$14.2 billion.

4.5.3 Air transport and airports

4.5.3.1 Main features

4.200. Brazil is the world's fourth largest aviation market and expanded rapidly during most of the review period. Spurred by strong economic growth, between 2007 and 2010, Brazil's regular domestic and international passenger traffic grew by 53% and 57%, respectively, in terms of paid-seats per km flown.²⁴⁰ In 2010, Brazilian carriers served 71.4 million passengers on domestic flights and 5.2 million passengers on international flights.²⁴¹ A total of 892.8 million tonnes of freight per km were transported on domestic and international flights in 2010.²⁴² The Brazilian aviation industry's performance indicators (e.g. regularity, punctuality, and overall operational efficiency) improved during the period under review.²⁴³ However, reflecting the recent slowdown of the country's economy, the domestic aviation industry grew at a slower pace during 2011 and 2012.

4.201. There are about 37 registered airlines in Brazil, of which 17 are currently operating. Grupo TAM and Gol continue to be the dominant carriers, with 39.8% and 34.8% of the domestic market, respectively (April 2012). However, smaller carriers, mainly focused on short and underdeveloped routes within Brazil, have expanded their market participation in recent years. Azul, which started operations in 2008, now has 9.9% of the domestic market, followed by Webjet (a Gol's subsidiary since 2011) with a 5.3% market share, Avianca Brazil with 4.9%, and TRIP (partially owned by TAM) with 4.3%. The rest of the market (less than 1%) consists of 11 small regional carriers. In the international market, Brazil's only long-haul carrier TAM maintains a dominant position with a 90.3% share (among Brazilian carriers), followed by Gol with 9.7% (April 2012).²⁴⁴ In

²³⁶ WTO documents G/TRIMS/W/93 of 20 April 2012, G/TRIMS/W/107 of 20 September 2012.

²³⁷ WTO documents G/TRIMS/W/99 of 15 May 2012, G/TRIMS/W/113 of 5 October 2012.

²³⁸ ANATEL Resolution No. 539 of 24 February 2010.

²³⁹ ICT Statistics Newslog. Viewed at: <http://www.itu.int/ITUD/ict/newslog/Brazil+Starts+Ne+Universal+Service+Plan.asp> [7 May 2012].

²⁴⁰ ANAC (2010).

²⁴¹ Information provided by ANAC.

²⁴² ANAC (2010).

²⁴³ For example, in 2010, on average 17% of regular flights provided by airlines operating in Brazil were delayed (in the case of domestic flights, by 15 minutes or more, and international flights, 30 minutes or more), compared with 35% in 2007 (ANAC, 2010).

²⁴⁴ ANAC online information. Viewed at: <http://www2.anac.gov.br/dadosComparativos/2012/abril.xlsx>.

December 2011, Brazil's antitrust authorities approved the merger of Chile's LAN airlines and Brazil's TAM, paving the way for the creation of Latin America's largest airline.²⁴⁵

4.202. In 2011, just over 17% of Brazil's imports (by value) and 4.3% of its exports were moved via air cargo. Between 2008 and 2011, total air cargo (ports, exports, and domestic cargo) increased by 25% as measured by tonnes of merchandise transported. In 2011, the cargo terminals in the two main airports of the metropolitan area of São Paulo (Guarulhos and Viracopos) were responsible for 63.8% of total import cargo (by volume) moved through Brazilian airports, and 72.3% of total export cargo.²⁴⁶ In the same year, 21% of total air cargo was carried by Brazilian companies, and 79% by foreign companies.²⁴⁷

4.203. Of a total 2,597 airports and airstrips in Brazil, 1,875 are private and 722 are state-owned.²⁴⁸ INFRAERO, a public enterprise linked to the Civil Aviation Secretariat, is responsible for the operation and management of 64 main commercial airports, 120 air navigation support stations, and 34 cargo terminals across the country. In 2012, concessions were granted for the operation of the international airports of Brasília, Guarulhos, and Viracopos (section 4.5.3.2.2. below). Until 2011, INFRAERO's airports handled 97% of Brazil's regular air traffic, equivalent to 2.9 million take-offs and landings, and transported 179.9 million passengers (up almost 63% over 2007) and 1.46 million tonnes of cargo (12% over 2007).²⁴⁹ The airports managed by INFRAERO are owned by the Federal Government solely or in association with the states and municipalities.

4.204. Brazil's airport infrastructure has not expanded at the same pace as economic growth and faces significant bottlenecks, in particular in São Paulo, the country's most important hub. According to IATA, 13 out of 20 major Brazilian airports are operating beyond capacity.²⁵⁰ Moreover, in addition to the expected increase in domestic demand in the next few years, Brazil will host the 2014 FIFA World Cup and the 2016 Summer Olympic Games, which will further strain its airport infrastructure. The Brazilian Government has committed to addressing these bottlenecks through public and private investments in infrastructure under the Growth Acceleration Programme (PAC)²⁵¹, and has adopted a concessions programme to allow private participation in expanding infrastructure and operating airports (see 4.5.3.2.2 below). Upgrading Brazil's physical infrastructure will be critical to improving its international competitiveness.

4.5.3.2 Regulatory framework

4.5.3.2.1 Air transport services

4.205. Until recently, responsibility for formulating and implementing civil aviation policy in Brazil rested primarily with the Ministry of Defence. However, Law No. 12,462 of 4 August 2011, created the Civil Aviation Secretariat (SAC/PR), directly linked to the Presidential Executive Office and headed by a Chief-Minister. The SAC/PR took over some of the civil aviation functions previously exercised by the Ministry of Defence, and is now responsible for, *inter alia*, formulating policies and strategic plans for the development of the civil aviation sector, overseeing plans to open up airport investment to private companies, approving concessions to build new airports and terminals, and delegating to the States, Federal District, and municipalities the management, operation, and maintenance of public airfields.²⁵² The new Secretariat is also responsible for coordinating the activities of other government entities involved in civil aviation, and for establishing directives for Brazil's participation in international civil aviation conventions and agreements. The Civil Aviation

²⁴⁵ After the merger, 82.73% of TAM shares with voting rights remained in Brazilian hands; 4.81% are owned by LAN shareholders, 3.13% by other TAM shareholders, and 9.32% by other shareholders.

²⁴⁶ INFRAERO, *Boletim Logístico*, December 2011. Viewed at: http://www.infraero.gov.br/images/stories/Infraero/cargo/Boletins_Logisticos [May 2012].

²⁴⁷ Information provided by ANAC.

²⁴⁸ ANAC online information. Viewed at: http://www.anac.gov.br/Conteudo.aspx?slCD_ORIGEM=8&ttCD_CHAVE=118. [May 2012].

²⁴⁹ INFRAERO online information. Viewed at <http://www.infraero.gov.br/index.php/us/institucional/a-infraero.html> [September 2012].

²⁵⁰ *MercoPress*, 23 November 2010. Viewed at <http://en.mercopress.com/2010/11/23/brazil-s-air-transport-infrastructure> [May 2012].

²⁵¹ In August 2009, INFRAERO announced a R\$5.3 billion (US\$2.8 billion) investment plan to upgrade airports in ten cities.

²⁵² Article 24 D of the Law No. 12.462.

Council (CONAC), previously chaired by the Minister of Defence, and now chaired by the Chief-Minister of SAC/PR, is in charge of advising the President in matters of civil aviation policy and setting guidelines for the sector.

4.206. Law No. 12,462 created a National Civil Aviation Fund (FNAC), administered by the SAC/PR, to provide resources for the development of airport and air traffic control infrastructure. The FNAC is financed through the revenues collected from airport concession fees, part of the international boarding fees, and from the ATAERO surcharge applied on airport fees (see below).²⁵³ Law No. 12,462 also established a Differentiated Public Contracting system, applicable exclusively to the bidding procedures and contracts for infrastructure works related to the 2014 FIFA World Cup and the 2016 Summer Olympic Games.

4.207. The National Agency for Civil Aviation (ANAC), created in 2006, is in charge of the regulation and supervision of civil aviation.²⁵⁴ Its responsibilities include, *inter alia*, regulating safety and security matters related to civil aircraft, certifying aircraft and granting airline operation permits, conducting biddings for airport concessions, regulating the allocation of slots in congested airports, and licensing civil aviation personnel. The ANAC is also responsible for maintaining the Brazilian Aeronautic Registry (RAB), in which all Brazilian aircraft must be registered. The ANAC observes and implements the policies and guidelines of the SAC/PR, but has administrative and financial autonomy. The Department of Air Space Control (DECEA), under the Aeronautics Command (COMAER) and the Ministry of Defence, provides most navigation and air traffic control services.

4.208. The main legal instrument governing the air transport sector is the Brazilian Aeronautical Code (CBA) of 1986, as amended.²⁵⁵ Under the CBA, concessions for the provision of Brazilian-based regular air transport services are granted only to Brazilian legal persons with headquarters in Brazil, managed exclusively by Brazilians, and in which four fifths of voting rights are in Brazilian hands.²⁵⁶ In November 2009, the Brazilian Senate approved a bill that increases the limit of foreign ownership in Brazilian airlines from 20% to 49%, with the purpose of stimulating foreign investment. However, the bill is still under consideration in the Chamber of Deputies.²⁵⁷ Domestic public air transport services (cabotage) are reserved to Brazilian legal persons.²⁵⁸ Foreign enterprises wishing to provide regular international air transport services must be designated by the Government of their home country, and obtain an authorization to operate in Brazil and an authorization to operate air services.²⁵⁹

4.209. Domestic air fares are determined freely by airline companies, but must be registered with the ANAC.²⁶⁰ In 2008, the free pricing regime was introduced for international flights originating in Brazil and with destinations in South American countries.²⁶¹ In 2010, the regime was extended to all international flights (passengers and cargo) originating in Brazil.²⁶²

4.210. Brazil's civil aviation policy pursues greater insertion of Brazilian aviation in international markets, through the conclusion of air services agreements (ASAs). ANAC is responsible for the negotiation of such agreements under the guidelines set by the SAC/PR and the CONAC.²⁶³ and the SAC/PR. Brazil has over 80 ASAs, of which 53 were either concluded, renegotiated or entered into force during the review period (Table A4.1). Brazil has sought to make ASAs more flexible by increasing traffic rights, opening new routes and removing capacity restrictions. The new or renegotiated ASAs tend to be more liberal than previous agreements. They grant at least 5th freedom rights, and in most cases include clauses on cooperation and code-sharing, multiple designation, and free-pricing. Most of the renegotiated agreements also contain free determination of capacity clauses.

²⁵³ Law No 12,648 of 17 May 2012 stipulates that FNAC resources shall be used exclusively for the development of civil aviation and its infrastructure.

²⁵⁴ Law No. 11,182 of 27 September 2005.

²⁵⁵ Law No. 7,565 of 19 December 1986.

²⁵⁶ Articles 180 and 181 of Law No. 7,565 of 19 December 1986.

²⁵⁷ Bill No. 6,716/2009.

²⁵⁸ Article 216 of Law No. 7,565 of 19 December 1986.

²⁵⁹ Article 206 of Law No. 7,565 of 19 December 1986.

²⁶⁰ Article 49 of Law No. 11,182 of 27 September 2005, and ANAC Resolution No. 140/2010.

²⁶¹ ANAC Resolution No. 16 of 27 February 2008.

²⁶² ANAC Resolutions No. 83 and No. 118 of 2009.

²⁶³ CONAC Resolution No. 007/2007 of 20 July 2007.

4.211. The main ASAs concluded by Brazil during the review period include an open skies agreement with Chile, which entered into force in January 2011; a new air transport agreement with the United States that will remove limits on the number of passenger and cargo flights between Brazil and the United States by 2015, together with a MOU, which established a schedule for increasing the number of flights between the two countries from 2011 to 2015.²⁶⁴ Also, a comprehensive ASA was negotiated with the European Union in 2011-12, allowing both parties' airlines to operate direct flights between Brazil and the EU, without restrictions on routes, prices, or the number of weekly flights. This ASA had not been signed at the time of writing this report.

4.212. Brazil is part of the Fortaleza Agreement on regional air transport services, together with Argentina, Bolivia, Chile, Paraguay, Peru, and Uruguay. The agreement established a subregional air services regime covering all routes that are not operated under the bilateral agreements among the parties. The Fortaleza Agreement was originally intended as an alternative to restrictive bilateral agreements; now it is rarely used. Brazil also participated in the negotiation of the Multilateral Open Skies Agreement for the Member States of the Latin American Civil Aviation Commission (LACAC), which it signed in November 2012 with reservations regarding 7th, 8th and 9th freedom traffic rights. The agreement will enter into force in Brazil after its ratification.

4.5.3.2.2 Airports and auxiliary services

4.213. The Brazilian Aeronautical Code stipulates that public airports must be built, maintained, and operated by the State; by specialized companies of the federal administration or its subsidiaries; through agreement with states and municipalities; or through concession or authorization. There are no legal restrictions for the participation of foreign investors in Brazilian airports. Until recently, however, all large public airports have been managed by the state-owned enterprise INFRAERO.

4.214. One of the most important changes in Brazil's air transport sector during the review period, was the Government's decision, announced in May 2011, to allow private investors to build, manage, and operate airports through concessions. The first concession was granted in August 2011 to the Consortium Inframérica (formed by Brazilian and Argentinian groups) to build and operate the São Gonçalo do Amarante airport in the Natal metropolitan area (Rio Grande do Norte).²⁶⁵

4.215. Decree No. 7,624 of 22 November 2011 established the conditions for the exploitation of airport infrastructure by private operators through concessions. All concessions must have prior approval from the SAC/PR, while the ANAC is in charge of carrying out the bidding procedures. In December 2011, the ANAC initiated the concession process for the operation of the international airports of Guarulhos (São Paulo), Campinas/Viracopos (São Paulo), and Brasília (Federal District). The auction for three airports took place simultaneously on 6 February 2012. The concession for the Guarulhos airport (for 20 years) was won by the Consortium Invepar-ACSA, comprising Brazilian and South African investors; the concession for the Brasília airport was won by the Consortium Inframérica (for 25 years); and the concession for the Viracopos airport was granted (for 30 years) to the Consortium Aeroportos Brasil, comprising Brazilian and French investors. INFRAERO retained 49% of the shares in each of the concessionaries.²⁶⁶ The proceeds from the concessions were transferred to the FNAC.

4.216. In December 2012, the Brazilian President announced the decision to grant the operation of two more airports in concession: Galeão, in Rio de Janeiro; and Confins, in Minas Gerais. As in the case of the Guarulhos, Viracopos, and Brasília airports, INFRAERO will keep 49% of the concessionaries' social capital. The bidding process is expected for the second semester of 2013.

4.217. The ANAC is also responsible for granting authorizations to provide air transport auxiliary services. Foreign airlines are automatically granted authorization to provide auxiliary services for their own aircraft, as long as their home country grants reciprocal treatment to Brazilian airlines. Operators other than airlines, domestic or foreign, are required to set up a company in Brazil in order to provide auxiliary services. Domestic and foreign companies may provide aircraft

²⁶⁴ US Department of Commerce (2011).

²⁶⁵ Decree No. 7.205 of 10 June 2010.

²⁶⁶ INFRAERO online information. Viewed at: <http://www.infraero.gov.br/index.php/br/institucional/concessao-de-aeroportos.html> [May 2012].

maintenance services in Brazil, provided they obtain a Brazilian maintenance-shop certification and a Certification of Approval of the Company issued by the ANAC. Brazilian airlines may contract maintenance services abroad.²⁶⁷

4.218. The ANAC determines ceiling fees for different airport services and adjusts them annually.²⁶⁸ The concessionary airports must apply airport fees in accordance with those established by the ANAC. In addition, airport services (e.g. take-off, landing, and parking of aircraft, and storage of air cargo) are subject to the Additional Airport Tax (ATAERO), applied at 35.9% on service fees as of May 2012 under Law No. 12,648. The aviation industry considers the abolition of this surcharge critical for improving their competitiveness.²⁶⁹

4.219. Decree No. 7,554 of 15 August 2011, created the National Airport Authorities Commission (CONAERO), responsible for coordinating and organizing the activities of all government bodies and agencies that operate in airports (e.g. Customs, migration, health, etc.), and headed by the SAC/PR. CONAERO's objective is to improve the quality, safety, and diligence of all regulatory procedures that take place at airports, and to establish performance indicators. CONAERO is also responsible for designing and implementing the National Programme for Air Transport Facilitation. With the aim of improving airport management, the same Decree created airport authorities in six of the major Brazilian airports, and authorized the CONAERO to create them in other airports. Currently, there are 13 airport authorities in operation.

4.220. Brazil did not schedule any GATS specific commitments on air transport services. Nevertheless, it made specific commitments on auxiliary services to all modes of transport, including handling and storage, and warehousing services. For these services, Brazil committed to allow commercial presence without restrictions.²⁷⁰

4.5.4 Maritime transport and ports

4.5.4.1 Main features

4.221. During the review period Brazil maintained a trade deficit in maritime transport services, which increased in tandem with the country's growing participation in international trade, especially in 2010 and 2011. In 2011, Brazil's exports and imports of maritime transport services amounted to US\$4.8 billion and US\$9.5 billion, respectively.

4.222. At end December 2011, the Brazilian-flagged navigation fleet comprised 156 ships²⁷¹, operated by 41 companies, with a total capacity of 2.9 million deadweight tonnes (DWT). Oil tankers represented 45.4% of total DWT capacity, followed by bulk carriers (18.2%), container ships (14%), and general cargo ships (5.6%).²⁷² The predominance of tankers and bulk carriers in total DWT reflects the structure of Brazil's merchandise exports, which comprise mainly oil, iron ore, soybeans, sugar, and other commodities. It also reflects the Brazilian suppliers' need to use large ships to achieve economies of scale in order to remain competitive. The largest Brazilian fleet is owned by PETROBRAS, with 42 ships and 46.2% of total DWT, followed by NORSUL (12.3%), ELCANO (10.9%), Aliança Navegação (9.5%) and Log-In (4.5%).²⁷³

4.223. Although two thirds of Brazilian-owned ships sail under the Brazilian flag, in terms of tonnage (DWT) foreign-flagged (Brazilian-owned) vessels account for 83%²⁷⁴, with the Liberian flag being the most used flag.²⁷⁵ The Brazilian-owned fleet's market share in world tonnage is just below 1%, ranking 21st in the world. In the near future, however, Brazil is expected to increase its

²⁶⁷ WTO (2009).

²⁶⁸ The latest adjustments are contained in ANAC Resolution No. 216 of 30 January 2012.

²⁶⁹ IATA, Press Release No. 18, "Urgent Change for Brazilian Aviation - Driving Economic benefits and Improving Competitiveness", 15 March 2011. Viewed at: <http://www.iata.org/pressroom/pr/pages/2011-03-15-01.aspx> [May 2012].

²⁷⁰ WTO document GATS/SC/13 of 15 April 1994.

²⁷¹ There were an additional 1,149 support navigation vessels.

²⁷² ANTAQ online information. Viewed at: <http://www.antaq.gov.br/Portal/pdf/BoletimPortuario/FrotaApoioMaritimoDez2011.pdf> [June 2012].

²⁷³ ANTAQ online information. Viewed at: <http://www.antaq.gov.br/Portal/pdf/BoletimPortuario/FrotaApoioMaritimoDez2011.pdf> [June 2012].

²⁷⁴ Vessels of 1,000 GT and above.

²⁷⁵ UNCTAD (2011) and (2012).

fleet substantially, as reflected by the country's order book, which is currently the world's largest.²⁷⁶

4.5.4.2 Regulatory framework

4.5.4.2.1 Maritime transport services

4.224. Brazil's regulatory agency for maritime services is the National Waterways Transport Agency (ANTAQ), a public-law independent agency linked to the Secretariat of Ports.²⁷⁷ The ANTAQ regulates and supervises the Port Authority, the federal waterway infrastructure, private terminals and shipping companies.²⁷⁸ The ANTAQ's main functions include setting rules for the use of shipping services, granting authorizations for the provision of services by shipping companies, supervising the activities of all shipping companies operating in Brazil, and authorizing contracts to charter foreign vessels and for government cargo transportation.²⁷⁹ The ANTAQ is also responsible for negotiating international maritime transport conventions and agreements.

4.225. Among the main legal instruments governing maritime transportation in Brazil are: Law No. 9,432 of 8 January 1997, which organizes maritime and other types of water-borne transport services, including the conditions for the participation of foreign vessels; Law No. 7,652 of 3 February 1998 on the registration of maritime property; and Law No. 10,233 of 5 June 2001, which created the ANTAQ and established its regulatory functions.

4.226. Under Law No. 9,432, Brazilian-flag vessels must be owned by natural persons residing or domiciled in Brazil, or by a Brazilian shipping company. The captain, the chief engineer and two-thirds of the crew of a Brazilian-flag vessel must be Brazilian nationals. To obtain authorization from the ANTAQ to operate as a Brazilian shipping company, an enterprise must be established in Brazil under Brazilian law, and own at least one ship technically adequate for the service envisaged. There are no restrictions on the national origin of the capital. Under Law No. 7,652, Brazilian ships must be registered in the Registry of Maritime Property. Ships under construction in a shipyard located in Brazil may be registered in the Special Brazilian Registry (REB), and hence be eligible for incentives aimed at fostering the development of the national shipbuilding industry (see below).²⁸⁰

4.227. Multimodal freight transport is regulated by Law No. 9,611 of 19 February 1998 and Decree No. 3,411. No restrictions apply on the origin of capital for the establishment of a multimodal transport operator in Brazil.

4.228. The Brazilian Constitution and Law No. 9,432 require reciprocity of treatment in Brazilian international maritime transport services, as specified in international agreements signed by Brazil.²⁸¹ As of March 2013, Brazil had bilateral agreements on maritime transport services with 13 countries²⁸², of which five (with Argentina, Algeria, Chile, Romania, and Uruguay) had cargo-sharing provisions.

4.229. Under Decree Law No. 666 of 2 July 1969, cargoes of government entities (including public enterprises), and goods benefitting from official fiscal or credit programmes must be transported by Brazilian flag vessels, unless a waiver is granted on a reciprocal basis. Exports of crude oil extracted in Brazil must also be transported by Brazilian-flag vessels. Up to 50% of government-controlled cargoes may be allocated to vessels bearing the flag of the importing/exporting country, subject to reciprocity. When no Brazilian vessel is available or rates are not deemed reasonable, a waiver may be given for a foreign vessel. The authorities indicated that 5,350 waivers were granted to foreign vessels to perform freight transport between 2008 and 2011.

²⁷⁶ For example, the Brazilian mining conglomerate is expected to take delivery of 35 of the largest existing cargo ships (with a capacity of up to 400,000 DWT) by the end of 2013 (UNCTAD, 2012).

²⁷⁷ ANTAQ was created by Law No. 10,233 of 5 June 2001, modified by Provisional Measure No. 595 of 6 December 2012.

²⁷⁸ ANTAQ online information. Viewed at: <http://www.antaq.gov.br/Portal/pdf/palestras/MarrocosANTAQ2010Mar09DGTiagoLimaIngCompatibilidadMode.pdf> [June 2012].

²⁷⁹ WTO (2009).

²⁸⁰ Law No. 9,432 of 8 January 1997.

²⁸¹ Article 178 of the Constitution and Article 5 of Law No. 9,432 of 8 January 1997.

²⁸² Algeria, Argentina, Bulgaria, Chile, China, France, Germany, Poland, Portugal, Romania, Russia, the United States, and Uruguay.

4.230. Cabotage is reserved for Brazilian-flag vessels operated by Brazilian shipping companies. Foreign vessels may only participate in cabotage when chartered by a Brazilian shipping company, for which an authorization must be obtained. Authorizations waiving this restriction may be granted when: a Brazilian-flag vessel of the required type is not available; for public interest reasons; or if the foreign vessel substitutes for a vessel that is under construction in a Brazilian shipyard.²⁸³ Between 2008 and 2011, 5,434 such waivers were granted, mainly due to the lack of availability of Brazilian-flag vessels.²⁸⁴

4.231. Brazil still maintains the Additional Freight Charge for the Renovation of the Merchant Navy (AFRMM), a federal tax levied on maritime freight.²⁸⁵ The tax is applied on the combined cost of freight and insurance at a rate of 25% for long-distance navigation (international routes) by Brazilian and foreign ships, 10% for cabotage navigation, and 40% for inland waterway transportation of liquid bulk cargoes in Brazil's north and north-east regions. The AFRMM is levied only on import cargos; transit and export cargos are exempted. The tax does not apply to countries with which Brazil has negotiated a specific clause in LAIA Economic Complementary Agreements. The AFRMM on international maritime freight may increase the cost of imported goods considerably.

4.232. Resources from the collection of the AFRMM are deposited in the Merchant Marine Fund (FMM) to finance the development of the Brazilian merchant fleet and shipyard industry. The BNDES is in charge of managing the fund, on behalf of the Ministry of Transport; it offers credits at attractive rates to Brazilian shipping companies ordering ships from Brazilian shipyards and to Brazilian shipbuilders producing vessels for Brazilian shipping companies. Central Bank Resolution BACEN No. 3828 of 17 December 2009 establishes the conditions applicable to credits granted with resources from the FMM. The conditions depend on the amount of "national content" used in the production of the vessels or in the construction, expansion, and modernization of shipyards; the origin of the goods or equipment to be financed; and the type of vessel (cargo, passengers, etc.). The authorities indicated that the FMM allocated a total of R\$9.3 billion in credits to the shipping industry between 2008 and 2011.²⁸⁶

4.233. The Brazilian shipping industry also benefits from other tax incentives related to the provision of services. Freight revenues from goods carried between Brazil and a foreign country by vessels registered under the REB are exempt from the Contribution to the Social Integration Programme (PIS) and the Contribution to the Social Security Financing (COFINS).²⁸⁷ The construction, maintenance, repair, and modernization of vessels registered under the REB in Brazilian shipyards enjoy the same fiscal treatment as exports of industrial goods in general, e.g. reimbursement of domestic indirect taxes. Moreover, in some states, inputs and other materials for the construction of ships and petroleum platforms are exempt from the Tax on the Circulation of Goods and Services (ICMS).²⁸⁸

4.234. The Brazilian Income Tax Code (Article 176) and Decree Law No. 5,844 of 1943 (Article 30) grant reciprocal income tax exemption to foreign shipping companies domiciled in countries where Brazilian shipping companies benefit from the same treatment for international shipping traffic activities.

4.235. Brazil signed the UN Convention on a Code of Conduct for Liner Conferences in 1975, but did not ratify it.²⁸⁹ Brazil is a member of the International Maritime Organization (IMO) and has ratified a number of IMO conventions related to maritime safety, prevention of maritime pollution,

²⁸³ Articles 7 and 9 of Law No. 9,432 of 8 January 1997.

²⁸⁴ ANTAQ (2011).

²⁸⁵ Law No. 10,893 of 13 July 2004 governs the AFRMM. Law No. 12,599 of 2012 clarified that the AFRMM is a tax, not a customs duty, that must be included for purposes of determining the sales tax (ICMS) on imports.

²⁸⁶ BANCEN Resolution No 3828 of 17 December 2009. Viewed at: <http://www.siop.planejamento.gov.br/sioplegis/pesquisa.php?query=%22Fundo+da+Marinha+Mercante+%22&index=101173> [March 2013].

²⁸⁷ Provisional measure No. 2,158-35 of 4 August 2001.

²⁸⁸ Decree No. 25.403 of 2 July 1999.

²⁸⁹ Brazil signed the UN Convention on a Code of Conduct for Liner Conferences on 23 June 1975. UN online information. Viewed at: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-6&chapter=12&lang=en#EndDec [July 2012].

and civil liability, among others.²⁹⁰ Brazil is a party to the Multilateral Agreement on Inland Waterway Transportation through the Paraguay-Parana Rivers, together with Argentina, the Plurinational State of Bolivia, Paraguay, and Uruguay.

4.5.4.2.2 Ports

4.236. Brazil has 35 maritime public ports under the jurisdiction of the federal Special Ports Secretariat (SEP), of which 17 are operated by State or municipal governments, and 18 are administered by the public-owned Companhia Docas. No public ports are operated under private concessions.²⁹¹ There are 134 private terminals (TUPs).

4.237. The main Brazilian ports in terms of cargo handled are TUP Tubarão (State of Espírito Santo), Ponta da Madeira (State of Maranhão), Santos (State of São Paulo), Itaguaí (State of Rio de Janeiro), TUP Almirante Barroso (State of São Paulo), and TUP Almirante Maximiano da Fonseca (State of Rio de Janeiro), which accounted for over 50% of total cargo movements in Brazilian ports in 2011 (Table 4.9). Some of these ports and terminals specialize in the shipment of a single commodity (e.g., mineral ore in the ports of Ponta da Madeira and Tubarão). The Port of Santos handles all forms of cargo and is the main port for general cargo and container traffic.

Table 4.9 Main Brazilian ports, cargo movement (tonnes), 2008-11

Port / Private-use terminal	2008	2009	2010	2011	2011 (%)
TUP CVRD TUBARÃO-ES	99,873,293	83,834,676	107,760,287	110,143,415	12.43
TUP PONTA DA MADEIRA-MA	86,902,994	87,716,016	96,364,127	102,260,814	11.54
PORTO DE SANTOS-SP	74,773,066	75,641,825	85,401,154	85,995,109	9.71
PORTO DE ITAGUAÍ-RJ	47,217,575	49,755,062	52,765,505	58,131,045	6.56
TUP ALMIRANTE BARROSO-SP	47,545,587	49,515,291	47,071,199	49,694,696	5.61
TUP ALMIRANTE MAXIMIANO DA FONSECA-RJ	30,195,739	35,417,192	39,612,657	38,783,547	4.38
TUP MBR-RJ	37,670,757	36,664,915	37,718,177	37,526,187	4.23
PORTO DE PARANAGUÁ-PR	32,274,468	30,630,149	34,348,405	37,418,523	4.22
TUP PONTA DE UBU-ES	17,660,461	19,084,850	23,005,992	23,703,579	2.67
TUP MADRE DE DEUS-BA	21,845,233	15,703,512	20,267,441	20,701,120	2.34
Other ports/private-use terminals	272,364,377	248,967,653	289,620,792	321,697,245	36.31
Total	768,323,550	732,931,141	833,935,736	886,055,280	100.00

Source: ANTAQ, Agência Nacional de Transportes Aquaviários (2011), "Anuário Estatístico Aquaviário 2011". Viewed at: <http://www.antaq.gov.br/Portal/Anuarios/Anuario2011/body/index.htm> [July 2012].

4.238. During the period under review (except in 2009), port cargo movement continued to increase, reflecting the growth of Brazil's external trade. Between 2007 and 2012, the volume of cargo moved through Brazilian ports rose from 755 million tonnes to 904 million tonnes. Private terminals handled about 65% of total cargo movements in 2012. The main products transported were commodities, including iron ore, petroleum and petroleum products, soybeans, bauxite, sugar, fertilizers, and coal, which together accounted for almost three quarters of all cargo moved in 2012.²⁹²

4.239. Around 90% of Brazilian exports are carried by sea, and, as Brazilian overseas trade expands, the country's ports are facing serious capacity and operational constraints. According to the General Port Concession Plan (PGO), which establishes the procedures for public port concessions, there are 19 potential areas for building new ports in Brazil. Their construction would help to meet increasing demand.²⁹³ In addition, the two major sporting events that Brazil will be hosting in the next few years are placing further strains on existing port and terminal capacity. In order to address such bottlenecks, the federal Government allocated nearly US\$2 billion for improvements in a dozen ports under the first phase of the Growth Acceleration Plan/PAC-1

²⁹⁰ For the list of international maritime transport conventions signed by Brazil, see: https://www.ccaimo.mar.mil.br/convencoes_e_codigos/convencoes [July 2012].

²⁹¹ Information provided by the Brazilian authorities. See also Secretaria de Portos online information. Viewed at: <http://www.portosdobrasil.gov.br/sistema-portuario-nacional>.

²⁹² ANTAQ online information. Viewed at <http://www.antaq.gov.br/Portal/Anuarios/Anuario2011> [July 2012].

²⁹³ Brazil's public ports are expected to move a billion tonnes of freight by 2015.

(2007-11). A further US\$3 billion has been earmarked for dredging, port infrastructure, port logistics, and passenger terminals under the PAC-2 programme.

4.240. As of March 2013, the main instrument regulating port activities is Provisional Measure No. 595 of 6 December 2012, which revoked Law No. 8,630 of 25 February 1993 (Port Modernization Law). Provisional Measure No. 595 maintains a decentralized system of port administration (at federal, state, and municipal level) and allows the leasing of public ports areas and facilities to the private sector, including foreign companies. Federal Decree No. 4,391 of 2002 established procedures and conditions for the leasing of areas at public ports. Many activities in the public ports are now carried out by private local and foreign companies under leasing contracts, which have an initial duration of 25 years, renewable for a further 25 years. Firms supplying auxiliary port services must be established in Brazil, but foreign capital may participate and receive national treatment. A number of activities in the public ports are still regulated by the State, and union labour must be used in the public ports. Under the new legislation, the Port Authority Council, comprising representatives from business, labour, and government, has shifted from being a decision-making body, responsible for regulating port operations, to an advisory body of the port administration.

4.241. Law No. 11,518 of 5 September 2007 provides for the creation of the Secretariat of Ports (SEP), directly linked to the Presidency, with the objectives of increasing the competitiveness of Brazilian ports and reducing logistic costs. SEP's responsibilities include policy formulation for the development of the sector; implementation of measures and programmes to support port infrastructure development with investments from the PAC programme; participation in planning and approval of ports concessions; consolidation of the regulatory framework; and promoting private investment. The SEP is currently working on the National Logistics and Ports Plan (PNLP). The SEP nominates the presidents of the Port Authority Councils and of the publicly-owned Companhia Docas, which also participates in the Port Authority Councils.

4.242. Federal Decree No. 6,628 of 2008 established regulations for the private-use-terminals (TUPs), while preserving the leasing programme of areas at public ports. Many companies operate private terminals, mostly used for exporting their own cargoes, and new terminals are being built. According to the industry, regulations for the establishment of private terminals are complex (e.g. regarding the definition of own and mixed cargoes), and there is a requirement that even the development of an approved private terminal should be open to tender regulated by the ANTAQ.²⁹⁴ Nevertheless, two major private port developments are in progress: Embraport, close to the port of Santos (for handling containers and ethanol), and Açu Superport, north of Rio de Janeiro, which will be a major shipping route to China and will include processing and production facilities.

4.243. In addition to increased investment in ports infrastructure, certain operational issues need to be addressed to maximize the efficiency and competitiveness of ports. For example, prices for port services continue to vary considerably from port to port making comparisons difficult. Private terminal prices are not subject to SEP control. Also, shipping companies must submit more than 100 documents to more than 20 institutions in order to carry out operations. Representatives of the industry advocate unifying the pricing structure, so as to boost competition, and simplifying/reducing documentation and procedural requirements.²⁹⁵

4.244. To simplify port procedures, the Federal Government is implementing the Paperless Ports programme. Among other facilitation measures, the programme includes a computerized system that unifies all relevant databases so that companies need to complete only one form, which can be accessed by all agencies involved in shipment or release of cargo. This system has been deployed in 19 ports, including some of the main ones and is expected to be deployed in 15 others by mid-2013. As part of the same programme, the SEP is working with a private corporation on the Brazil Intelligent Cargo project in order to assess how enhanced business processes, technologies, and best practices can be used to improve the security and efficiency of Brazil's port and logistics operations, and reduce docking and cargo clearance times and costs.

4.245. Brazil maintains a lighthouse fee (TUF) applied only on foreign vessels, each time a foreign ship uses a port in a different Brazilian State. The fee is applied according to dead weight tonnage

²⁹⁴ UK Trade and Investment (2011).

²⁹⁵ InfoSur online information, "Brazil: Ports operating at their limit", 2 August 2011. Viewed at http://infosurhoy.com/coccon/saii/xhtml/en_GB/features/saii/features/main/2011/02/08 [July 2012].

(DWT) at the following rates: US\$1,500 for vessels from 1,000 to 50,000 DWT; US\$2,250 for vessels from 50,000 to 100,000 DWT; and US\$3,000 for vessels of over 100,000 DWT. Vessels under 1,000 DWT are exempted from the fee. The revenue collected is used for repair and maintenance of navigation signals (e.g. lighthouses) along the Brazilian coast, with a view to maintaining safety levels for navigation in Brazilian territorial seawaters. The authorities indicated that TUF amounts to roughly US\$40 million a year.

4.246. Brazil continues to implement security measures in national ports to comply with the IMO's International Ship and Port Facility Security Code (ISPS Code). As at August 2012, 24 Brazilian ports had been certified under the ISPS Code.

4.5.5 Professional services

4.5.5.1 General features

4.247. Brazil maintained a positive trade balance in professional and business services throughout the period under review. Exports increased rapidly, to US\$18.3 billion in 2011, while imports amounted to US\$7.6 billion.

4.248. Under the Brazilian Constitution, the Union has exclusive powers to regulate the practice of professions.²⁹⁶ Registration in professional associations is mandatory for the provision of certain services, such as legal, accounting, architectural, and engineering. No professions are reserved for Brazilian nationals, but practice of the legal, medical, health, and other professions requires residence in Brazil. Foreign providers are not allowed to own or manage companies specialized in investigation and security services.

4.249. Professionals with foreign qualifications must obtain revalidation of their degrees from a university recognized by the Ministry of Education, and meet the requirements established by law to practise in Brazil. The National Education Council of the Ministry of Education, through Resolution No. 1 of 28 January 2002, as modified by Resolution No. 8 of 4 October 2007, regulates the revalidation of foreign diplomas, titles, and certificates. The request for revalidation must be submitted to a recognized Brazilian university.²⁹⁷ The degree is assessed by a special commission from the university. By law, recognized universities have complete autonomy in the assessment and validation of foreign degrees²⁹⁸, and have their own criteria, which may include analysis of the curriculum, a test or even the demand that the applicant sit some extra courses in Brazil. In practice, procedures for revalidation of foreign diplomas are complex and time consuming. The National Education Council is currently reviewing revalidation rules in order to speed up the process.²⁹⁹

4.250. Within the MERCOSUR, Decision No. 25/2003 established a regulatory framework to engage in mutual career recognition among member countries. The National Education Council Resolution No. 106 of 2007 provides for the implementation of Decision No. 25/2003 in Brazil. However, the decision has not been implemented, pending approval by other MERCOSUR members.

4.5.5.2 Legal services

4.251. Law No. 8,906 of 4 July 1994 (as amended) governs the practice of law in Brazil. The Brazilian Bar Association (OAB), an independent private institution, regulates and sets the standards of conduct and qualifications for the legal profession at the federal level, and has the exclusive authority to admit and discipline attorneys. The OAB has 27 sectional councils located in each of the Brazilian federative units, and together they constitute the Federal Council of the

²⁹⁶ Article 22 of the Constitution.

²⁹⁷ For a list of the required documents and procedures (in Portuguese), see Ministry of Education online information. Viewed at: http://portal.mec.gov.br/index.php?option=com_content&view=article&id=12405:revalidacao-de-diploma-graduacao&catid=322:revalidacao-de-diploma-graduacao&Itemid=317 [July 2012].

²⁹⁸ Article 207 of the Constitution and Law for Guidelines and Bases for National Education No. 9,394 of 20 December 1996.

²⁹⁹ Brazil-Arab New Agency, "Brazil: National Education Council aims to speed up validation of foreign diplomas", 24 June 2011. Viewed at <http://www2.anba.com.br/noticia-educacao.kmf?cod=12047050> [July 2012].

Brazilian Bar Association, the highest-ranking body regulating the legal profession. Currently, over 600,000 lawyers are registered with the OAB.

4.252. Under Law No. 8,906 of 1994, the practice of law encompasses legal consulting, advisory, and management, and pleading before the Brazilian Judiciary branch. Only lawyers registered with the OAB may receive the title of attorney and perform such activities in Brazil. Individuals (Brazilian and foreign) who have obtained a law degree abroad may be admitted to practise law in Brazil as attorneys, provided they validate their law degree at an authorized Brazilian law school, pass the OAB Bar exam, and register with the OAB. Practice as a legal professional also requires residence in Brazil. An attorney's main registration must be at the sectional council of the federative unit where he/she intends to establish professional domicile. The licence to practise law as an attorney is valid for an indefinite term and the attorneys are allowed to practice Brazilian law.

4.253. Foreign-qualified lawyers may also practise in Brazil as foreign law consultants. Provision No. 91 of 13 March 2000 allows a foreign lawyer to establish a consultancy in foreign law in Brazil. In this case, the foreign lawyer is not required to validate his/her law degree or to pass the Bar exam. However, OAB authorization and registration are required and are granted for renewable periods of three years. The requirements to obtain a licence as a foreign law consultant include: to be licensed to practise law and be admitted to the Bar in the country of qualification, to hold a permanent visa in Brazil, to provide evidence of good conduct and reputation, of never having been punished for a disciplinary violation or convicted in a criminal lawsuit, and proof that there is an instrument offering reciprocal treatment to Brazilian attorneys in the applicant's country of origin. Foreign law consultants are forbidden from offering consultancy services or counselling in Brazilian law and from exercising the function of an attorney-at-law. They are only allowed to provide consultancy on the foreign law of the country where they are licensed to practise law. Provision No. 99 of 2002 established a Registry of Foreign Law Consultants.

4.254. A consultancy firm providing foreign law services must be constituted and registered in Brazil, and all its lawyers must be authorized by the OAB to provide foreign law consultancy services. A foreign law consultancy firm may not enter into partnership with a Brazilian attorney practicing Brazilian law or hire Brazilian lawyers, except as foreign law consultants. Currently, some 20 foreign law firms are registered with the OAB, of which more than half are organized in São Paulo and the rest in Rio de Janeiro.

4.255. Cross-jurisdictional legal work is strictly regulated, and reportedly in recent years, the OAB has investigated affiliations between Brazilian law firms and foreign law consultants in Brazil. According to the OAB, Brazilian attorneys and foreign law consultants may not enter into partnership within a single legal entity. Therefore, a law firm in Brazil shall be established only by attorneys licensed by the OAB and is allowed to practise Brazilian law; while a foreign law consultancy firm shall be established only by foreign law consultants, who are authorized to provide counselling only on the foreign law(s) for which they are licensed by the bar association in their country (or countries) of origin.³⁰⁰

4.5.5.3 Accounting and auditing services

4.256. The accounting profession is regulated by the Federal Accounting Council (CFC). The CFC is in charge of issuing, regulating, and implementing accounting principles, technical qualification requirements, and continuous educational programmes for accountants. It is also responsible for compiling and updating the Brazilian Rules of Accountancy. Established by Decree-Law No. 9,295 of 27 May 1946, the CFC is a special corporative body of public law.³⁰¹ It comprises one representative from each of the 27 Regional Accounting Councils (CRCs). The CRCs are responsible for implementing the CFC Directives and for the registration and supervision of accountants in their respective jurisdictions. CFC Resolution No. 1,370 of December 2011, which repealed CFC

³⁰⁰ *Law.com-Internationalnews*, "Foreign Law Firms' Operation in Brazil, 2012". Viewed at: <http://www.law.com/sp/law/international/LawArticleFreindlyIntl.jsp?id=1202473434>; *The Law Gazette*, "A coming struggle on partnership with foreign lawyers", 24 February 2012. Viewed at: <http://www.lawgazette.co.uk/print/64424>; and *The Economist*, "Foreign law firms in Brazil. Keep out", 23 June 2011. Viewed at: <http://www.economist.com/node/18867851> [July 2012].

³⁰¹ CFC online information. Viewed at: <http://www.cfc.org.br/conteudo.aspx?codMenu=1> [July 2012].

Resolution No. 960/2003, established a new General Regulation for Accounting Councils, which spells out rules on the composition, election, mandate, powers, and resources of the CRCs.

4.257. At end 2011, there were 493,000 accounting professionals in Brazil of which 488,000 were registered. There were also 78,970 accounting organizations registered with CFC.³⁰²

4.258. Brazilian legislation makes a distinction between professional accountants, who require a university degree, and accounting technicians.³⁰³ Under Law No. 12,249 of 14 June 2010, in order to practise as a professional accountant, an individual must possess a bachelor's degree in accountancy recognized by the Ministry of Education, have passed the CFC Sufficiency Exam, and be registered with the relevant CRC. Accountants who wish to practise as independent auditors must pass a technical qualifications exam to be enrolled in the National Registry of Independent Auditors (CNAI) of the Federal Accounting Council. Auditors wishing to act in the area of securities must also register at the Brazilian Securities Exchange Commission (CVM). Moreover, an accountant wishing to audit financial institutions or private insurers must pass, in addition to the general technical qualification exam, an exam for auditing institutions regulated by the Central Bank, or an exam for auditing institutions regulated by the private insurance supervisor (SUSEP).

4.259. In order to practise accountancy in Brazil, any individual holding an accountancy degree from a foreign university must first revalidate his or her diploma in a Brazilian public university with a full accountancy graduation course. Requirements set by the Brazilian university may include the presentation of an official translation of the foreign diploma into Portuguese, and attendance of additional classes by the diploma's holder to become acquainted with Brazilian accountancy standards. After passing the CFC Sufficiency Exam, professional registration with the local CRC is required. In the case of foreigners, registration is conditional on the duration of their work visa in Brazil.

4.260. During the review period, Brazil proceeded with the gradual adoption of the International Financial Reporting Standards (IFRS), as provided for by Law No. 11,638/07 dealing with Brazilian corporations. The deadline for full compliance was 31 December 2010. Since then, all companies listed on the Brazilian Stock Exchange as well as financial institutions have been required to produce financial statements that meet IFRS standards. A simpler version of the IFRS has also been introduced for SMEs. This has meant a significant change from the old Brazilian accounting system which was focused primarily on taxes, rather than on financial management. The transition process was carried out under the direction of the FCF Accounting Standards Committee. It is expected that, by improving the quality of financial reporting, the adoption of the IFRS standards will facilitate access to international credit and attract investments.

4.261. In December 2011, the CFC, the Brazilian Accounting Foundation, and the American Institute of Certified Public Accountants (AICPA) signed a memorandum of understanding intended to strengthen the accounting profession in Brazil and the United States. Among other issues, the parties will establish working groups for the launch and administration of the CPA exam in Brazil, and seek to implement a Portuguese-language IFRS training programme in Brazil.³⁰⁴

4.5.5.4 Architectural and urban planning services

4.262. Law No. 12,378 of 31 December 2010, which revoked all related previous legislation, governs the practice of architects and urban planners. The law created the Council of Architecture and Urbanism of Brazil (CAU/BR) at the national level, and the Councils of Architecture and Urbanism (CAU/UF) in each of the federative units, which are responsible for overseeing the exercise of these professions.³⁰⁵ Architects, urban planners, and engineer-architects who were enrolled under the old registry system (CONFEA), are now registered with the CAUs under the single title of architect and urban planner.

³⁰² *Journal of Accountancy* online information. Viewed at: <http://www.journalofaccountancy.com/Issues/2011/Nov/20114143.htm> [July 2012].

³⁰³ WTO document S/WPPS/W/7/Add.22, 5 November 1996.

³⁰⁴ AICPA online information. Viewed at: <http://www.aicpa.org/Press/PressReleases/2011/Pages/AICPA-and-Brazilian-Accounting-Bodies-agree-on-Memorandum-of-Understanding/> [July 2012].

³⁰⁵ Previously, the professions of architect and engineer were regulated by the Federal Council of Engineering, Architecture and Agronomy (CONFEA), and the Regional Councils of Engineering, Architecture and Agronomy (CREAS).

4.263. Registration with the relevant CAU/UF is mandatory in order to use the title of, and exercise the profession of, architect and urban planner. Registration is valid throughout the national territory. Brazilian citizens and foreigners holding a permanent visa, who have a university degree in architecture and urban planning from an officially recognized Brazilian institution, may obtain CAU/UF registration, provided they meet the requirements set out in CAU Resolution No. 18 of 2 March 2012. Brazilians and foreign individuals holding a permanent visa, who possess a university diploma from a foreign institution may register with the relevant CAU/UF, provided their diploma is duly legalized by the competent Brazilian consulate and revalidated by an authorized institution in Brazil (CAU Resolution No. 26 of 6 June 2012).

4.264. Temporary registration may be granted to Brazilian and foreign architects in possession of a foreign diploma and a temporary work contract in Brazil. In this case, validation of the foreign diploma is not required, but it must be issued by an institution officially recognized in the country where it is located. The temporary registration is valid for the duration of the contract and only for the activities therein specified; proof of residency in Brazil is required (CAU Resolution No. 26 of 6 June 2012). Exceptionally, foreign professionals with no permanent residency in Brazil may obtain temporary registration, provided they are accompanied in all the professional activities they perform by a registered Brazilian architect or registered architect association with residency in Brazil.³⁰⁶

4.265. CAU registration is also mandatory for enterprises or associations providing architectural and urban planning services, either as their sole commercial purpose or in combination with other professional services. Such juridical persons must include among their staff at least one professional architect or urban planner. CAU Resolution No. 15 of 3 February 2012 sets out the requirements for the registration of juridical persons with the CAU/UF, including the company's constitutive act and proof of inscription in the national registry of juridical persons with the fiscal authorities. In order to establish a commercial presence in Brazil to provide architectural and urban planning services, a foreign juridical person must form a partnership (*consórcio*) with a Brazilian architect firm.

³⁰⁶ Article 6 of Law No. 12,378 of 31 December 2010.

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GLOSSARY

<i>ABC, Agência Brasileira de Cooperação</i>	Brazilian Agency for Co-Operation
<i>Plano ABC, Plano de Agricultura de Baixa Emissão de Carbono</i>	Plan ABC, Plan for Low Carbon Emissions in Agriculture
<i>Programa ABC, Programa de Agricultura de Baixa Emissão de Carbono</i>	ABC Programme, Low Carbon Agriculture Programme
<i>ABGF, Agência Brasileira Gestora de Fundos e Garantias S.A.; Agência Brasileira Gestora de Fundos Garantidores e Garantias</i>	Brazilian Funds and Guarantees Management Agency (pre August 2012); Brazilian Guarantee Fund and Guarantees Management Agency (post August 2012)
<i>ABNT, Associação Brasileira de Normas Técnicas</i>	Brazilian Association for Technical Standardization
<i>ACC, Adiantamentos sobre Contratos de Câmbio</i>	Advance on Export Contracts
<i>ACE, Adiantamentos sobre Cambiais Entregues</i>	Advance on Exchange Contracts
<i>ACL, Ambiente de Contratação Livre</i>	Free Contracting Environment
<i>ACR, Ambiente de Contratação Regulada</i>	Regulated Contracting Environment
<i>AFRMM, Adicional ao Frete para Renovação da Marinha Mercante</i>	Additional Freight Charge for the Renovation of the Merchant Navy
<i>AGF, Aquisição do Governo Federal</i>	Federal Government Acquisition Programme
<i>AMAZUL, Amazônia Azul Tecnologias de Defesa S.A.</i>	Blue Amazonia Defence Technologies
<i>ANAC, Agência Nacional de Aviação Civil</i>	National Agency for Civil Aviation
<i>ANATEL, Agência Nacional de Telecomunicações</i>	National Telecommunications Agency
<i>ANEEL, Agência Nacional de Energia Elétrica</i>	National Agency for Electrical Energy
<i>ANP, Agência Nacional do Petróleo, Gás Natural e Biocombustíveis</i>	National Agency for Petroleum, Natural Gas and Biofuels
<i>ANS, Agência Nacional de Saúde Suplementar</i>	National Regulatory Agency for Private Health Insurance and Plans
<i>ANVISA, Agência Nacional de Vigilância Sanitária</i>	Brazilian Health Surveillance Agency
<i>APEX-Brasil, Agência Brasileira de Promoção de Exportações e Investimentos</i>	Brazilian Trade and Investment Promotion Agency
<i>ATAERO, Adicional de Tarifa Aeronáutica</i>	Additional Airport Tax
<i>ATER, Assistência Técnica e Extensão Rural</i>	Rural Extension and Technical Assistance
<i>ATIT, Acordo de Transporte Internacional Terrestre</i>	International Land Transport Agreement of the Southern Cone
<i>BASA, Banco da Amazônia</i>	Amazônia Bank
<i>BB-agroindustrial</i>	Banco do Brasil Credit Line for Agri-Industries
<i>BCB, Banco Central do Brasil</i>	Central Bank of Brazil
<i>BK, Lista de Convergência de Bens de Capital</i>	List of Convergence for Capital Goods
<i>BM&F BOVESPA, Bolsa de Valores, Mercadorias & Futuros de São Paulo</i>	São Paulo Stock Exchange
<i>BNB, Banco do Nordeste do Brasil</i>	Bank of the North-East of Brazil
<i>BNDES, Banco Nacional de Desenvolvimento Econômico e Social</i>	National Development Bank
<i>CADE, Conselho Administrativo de Defesa Econômica</i>	Administrative Council for Economic Defence
<i>CAMEX, Câmara de Comércio Exterior</i>	Chamber of Foreign Trade
<i>CAPES, Coordenação de Aperfeiçoamento de Pessoal de Nível Superior</i>	Foundation for Higher Education Professionals
<i>CBA, Código Brasileiro de Aeronáutica</i>	Brazilian Aeronautical Code
<i>CBIT, Capacitação e Competitividade do Setor de Informática e Automação</i>	Capacity Building and Competitiveness Enhancement in Information Technology
<i>CCEE, Câmara de Comercialização de Energia Elétrica</i>	Electric Energy Commercialization Chamber
<i>CDE, Conta de Desenvolvimento Energético</i>	Energy Development Fund
<i>CDI, Certificado de Depósito</i>	Certificate of Deposit
<i>CEF, Caixa Econômica Federal</i>	Federal Savings Bank
<i>CEITEC, Centro Nacional de Tecnologia Eletrônica Avançada S.A.</i>	National Center for Advanced Research in Electronics
<i>CERAD, Centro Nacional de Gestão de Riscos</i>	National Centre for Customs Risk Management

<i>Aduaneiros</i>	
<i>CFC, Conselho Federal de Contabilidade</i>	Federal Accounting Council
<i>CGCRE, Coordenação Geral de Acreditação</i>	General Coordination for
<i>CGSAP, Coordenação Geral de Sanidade Pesqueira</i>	General Coordination Office for Aquatic Animal Health
<i>CIBES, Comissão Interministerial de Bens Sensíveis</i>	Inter-Ministerial Commission for the Export Control of Sensitive Goods
<i>CIDE, Contribuição de Incidência sobre o Domínio Econômico</i>	Contribution for Intervention in the Economic Domain
<i>CIMA, Conselho Interministerial do Açúcar e do Álcool</i>	Inter-Ministerial Council for Sugar and Alcohol
<i>CMC (GMC), Conselho Mercado Comum</i>	Council for the Common Market
<i>CMED, Câmara de Regulação do Mercado de Medicamentos</i>	Drug Market Regulation Chamber
<i>CMN, Conselho Monetário Nacional</i>	National Monetary Council
<i>CMSE, Comitê de Monitoramento do Setor Elétrico</i>	Electricity Industry Monitoring Committee
<i>CNAI, Conselho Nacional de Autores Independentes</i>	National Registry of Independent Auditors
<i>CNEN, Comissão Nacional de Energia Nuclear</i>	National Commission of Nuclear Energy
<i>CNI, Confederação Nacional da Indústria</i>	National Industry Confederation
<i>CNJ, Conselho Nacional de Justiça</i>	National Justice Council
<i>CNSP, Conselho Nacional de Seguros Privados</i>	National Council of Private Insurance
<i>COBRA, Computadores e Sistemas Brasileiros</i>	Brazilian Computers and Systems
<i>CODEFAT, Conselho Deliberativo do Fundo de Amparo ao Trabalhador</i>	Deliberative Council of the Workers' Assistance Fund
<i>COFIG, Comitê de Financiamento e Garantia das Exportações</i>	Export Financing and Guarantee Committee
<i>COFINS, Contribuição para o Financiamento da Seguridade Social</i>	Contribution to Social Security Financing
<i>CONAB, Companhia Nacional de Abastecimento</i>	National Food Supply Company
<i>COMAER, Comando Aéreo</i>	Aeronautics Command
<i>CONAERO, Comissão Nacional de Autoridades Aeroportuárias</i>	National Airport Authorities Commission
<i>COMEXE</i>	Army Command, Ministry of Defence
<i>CONEX</i>	CAMEX Private Sector Advisory Council
<i>CONFAZ, Conselho Nacional de Política Fazendária</i>	National Fiscal Policy Council
<i>CONMETRO, Conselho Nacional de Metrologia, Normalização e Qualidade Industrial</i>	National Council of Metrology, Standardization and Industrial Quality
<i>COPOM (BCB), Conselho de Política Monetária</i>	Monetary Policy Committee
<i>COV, Contratos de Opções Variáveis</i>	Public Option Contracts
<i>CPR, Cédula de Produto Rural</i>	Rural Product Certificate
<i>CRCs, Conselhos Regionais de Contabilidade</i>	Regional Accounting Councils
<i>CTNBio, Comissão Nacional Técnica de Biossegurança</i>	National Technical Commission on Biotechnology
<i>CVM, Comissão de Valores Mobiliários</i>	Brazilian Securities Exchange Commission
<i>CVP, Comitê Veterinário Permanente do Cono Sul</i>	Standing Veterinary Committee of the South Cone
<i>CZPE, Conselho Nacional das Zonas de Processamento de Exportação</i>	National Council of Export Processing Zones
<i>DECEA, Departamento de Controle do Espaço Aéreo</i>	Department of Air Space Control
<i>DECEX (SECEX), Departamento de Comercio Exterior</i>	Foreign Trade Operations
<i>DECIC (BCB), Departamento de Prevenção a Ilícitos Financeiros e de Atendimento de Demandas de Informações do Sistema Financeiro</i>	Department of Financial Compliance and Financial Information Treatment of the Central Bank
<i>DECOM (SECEX), Departamento de Defesa Comercial</i>	Department of Trade Remedies
<i>DECOS, Departamento de Políticas de Comercio</i>	Department of Commerce and Services Policies

<i>e Serviços</i>	
<i>DEINT (SECEX), Departamento de Negociações Internacionais</i>	International Trade Negotiations
<i>DENOC (SECEX), Departamento de Normas e Competitividade no Comércio Exterior</i>	Rules and Competitiveness in Foreign Trade
<i>DEORF (Banco Central), Departamento de Organização do Sistema Financeiro</i>	Central Bank's Financial Organization Department
<i>DEPLA (SECEX), Departamento de Planejamento e Desenvolvimento do Comércio Exterior</i>	Planning and Development of Foreign Trade Policies
<i>DEST, Departamento de Coordenação e Governança das Empresas Estatais</i>	Ministry of Planning's Department of Coordination and Control of State Enterprises
<i>DFPC, Diretoria de Fiscalização de Produtos Controlados</i>	Directorate for the Supervision of Controlled Products
<i>DIRE, Declaração de Importação de Remessas Expressas</i>	Express Shipment Declaration
<i>DNPM, Departamento Nacional de Produção Mineira</i>	National Department of Mineral Production
<i>DPF, Departamento de Polícia Federal</i>	Federal Police Department
<i>EBC, Empresa Brasil de Comunicação</i>	Brazilian Communications Company
<i>EBSERH, Empresa Brasileira de Serviços Hospitalares</i>	Brazilian Enterprise of Hospital Services
<i>EGF, Empréstimo do Governo Federal</i>	Federal Government Loan
<i>ELETOBRAS Centrais Elétricas Brasileiras</i>	ELETOBRAS Brazilian Electrical Power Stations
<i>ELETRONUCLEAR, ELETOBRAS Termonuclear</i>	ELETOBRAS Thermo-Nuclear
<i>E&P, Exploração e Produção</i>	Brazil's Regulatory Framework for Oil and Gas Exploration and Production
<i>EPE, Empresa de Pesquisa Energética</i>	Energy Research Company
<i>EPL, Empresa de Planejamento e Logística S.A.</i>	Research and Logistics Company to Promote High-Speed Railways Services
<i>FAT, Fundo de Amparo ao Trabalhador</i>	Workers' Assistance Fund
<i>FCO, Fundo Constitucional de Financiamento do Centro-Oeste</i>	Constitutional Funds for Financing the Mid-West Regions
<i>FDA, Fundo de Desenvolvimento da Amazônia</i>	Amazon Development Fund
<i>FDNE, Fundo de Desenvolvimento do Nordeste</i>	North-East Region Development Fund
<i>FENASEG, Federação Nacional das Empresas de Seguros Privados e de Capitalização</i>	National Federation of Insurance Services Providers
<i>FFEX, Fundo Financeiro de Exportação</i>	Export Financing Fund
<i>FGC, Fundo Garantidor de Créditos</i>	Credit Guarantee Fund
<i>FGE, Fundo Garantidor de Exportação</i>	Export Guarantee Fund
<i>FINAM, Fundo de Investimento da Amazônia</i>	Amazon Investment Fund
<i>FINAME (BNDES), Agência Especial de Financiamento Industrial</i>	Special Industrial Financing Agency
<i>FINEP, Financiadora de Estudos e Projetos</i>	Financing of Studies and Projects
<i>FINOR, Fundo de Investimentos do Nordeste</i>	North-East Investment Fund
<i>FIRJAN, Federação das Indústrias do Estado do Rio de Janeiro</i>	Federation of Industries of the State of Rio de Janeiro
<i>FMM, Fundo da Marinha Mercante</i>	Merchant Marine Fund
<i>FNAC, Fundo Nacional de Aviação Civil</i>	National Civil Aviation Fund
<i>FNDCT, Fundo Nacional de Desenvolvimento Científico e Tecnológico</i>	Scientific and Technological Development Fund
<i>FNE, Fundo Constitucional de Financiamento do Nordeste</i>	Constitutional Fund for Financing the North-East Region
<i>FNO, Fundo Constitucional de Financiamento do Norte</i>	Constitutional Funds for Financing the North Region
<i>FUNCAFE, Fundo de Defesa da Economia Cafeeira</i>	Brazilian Coffee Fund
<i>FUNRES, Fundo de Recuperação Econômica do Estado do Espírito Santo</i>	Fund for the Economic Recovery of the State of Espírito Santo
<i>FUNTTEL, Fundo para o Desenvolvimento Tecnológico das Telecomunicações</i>	Telecommunications Technology Development Fund
<i>FUST, Fundo de Universalização dos Serviços de</i>	Universal Telecommunications Service Fund

<i>Telecomunicações</i>	
<i>Garantia-Safra</i>	Harvest Guarantee Programme
<i>GERES, Grupo de Recuperação Econômica do Estado do Espírito Santo</i>	
<i>IBAMA, Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis</i>	Brazilian Institute of the Environment and Renewable Natural Resources
<i>IBGE, Instituto Brasileiro de Geografia e Estatística</i>	National Statistical Bureau
<i>IBRAC, Instituto Brasileiro de Estudos de Concorrência, Consumo e Comércio</i>	Brazilian Institute of International Trade, Consumer and Competition Studies
<i>ICMS, Imposto sobre Circulação de Mercadorias e Prestação de Serviços</i>	Tax on the Circulation of Goods and Services
<i>INB, Indústrias Nucleares do Brasil</i>	Brazilian Nuclear Industries
<i>INMETRO, Instituto Nacional de Metrologia, Normalização e Qualidade Industrial</i>	National Institute of Metrology, Quality and Technology
<i>INOVA Brasil Programme, Programa de Incentivo à Inovação nas Empresas Brasileiras</i>	INOVA Brazil Programme
<i>INOVA PETRO</i>	INOVA Petroleum Programme
<i>INOVAR-AUTO, Programa de Incentivo à Inovação Tecnológica e Adensamento da Cadeia Produtiva de Veículos Automotores</i>	Programme of Incentives Technological Innovation and Production Strengthening in the Automotive Industry
<i>INPC, Índice Nacional de Preços ao Consumidor</i>	National Consumer Price Index
<i>INPI, Instituto Nacional de Propriedade Industrial</i>	National Industrial Property Institute
<i>IOF, Imposto sobre Operações Financeiras</i>	Financial Transaction Tax
<i>IPCA, Índice Nacional de Preços ao Consumidor Amplo</i>	Broad Consumer Price Index
<i>IPEA, Instituto de Pesquisa Econômica Aplicada</i>	Brazilian Institute of Applied Economic Research
<i>IPI, Imposto sobre Produtos Industrializados</i>	Tax on Industrial Products
<i>IPTU, Imposto Sobre a Propriedade Predial e Territorial Urbana</i>	Tax on Urban Real States Property
<i>IRB, Instituto de Resseguros do Brasil</i>	Brazilian Reinsurance Institute
<i>ISS, Imposto sobre os Serviços</i>	Tax on Services
<i>LEC, Linha Especial de Crédito à Comercialização</i>	Special Marketing Credit Line
<i>LOAS, Lei Orgânica da Assistência Social</i>	Organic Social Assistance Law
<i>MAPA, Ministério da Agricultura, Pecuária e Abastecimento</i>	Ministry of Agriculture, Livestock and Food Supply
<i>MCT, Ministério da Ciência e Tecnologia</i>	Ministry of Science and Technology
<i>MCTI, Ministério da Ciência, Tecnologia e Inovação</i>	Ministry of Science, Technology and Innovation
<i>MDA, Ministério do Desenvolvimento Agrário</i>	Ministry of Agrarian Development
<i>MDIC, Ministério do Desenvolvimento, Indústria e Comércio Exterior</i>	Ministry of Development, Industry and Foreign Trade
<i>MODERAGRO, Programa de Modernização da Agricultura e Conservação de Recursos Naturais</i>	Programme for the Modernization of Agriculture and the Conservation of Natural Resources
<i>MODERFROTA, Programa de Modernização da Frota de Tratores Agrícolas e Implementos Associados e Colheitadeiras</i>	Tractor Fleet Modernization Incentives Programme
<i>MODERINFRA, Programa de Incentivo à Irrigação e à Armazenagem</i>	Incentives Programme for Irrigation and Storage
<i>MPA, Ministério da Pesca e Aquicultura</i>	Ministry of Fisheries and Aquaculture
<i>NTN, Notas do Tesouro Nacional</i>	National Treasury Notes
<i>ONS, Organismos de Normalização Setorial</i>	Accredited Sectoral Standardization Bodies
<i>PAA, Programa de Aquisição de Alimentos</i>	Food Purchase Programme
<i>PAC, Programa de Aceleração do Crescimento</i>	Growth Acceleration Programme
<i>PADIS, Programas de Incentivos ao Setor de Semicondutores</i>	Programme of Support to the Technological Development of the Semiconductors Industry
<i>PAISS, Plano BNDES-FINEP de Apoio à Inovação dos Setores Sucoenergético e Sucoquímico</i>	BNDES-FINEP Innovation Support Plan for the Sugar-based energy and chemical sectors
<i>PASEP, Programa de Formação do Patrimônio do Servidor Público</i>	Contribution to Finance Unemployment Insurance and Allowances for Low-Paid

	Workers.
<i>PASS (BNDES), Programa de Apoio ao Setor Sucrual</i>	Programme of Support to the Sugar and Ethanol Sector
<i>PDP, Política de Desenvolvimento Produtivo</i>	Productive Development Policy
<i>PDTA, Programas de Desenvolvimento Tecnológico Agropecuário</i>	Agriculture/Cattle Breeding Technology Development Programme
<i>PDTI, Programa de Desenvolvimento Tecnológico e Industrial</i>	Industrial Technology Development Programme
<i>PEP, Premio para Escoamento de Produto</i>	Premium for Product Outflow
<i>PEPRO, Premio Equalizador Pago ao Produtor</i>	Agricultural Products' Sale Option Private Premium
<i>PETROBRAS</i>	Brazilian Petroleum Company
<i>PEXPAM, Programa Especial de Exportação da Amazônia Ocidental</i>	Western Amazon Export Special Programme
<i>PGMU, Plano Geral de Metas para a Universalização</i>	Universal Service Plan
<i>PGO, Plano Geral de Outorgas</i>	General Port Concession Plan
<i>PGPAF, Programa de Garantia de Preços para a Agricultura Familiar</i>	Price Guarantee Programme for Family Farming
<i>PGPM, Política de Garantia de Preços Mínimos</i>	Policy of Guaranteed Minimum
<i>PIS, Programa de Integração Social</i>	Contribution to the Social Integration Programme
<i>Plano Brasil Maior</i>	Greater Brazil Plan
<i>PNAD, Pesquisa Nacional por Amostra de Domicílios</i>	National Household Sample Survey
<i>PNAE, Programa Nacional de Alimentação Escolar</i>	National School Feeding Programme
<i>PNBL, Plano Nacional de Banda Larga</i>	National Broadband Plan
<i>PND, Programa Nacional de Desestatização</i>	Brazilian Privatization Programme
<i>PNDR, Política Nacional de Desenvolvimento Regional</i>	National Policy of Regional Development
<i>PNLP, Plano Nacional de Logística Portuária</i>	National Logistics and Ports Plan
<i>PPB, Processo Produtivo Básico</i>	Basic Productive Process
<i>PPSA, Pré-Sal Petróleo S.A.</i>	Pre-salt Petroleum Company
<i>PREVIC, Superintendência Nacional de Previdência Complementar</i>	National Complementary Welfare Superintendence
<i>PROCAP-Agro, Programa de Capitalização de Cooperativas Agropecuárias</i>	Agricultural Cooperatives Capitalization Programme
<i>PRODECOOP, Programa de Desenvolvimento Cooperativo para Agregação de Valor à Produção Agropecuária</i>	Cooperative Development Programme for the Enhancement of Agricultural Value Added
<i>PROEX, Programa de Financiamento às Exportações</i>	Export Financing Programme
<i>PROFARMA</i>	Support Programme for the Development of the Pharmaceutical Productive Chain
<i>PROFROTA, Programa de Financiamento da Ampliação e Modernização da Frota Pesqueira Nacional</i>	Programme for Financing the Enlargement and Modernization of National Fishing Fleet
<i>PROGER Rural, Programa de Geração de Emprego e Renda da Área Rural</i>	Rural Employment and Revenue Generation Programme
<i>PROINFA, Programa de Incentivo às Fontes Alternativas de Energia Elétrica</i>	Alternative Sources of Electric Energy Programme
<i>PRONAF, Programa Nacional de Fortalecimento da Agricultura Familiar</i>	Programme to Strengthen Household Agriculture
<i>PRONAMP, Programa Nacional de Apoio ao Médio Produtor Rural</i>	Medium-Scale Agricultural Producer Support Programme
<i>PROP, Premio de Risco para Aquisição de Produto Agrícola Oriundo de Contrato Privado de Opção de Venda</i>	Private Option Risk Premium
<i>PRORENOVA (BNDES), Programa de Apoio à Renovação e Implantação de Novos Canaviais</i>	Programme of Support to the Renewal and Expansion of Sugarcane Fields
<i>Programa de Subvenção Econômica à Inovação</i>	Economic Subvention to National Innovation

<i>Nacional</i>	Programme
<i>PSI-BK</i>	BNDES Programme for the Sustainability of Investment in Capital Goods
<i>PSR, Prêmio do Seguro Rural</i>	Rural Insurance Premiums
<i>REB, Registro Especial Brasileiro</i>	Brazilian Special Register
<i>RECAP, Regime Especial para Aquisição de Bens de Capital para Empresas Exportadoras</i>	Special Regime for the Purchase of Capital Goods for Exporting Enterprises
<i>RECOF, Regime Aduaneiro de Entrepósito Industrial sob Controle Informatizado</i>	Special System of Industrial Depots Subject to Standardized Control
<i>RDE-IED, Registro Declaratório Eletrônico - Investimento Externo Direto</i>	Electronic Statement of Registration - Foreign Direct Investment Module
<i>REI, Registro de Exportadores e Importadores</i>	Registry of Exporters and Importers
<i>REICOMP, Regime Especial de Incentivo a Computadores para Uso Educacional</i>	Special Incentives Regime for Computers for Educational Use
<i>Reintegra</i>	Special Regime for the Reimbursement of Taxes for Exporters
<i>REMESSA</i>	Computerized Control of Expedited Shipments
<i>REPENEC, Regime Especial de Incentivos para o Desenvolvimento de Infraestrutura da Indústria Petrolífera nas Regiões Norte, Nordeste e Centro-Oeste</i>	Special Incentive Regime for the Development of the Petroleum Industry's Infrastructure in the North, North-East and Central Western regions
<i>REPES, Regime Especial de Tributação para a Plataforma de Exportação de Serviços de Tecnologia</i>	Special Regime for the Information Technology Exportation Platform
<i>Revitaliza</i>	Programme for the Revitalization of Companies
<i>REPETRO, Regime Aduaneiro Especial de Exportação e de Importação de Bens Destinados às Atividades de Pesquisa e de Lavra das Jazidas de Petróleo e de Gás Natural</i>	Special Regime for the Exportation and Importation of Goods Destined to the Exploration of Petroleum and Natural Gas
<i>REPUBL-Redes, Regime Especial de Tributação do Programa Nacional de Banda Larga para Implantação de Redes de Telecomunicações</i>	Special Taxation Regime for the National Broadband Programme for the Deployment of Telecommunications Networks
<i>RETAERO, Regime Especial para a Indústria Aeronáutica Brasileira</i>	Special Regime for the Aeronautical Industry
<i>RFB, Secretaria da Receita Federal do Brasil</i>	Secretariat of Federal Revenue of Brazil
<i>RMCCI, Regulamento do Mercado de Câmbio e Capitais Internacionais</i>	Regulation of Foreign Exchange Market and International Capital
<i>RMV, Renda Mensal Vitalícia</i>	Lifetime Monthly Income
<i>RNC (MAPA), Registro Nacional de Cultivares</i>	National Register of Plant Varieties
<i>RTS, Regime de Tributação Simplificada</i>	Simplified Tax Regime
<i>SAC/PR, Secretaria de Aviação Civil</i>	Civil Aviation Secretariat
<i>SBCE, Seguradora Brasileira de Crédito à Exportação</i>	Brazilian Export Credit Insurance Company S.A.
<i>SCE, Seguro de Crédito à Exportação</i>	Export Credit Insurance
<i>SDA (MAPA), Secretaria De Defesa Agropecuária</i>	Secretariat of Agricultural Protection
<i>SEAE, Secretaria de Acompanhamento Econômico</i>	Secretariat of Economic Monitoring
<i>SEAF, Seguro da Agricultura Familiar</i>	Family Farming Insurance Programme
<i>SECEX, Secretaria de Comércio Exterior</i>	Secretariat of Foreign Trade
<i>SELIC, Sistema Especial de Liquidação e Custódia</i>	Overnight Inter-bank Loans Interest Rate
<i>SFN, Sistema Financeiro Nacional</i>	Brazilian Financial System
<i>SIASG, Sistema Integrado de Administração de Serviços de Administração de Serviços Gerais</i>	Integrated System for the Administration of General Services
<i>SIGVIG, Sistema de Informações Gerenciais do Trânsito Internacional de Produtos e Insumos</i>	Computerized System for the Management of Agricultural Products and Inputs transiting through Brazil
<i>SIN, Sistema Interligado Nacional</i>	National Integrated Grid
<i>SINMETRO, Sistema Nacional de Metrologia, Normalização e Qualidade Industrial</i>	National System of Metrology, Standardization and Industrial Quality
<i>SINPI, Sistema Integrado de Propriedade</i>	Integrated Industrial Property System

<i>Industrial</i>	
<i>SISBACEN, Sistema de Informação do Banco Central</i>	Central Bank's Information System
<i>SISBIOLIST, Software para Depósito de Sequências Biológicas</i>	Software for the Filing of Biological Sequences
<i>SISCOMEX, Sistema Integrado de Comércio Exterior</i>	Integrated Foreign Trade System
<i>SISCOSEV, Sistema Integrado de Comércio Exterior de Serviços, Intangíveis e Outras Operações que Produzam Variações no Patrimônio</i>	Integrated System of Trade in Foreign Services, Intangible Assets, and Other Operations
<i>SNCR, Sistema Nacional de Crédito Rural</i>	National System of Rural Credit
<i>SNSP, Sistema Nacional de Seguros Privados</i>	Brazilian national insurance system
<i>SRI (MAPA), Secretaria de Relações Internacionais do Agronegócio</i>	Secretariat for International Relations of Agribusiness
<i>STF, Supremo Tribunal Federal</i>	Federal Supreme Court
<i>SUDAM, Superintendência do Desenvolvimento da Amazônia</i>	Amazon Development Authority
<i>SUDENE, Superintendência do Desenvolvimento do Nordeste</i>	North-East Region Development Authority
<i>SUFRAMA, Superintendência da Zona Franca de Manaus</i>	Superintendence of the Manaus Free Trade Zone
<i>SUSEP, Superintendência de Seguros Privados</i>	Superintendence of Private Insurance
<i>TCU, Tribunal de Contas da União</i>	Federal Accounts Tribunal
<i>TIPI, Tabela de Incidência do Imposto sobre Produtos Industrializados</i>	Industrialized Products Tax Table
<i>TJLP, Taxá de Juros a Longo Prago</i>	Long Term Interest Rate
<i>VE, Vitrine do Exportador</i>	Exporters Showcase
<i>VEP, Valor de Escoamento de Produto</i>	Outflow of Product Value
<i>ZFM, Zona Franca de Manaus</i>	Manaus Free Trade Zone

5 APPENDIX TABLES

Table A1.1 Merchandise exports by groups of products, 2007-12

(US\$ million and %)

Description	2007	2008	2009	2010	2011	2012
Total	160,649	197,942	152,995	197,356	256,039	242,580
	(% of total exports)					
Total primary products	50.1	53.3	59.0	63.2	64.2	62.7
Agriculture	30.1	31.0	37.7	34.8	33.8	35.6
Food	26.2	27.4	33.9	30.8	30.2	31.8
2222 Soya beans	4.2	5.5	7.5	5.6	6.4	7.1
0611 Sugars, beet/cane, raw, solid, no added flavour/colour	1.9	1.8	3.9	4.7	4.5	4.1
0123 Poultry, meat and offal	2.7	3.0	3.2	3.0	2.8	2.9
0813 Oil-cake, oilseed residues	1.8	2.2	3.0	2.4	2.2	2.7
0711 Coffee, not roasted	2.1	2.1	2.5	2.6	3.1	2.4
0449 Other maize, unmilled	1.2	0.7	0.8	1.1	1.0	2.2
0112 Bovine meat, frozen	1.7	1.9	1.7	1.7	1.4	1.5
Agricultural raw material	3.8	3.6	3.8	4.0	3.5	3.8
2515 Chemical wood pulp, soda/sulphate bleached	1.8	1.9	2.0	2.2	1.8	1.8
2631 Cotton (other than linters), not carded or combed	0.3	0.4	0.4	0.4	0.6	0.9
Mining	20.0	22.2	21.3	28.5	30.4	27.0
Ores and other minerals	8.9	10.7	10.8	17.1	18.7	15.1
2815 Iron ores and concentrates, not agglomerated	4.4	5.6	6.9	10.8	12.4	9.8
2816 Iron ore agglomerates (sinters, pellets, briquettes, etc.)	2.1	2.8	1.7	3.8	3.9	3.0
Non-ferrous metals	2.9	2.1	1.6	1.4	1.2	1.0
6841 Aluminium and aluminium alloys, unwrought	1.4	1.0	0.8	0.6	0.5	0.4
Fuels	8.3	9.4	8.9	10.1	10.5	10.9
3330 Crude oils of petroleum and bituminous minerals	5.5	6.9	6.1	8.3	8.4	8.4
334 Petroleum oils (other than crude petroleum)	2.7	2.4	2.0	1.6	1.7	2.2
Manufactures	46.6	43.7	38.0	35.7	32.8	33.8
Iron and steel	6.3	6.9	4.9	4.5	4.9	4.6
6726 Semi-finished iron/steel products <0.25% carbon	1.0	1.6	0.9	1.1	1.4	1.2
6715 Other ferro-alloys (excl. radio-active ferro-alloys)	0.9	1.1	0.9	1.0	1.0	1.1
Chemicals	6.6	6.4	6.9	6.2	5.9	6.2
5121 Acyclic monohydric alcohols	1.0	1.2	0.9	0.6	0.6	0.9
5711 Polyethylene	0.7	0.5	0.6	0.5	0.5	0.5
Other semi-manufactures	6.9	5.9	5.8	5.4	4.7	5.0
6114 Other bovine/equine leather, without hair (excl. of 611.8)	1.3	0.9	0.7	0.9	0.8	0.8
6412 Paper and paperboard, uncoated of a kind used for writing	0.4	0.4	0.5	0.5	0.4	0.4
Machinery and transport equipment	22.6	21.1	17.2	16.8	15.2	15.8
Power generating machines	1.0	1.0	1.1	0.9	0.8	0.9
7163 Motors (other than motors of an output not exceeding 37.5 W) and generators, alternating current; generating sets; electric rotary converters	0.4	0.4	0.4	0.3	0.3	0.3
Other non-electrical machinery	5.1	4.8	3.9	3.8	3.9	4.3
7231 Bulldozers, angledozers, etc., self-propelled	0.6	0.6	0.3	0.4	0.6	0.6
7431 Air/vacuum pumps/compressors, etc. with fan	0.5	0.4	0.4	0.4	0.3	0.4
Agricultural machinery and tractors	0.8	0.8	0.6	0.6	0.5	0.5
Office machines & telecommunication equipment	1.7	1.6	1.5	1.0	0.7	0.6
7643 Radio or television transmission apparatus	1.3	1.1	0.9	0.5	0.2	0.1
Other electrical machines	1.4	1.2	1.3	1.1	0.9	0.8
Automotive products	8.2	7.5	5.6	6.4	5.6	5.4
7843 Other motor vehicle parts and accessories of 722, 781 to 783	1.7	1.8	1.6	1.7	1.6	1.6
7812 Motor vehicles for the transport of persons, n.e.s.	2.9	2.5	2.1	2.2	1.7	1.5
7821 Goods vehicles	1.3	1.1	0.6	0.9	0.9	0.9
Other transport equipment	5.2	5.0	3.8	3.5	3.2	3.8
7924 Aeroplanes, etc. (excluding helicopters), >15,000 kg unladen	2.3	2.2	2.0	1.5	1.3	1.5
7139 Parts, n.e.s., for piston engines of 713.2, 713.3, 713.8	1.0	0.8	0.6	0.7	0.8	0.7
Textiles	0.9	0.7	0.6	0.6	0.4	0.4
Clothing	0.2	0.1	0.1	0.1	0.1	0.1
Other consumer goods	3.1	2.6	2.5	2.1	1.7	1.8
8514 Other footwear, leather or composition leather uppers	0.9	0.7	0.6	0.5	0.3	0.2
Other	3.3	3.1	3.0	1.1	3.0	3.6
Gold	0.5	0.5	0.9	0.9	0.9	1.1

Source: UNSD, Comtrade database (SITC Rev.3).

Table A1.2 Merchandise imports by groups of products, 2007-12

(US\$ million and %)

Description	2007	2008	2009	2010	2011	2012
Total	120,621	173,197	127,647	180,459	226,243	223,149
	(% of total imports)					
Total primary products	29.4	29.7	24.0	26.0	28.0	26.8
Agriculture	6.0	5.6	6.4	6.0	6.0	5.9
Food	4.6	4.4	5.3	4.6	4.5	4.8
0412 Other wheat (including spelt) and meslin, unmilled	1.2	1.1	0.9	0.8	0.8	0.8
0482 Malt, whether or not roasted (including malt flour)	0.2	0.3	0.4	0.2	0.2	0.2
0579 Fruit, fresh, dried, n.e.s.	0.2	0.1	0.2	0.2	0.2	0.2
Agricultural raw material	1.4	1.2	1.2	1.3	1.5	1.1
2321 Synthetic rubber	0.4	0.3	0.3	0.3	0.3	0.3
Mining	23.3	24.1	17.6	20.0	22.0	20.9
Ores and other minerals	1.9	1.9	1.0	1.1	1.2	0.9
2831 Copper ores and concentrates	0.9	0.6	0.5	0.5	0.5	0.3
Non-ferrous metals	2.9	2.4	1.8	2.3	2.3	2.0
6821 Copper anodes; alloys; unwrought	1.4	1.1	0.8	1.1	0.9	0.9
Fuels	18.5	19.8	14.8	16.6	18.5	18.0
334 Petroleum oils (other than crude petroleum)	5.0	5.6	3.6	6.2	7.5	7.3
3330 Crude oils of petroleum and bituminous minerals	9.9	9.6	7.2	5.6	6.2	6.0
3432 Natural gas, in the gaseous state	1.2	1.6	1.2	1.2	1.2	1.5
3212 Other coal, whether or pulverized, not agglomerated	1.2	1.5	1.6	1.5	1.8	1.3
Manufactures	63.9	70.3	75.9	74.0	72.0	73.1
Iron and steel	2.0	2.5	2.5	3.3	2.2	2.2
Chemicals	19.0	19.6	19.8	17.9	18.5	18.9
5623 Mineral/chemical fertilizers (excluding crude natural potassium salts)	1.3	2.2	1.7	1.3	1.6	1.6
5416 Glycosides; glands, etc. and extracts; antisera/vaccines, etc.	0.9	0.8	1.3	1.5	1.2	1.3
5429 Medicaments, n.e.s.	1.5	1.2	1.6	1.4	1.2	1.2
Other semi-manufactures	4.9	4.6	4.8	5.0	5.0	5.1
Machinery and transport equipment	30.3	35.9	39.9	39.3	38.3	38.4
Power generating machines	2.2	2.0	2.9	2.2	2.1	2.3
7149 Parts of engines and motors of 714.41 and 714.8	0.6	0.6	0.8	0.5	0.5	0.6
Other non-electrical machinery	9.4	9.6	10.5	10.5	10.2	10.2
7284 Machinery and appliances for particular industries, n.e.s.	0.9	0.9	0.8	0.7	0.9	0.8
Agricultural machinery and tractors	0.2	0.2	0.2	0.2	0.3	0.4
Office machines & telecommunication equipment	4.7	9.4	9.7	9.7	9.0	9.0
7649 Parts and accessories for apparatus of division 76	0.9	2.4	2.1	2.6	2.5	2.5
7764 Electronic integrated circuits and microassemblies	0.0	2.0	2.3	2.2	1.9	1.9
Other electrical machines	3.8	3.8	4.3	4.2	4.0	4.1
7725 Switches, relays, fuses etc. for a voltage not exceeding 1,000 V	0.6	0.6	0.6	0.6	0.6	0.6
Automotive products	6.9	7.6	9.2	9.4	10.1	9.7
7812 Motor vehicles for the transport of persons, n.e.s.	2.6	3.1	4.3	4.6	5.3	4.3
7843 Other motor vehicle parts and accessories of 722, 781 to 783	2.7	2.9	2.9	2.7	2.8	3.0
7821 Goods vehicles	0.7	0.7	1.1	1.1	1.1	1.3
Other transport equipment	3.3	3.5	3.5	3.3	3.1	3.1
Textiles	1.8	1.7	2.0	2.1	1.9	1.9
Clothing	0.5	0.5	0.8	0.8	0.9	1.1
Other consumer goods	5.4	5.4	6.2	5.6	5.1	5.4
8746 Automatic regulating and controlling instruments	0.5	0.5	0.5	0.4	0.4	0.4
Other	6.7	0.0	0.1	0.1	0.0	0.1

Source: UNSD, Comtrade database (SITC Rev.3).

Table A1.3 Merchandise exports by trading partner, 2007-12

(US\$ million and %)

Description	2007	2008	2009	2010	2011	2012
Total	160,649	197,942	152,995	197,356	256,039	242,580
	(% of total exports)					
America	43.3	40.8	34.7	35.1	33.3	32.6
United States	15.8	14.0	10.3	9.7	10.1	11.1
MERCOSUR ^a	10.8	11.0	10.3	11.4	10.9	9.4
Argentina	9.0	8.9	8.4	9.3	8.9	7.4
Paraguay	1.0	1.3	1.1	1.3	1.2	1.1
Uruguay	0.8	0.8	0.9	0.8	0.8	0.9
Other America	27.5	26.8	24.4	25.3	23.2	21.5
Bolivarian Republic of Venezuela	2.9	2.6	2.4	1.9	1.8	2.1
Chile	2.7	2.4	1.7	2.1	2.1	1.9
Mexico	2.7	2.2	1.7	1.9	1.5	1.7
Canada	1.5	0.9	1.1	1.2	1.2	1.3
Colombia	1.5	1.2	1.2	1.1	1.0	1.2
Peru	1.0	1.2	1.0	1.0	0.9	1.0
Europe	26.9	25.3	24.6	23.7	22.5	22.0
EU(27)	25.2	23.5	22.3	21.8	20.7	20.2
Netherlands	5.5	5.3	5.3	5.2	5.3	6.2
Germany	4.5	4.5	4.0	4.1	3.5	3.0
Italy	2.8	2.4	2.0	2.1	2.1	1.9
United Kingdom	2.1	1.9	2.4	2.3	2.0	1.9
France	2.2	2.1	1.9	1.8	1.7	1.7
EFTA	1.1	1.2	1.7	1.2	1.1	1.2
Switzerland	0.7	0.7	1.3	0.7	0.6	0.7
Other Europe	0.6	0.6	0.6	0.7	0.7	0.6
Commonwealth of Independent States (CIS)	2.7	2.8	2.2	2.4	2.0	1.8
Russian Federation	2.3	2.4	1.9	2.1	1.6	1.3
Ukraine	0.2	0.2	0.2	0.1	0.2	0.3
Africa	5.3	5.1	5.7	4.7	4.8	5.0
Egypt	0.8	0.7	0.9	1.0	1.0	1.1
South Africa	1.1	0.9	0.8	0.7	0.7	0.7
Middle East	4.0	4.1	4.9	5.3	4.8	4.8
Kingdom of Saudi Arabia	0.9	1.3	1.3	1.6	1.4	1.2
United Arab Emirates	0.7	0.7	1.2	0.9	0.8	1.0
Asia	16.1	19.6	26.1	28.8	30.3	31.3
China	6.7	8.3	13.2	15.6	17.3	17.0
Japan	2.7	3.1	2.8	3.6	3.7	3.3
Six East Asian Traders	4.5	5.5	5.7	5.7	6.0	6.5
Korea, Rep. of	1.3	1.6	1.7	1.9	1.8	1.9
Singapore	0.9	1.1	0.8	0.7	1.1	1.2
Hong Kong, China	0.8	0.9	1.2	0.9	0.8	1.0
Chinese Taipei	0.5	0.7	0.6	0.9	0.9	1.0
Thailand	0.6	0.8	0.7	0.8	0.7	0.9
Malaysia	0.4	0.4	0.5	0.6	0.6	0.6
Other Asia	2.2	2.7	4.5	3.9	3.3	4.5
India	0.6	0.6	2.2	1.8	1.3	2.3
Indonesia	0.4	0.6	0.8	0.8	0.7	0.8
Other	1.8	2.3	1.7	0.0	1.9	2.0
Bunkers	0.0	2.3	1.7	0.0	1.9	2.0

a The Bolivarian Republic of Venezuela became full member of MERCOSUR as of July 2012.

Source: UNSD, Comtrade database (SITC Rev.3).

Table A1.4 Merchandise imports by trading partner, 2007-12

(US\$ million and %)

Description	2007	2008	2009	2010	2011	2012
Total	120,621	173,197	127,647	180,459	226,243	223,149
	(% of total imports)					
America	34.9	33.5	35.0	34.0	33.5	33.1
United States	15.7	14.9	15.8	15.1	15.1	14.6
MERCOSUR ^a	9.6	8.6	10.3	9.2	8.6	8.6
Argentina	8.6	7.7	8.8	8.0	7.5	7.4
Uruguay	0.7	0.6	1.0	0.9	0.8	0.8
Paraguay	0.4	0.4	0.5	0.3	0.3	0.4
Other America	19.2	18.5	19.2	19.0	18.4	18.4
Mexico	1.6	1.8	2.2	2.1	2.3	2.7
Chile	2.9	2.4	2.0	2.3	2.0	1.9
Plurinational State of Bolivia	1.3	1.7	1.3	1.2	1.3	1.5
Canada	1.4	1.9	1.3	1.5	1.6	1.4
Peru	0.8	0.6	0.4	0.5	0.6	0.6
Colombia	0.4	0.5	0.4	0.6	0.6	0.6
Bolivarian Republic of Venezuela	0.3	0.3	0.5	0.5	0.6	0.4
Europe	24.6	22.8	25.2	23.6	22.6	23.5
EU(27)	22.2	20.9	22.9	21.2	20.5	21.4
Germany	7.2	6.9	7.7	6.5	6.7	6.4
Italy	2.8	2.7	2.9	2.7	2.8	2.8
France	2.9	2.7	2.8	2.6	2.4	2.7
Spain	1.5	1.4	1.5	1.5	1.5	1.6
United Kingdom	1.6	1.5	1.9	1.7	1.5	1.6
EFTA	2.3	1.7	2.0	2.0	1.6	1.6
Switzerland	1.8	1.3	1.6	1.6	1.3	1.2
Other Europe	0.2	0.2	0.3	0.4	0.4	0.5
Commonwealth of Independent States (CIS)	2.3	3.1	1.6	1.7	2.3	1.8
Russian Federation	1.4	1.9	1.1	1.1	1.3	1.3
Belarus	0.3	0.7	0.4	0.4	0.7	0.4
Africa	9.4	9.1	6.6	6.3	6.8	6.4
Nigeria	4.4	3.9	3.7	3.3	3.7	3.6
Algeria	1.9	1.4	1.1	1.3	1.4	1.4
Middle East	2.7	3.6	2.5	2.6	2.7	3.3
Kingdom of Saudi Arabia	1.4	1.7	1.3	1.1	1.4	1.4
Israel	0.6	0.7	0.5	0.6	0.4	0.5
Asia	26.1	28.0	29.0	31.8	31.9	31.5
China	10.5	11.6	12.5	14.2	14.5	15.3
Japan	3.8	3.9	4.2	3.9	3.5	3.5
Six East Asian Traders	8.1	8.4	8.6	9.2	8.9	8.3
Korea, Rep. of	2.8	3.1	3.8	4.7	4.5	4.1
Chinese Taipei	1.9	2.0	1.9	1.7	1.6	1.4
Thailand	0.8	0.8	1.0	1.0	1.1	1.1
Malaysia	1.1	0.9	1.0	1.0	1.0	0.9
Hong Kong, China	0.5	0.5	0.4	0.4	0.4	0.4
Singapore	1.0	1.0	0.5	0.5	0.4	0.4
Other Asia	3.8	4.1	3.8	4.6	5.0	4.3
India	1.8	2.1	1.7	2.3	2.7	2.3
Indonesia	0.7	0.6	0.8	0.8	0.8	0.8
Other	0.0	0.0	0.0	0.0	0.2	0.4

a The Bolivarian Republic of Venezuela became full member of Mercosur as of July 2012.

Source: UNSD, Comtrade database (SITC Rev.3).

Table A2.1 Status of notification requirements to the WTO, March 2013

WTO Agreement	Description of requirement	Periodicity	Document symbol of most recent notification or number of notifications
Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)			
Article 16.4	Anti-dumping actions taken	Semi-annual	G/ADP/N/230/BRA, 27 August 2012
Article.16.5	Notification of domestic procedures and authorities competent to initiate and conduct investigations	Once, then changes	G/ADP/N/111, 4 December 2003
Agreement on Agriculture			
Articles 10 and 18.2	Export subsidies (outlays and quantities)	Annual	G/AG/N/BRA/28, 2 October 2012
Article 18.2	Domestic support	Annual	G/AG/N/BRA/27, 1 March 2012
Article 18.2	Volume of imports under tariff quotas (MA:2)	Annual	G/AG/N/BRA/24, 11 March 2009
Agreement on Import Licensing Procedures			
Article 1.4	Laws and regulations	Ad hoc	G/LIC/N/1/BRA/5, 19 April 2010 G/LIC/N/3/BRA/8, 19 April 2010
Article 5	List of products subject to licensing	Ad hoc	G/LIC/N/2/BRA/5, 19 April 2010 G/LIC/N/2/BRA/4, 8 December 2008
Article 7.3	Questionnaire; rules and information concerning procedures for the submission of applications	Annual for questionnaire; rules and information, Once then changes	G/LIC/N/3/BRA/9, 16 September 2011 G/LIC/N/3/BRA/8/corr.1, 22 April 2010 G/LIC/N/3/BRA/8, 19 April 2010 G/LIC/N/3/BRA/7, 1 December 2008
General Agreement on Trade in Services			
Article V:7	Regional integration	Ad hoc	S/C/N/388, 18 December 2006 No new notification during period
General Agreement on Tariffs and Trade 1994			
Article XVII:4(a) of GATT 1994 and Par. 1 of the Understanding on the Interpretation of Article XVII	Notification of state trading enterprises	Once, then changes	Last notification G/STR/N/3/BRA, 11 December 1997
Article XXVIII:5	Brazil reserved its right, under the provisions of Art XXVIII, to modify its Schedule		G/MA/252, 27 September 2012
Agreement on Subsidies and Countervailing Measures			
Article 25.11	Countervailing duty actions taken	Semi-annual and when measure taken	G/SCM/N/242/BRA, 31 August 2012
Article 25.1	Subsidies programmes	Annual	G/SCM/N/220/BRA, 10 January 2012
Agreement on Safeguards			
Article 12.1(a)	Initiation of investigation relating to serious injury or threat thereof	Ad hoc	G/SG/N/6/BRA/5/Suppl.1, 11 August 2012 G/SG/N/6/BRA/5/Corr.1, 5 April 2012 G/SG/N/6/BRA/5, 2 April 2012 G/SG/N/6/BRA/4, 11 August 2009
Article 12.1(b)	Finding of serious injury or threat thereof caused by increased imports	Ad hoc	G/SG/N/10/BRA/3/Suppl.4, G/SG/N/14/BRA/2, 27 July 2007 No new notification during period
Article 12.1(c)	Decision to apply or extend a safeguard measure	Ad hoc	G/SG/N/14/BRA/3, 16 August 2010
Article 9.1 footnote 2	Non-application of safeguard measure to developing countries	Ad hoc	G/SG/N/10/BRA/3/Suppl.3, 14 June 2005 G/SG/N/11/BRA/2/Suppl.3, 14 June 2005 No new notification during period
Article 12.5	Mid-term review and consultations	Ad hoc	G/L/723, G/SG/N/13/BRA/3, 7 December 2004 No new notification during period

WTO Agreement	Description of requirement	Periodicity	Document symbol of most recent notification or number of notifications
Agreement on the Application of Sanitary and Phytosanitary Measures			
Article 7, Annex B	Notification of changes in sanitary and phytosanitary measures	Ad hoc	475 notifications (November 2008-October 2012, including addenda and corrigenda) until WTO documents G/SPS/N/BRA/847, 29 October 2012
Agreement on Technical Barriers to Trade			
Articles 2.9, 2.10 5.6 and 5.7	Technical regulations	Ad hoc	381 notifications (November 2008-October 2012, including addenda, revisions and corrigenda) until WTO documents G/TBT//N/BRA/359/Add.4/Corr.1, 23 October 2012
Article 15.2	Implementation and administration of the TBT agreement		G/TBT/2/Add.26/Rev.2/Suppl.2, 6 November 2006 No new notification during period
Agreement on Textiles and Clothing			
Article 2.11	Notification of programmes of integration	12 months before their coming into effect	G/TMB/N/475, 13 May 2004 No new notification during period

Source: WTO Central Registry of Notifications.

Table A3.1 BNDES selected export finance programmes, 2013

Programme	Sector/products targeted	Conditions	Rates/charges
EXIM – Pre-shipment (BNDES Circular No. 25/2012 of 20 April 2012)	Finances production of goods for export by Brazilian companies. Eligible products listed in Circular No. 74/2012, except NCM 87.03 (motor vehicles for less than 10 persons).	Financing granted for up to 24 months for industrial machinery and 18 months for all other products. Financing up to 90% of the f.o.b. value for MSMEs ^a , and 80% for large enterprises. To qualify automatically, goods must: be accredited under the BNDES FINAME scheme ^b , or meet an index of nationalization ^c , or meet PPB criteria. ^d	Interest rates: for MSMEs: TJLP ^e or LIBOR. for large firms: TJ462 (TJLP + 1% p.a.), TJFPE ^f or 90% of TJ462 + 10% of TJFPE, depending on the product. Plus BDNES remuneration rate of 0.9% for MSMEs, and 1.8% or 2.3% for large firms, depending on the product.
EXIM Pre-shipment "anchor" (BNDES Carta-Circular No. 36/2004 of 13 August 2004)	Trading companies and other firms that make indirect exports produced by MSMEs viable. List of eligible products the same as for the regular pre-shipment programme (Circular No. 74/2012).	Financing period same as for regular pre-shipment programme. Covers up to 90% of export value. To qualify automatically, goods must have an index of nationalization of 60% (in value and weight terms), or meet PPB criteria.	Interest rates: TJLP or LIBOR, plus a BNDES remuneration rate of 0.9% p.a.
EXIM Pre-shipment "automobiles" (BNDES Carta-Circular No. 35/2006 of 25 August 2006)	Finances production for export of passenger automobiles (NCM 87.03). Applicable only to investments in new manufacturing plants with up-to-date technology or in the production of new automobile models.	Requires an export engagement of 20% of total production within 12 months. Financing for up to 30% of the export engagement value. Can be for up to 36 months. To qualify automatically, goods must have an index of nationalization of over 60% in value.	Interest rates: 90% of TJ462 + 10% of TJFPE. Plus BNDES remuneration rate of 1.3% p.a.
EXIM Post-shipment (BNDES Circular No. 176/2002 of 12 September 2002 and annexes)	Finances commercialization of Brazilian goods and services abroad. Can be granted to the importer via the exporter (supplier's credit modality) or directly to the importer (buyer's credit modality). List of eligible goods the same as for regular pre-shipment programme (Circular No. 74/2012). Services associated with the export of eligible goods may be financed (up to 30% of the export value) as well as construction and engineering services.	Supplier's credit: financing for up to 12 years, and 100% of the export value. To qualify automatically, goods must have an index of nationalization of 60% in value terms. For construction and engineering services, percentage of Brazilian-origin goods in total value of financed exports to be established by BNDES on a case-by-case basis. Company must have its administration and headquarters in Brazil. Buyer's credit: financing period and other conditions vary according to the operation.	Supplier's credit: cost of refinancing is LIBOR plus a BNDES remuneration rate of at least 1% p.a. and a risk premium. A management fee of up to 1% and a commitment fee of 0.5% are levied. Buyer's credit: financing rates and fees defined according to the nature of the operation.
EXIM Automatic (BNDES website)	Finances commercialization of Brazilian exports of goods abroad, at the post-shipment phase. As in the regular EXIM Post-shipment programme, supplier's credit and buyer's credit modalities are available. Focuses on priority markets in Latin America and	Financing for up to 5 years, depending on the importing country's political and commercial risk. Payment of principal and interest on a bi-annual basis.	Interest rate: LIBOR plus a BNDES remuneration rate of 0.4% to 1.2% p.a. Plus BNDES administrative fee of 0.3%.

Programme	Sector/products targeted	Conditions	Rates/charges
	Africa. Capital and consumer goods are eligible.		
EXIM/Pro-Aviation exports (BNDES website)			
	Finances production of goods and services for export by MSMEs integrating the Brazilian aviation industry production chain. Applies to the pre-shipment phase.	Financing may be granted up to 36 months, and up to 90% of the export value. A company must have been operating for over three years and have exported, directly or indirectly, more than US\$200,000 in goods and/or services of the aviation industry. In addition, the programme is subject to the conditions of the Exim Pre-shipment programme.	Interest rates: TJLP + currency exchange variation. Plus BNDES remuneration rate of 1%.
PSI – Export Pre-shipment (BNDES Circular No. 20/2012 of 10 April 2012, Circular No. 37/2012 of 25 May 2012; Circular No. 73 of 21 December 2012, and their annexes)			
	Finances production of capital goods for export. Eligible products are capital goods listed in Group I of Circular No. 74/2012, except telephone appliances (NCM 8517.1) and their parts (NCM 8517.70).	Financing for up to 100% of the export value for MSMEs and up to 80% for large firms. Can be granted up to 3 years. To qualify automatically, goods for financing, goods must be accredited under the BNDES FINAME scheme ^b , or meet the PPB criteria. Companies must have their headquarters and administration in Brazil.	Fixed interest rate of 5% p.a.
Revitalize Exports (BNDES Circular No. 47/2012 of 10 July 2012 and annexes.	Sectors negatively affected by the international economic environment. Eligible products are listed in Groups I and II of Circular No. 74/2012. Export companies of all sizes are eligible, provided they operate in the sectors listed in Annex A (paragraph 4) to Circular No. 47/2012. List covers several sectors, including production of footwear, textiles, leather, toys, fruits, automobile parts and information technology products.	Requires an export engagement. Financing for up to 100% of the export engagement value, and may be granted for up to 2 years. To qualify automatically goods must be accredited under the BNDES FINAME scheme ^b , or meet PPB criteria. Companies must have their headquarters and administration in Brazil.	Fixed interest rate of 8% p.a.

- a The BNDES classifies micro, small, and medium-sized enterprises (MSMEs) as those with annual operational gross revenues less than or equal to R\$90 million.
- b In order to be accredited under FINAME, among other criteria, goods must meet a nationalization index of at least 60% in value and weight. See also section 3.4.2.6.
- c Index of nationalization: measure used by the BNDES to determine the domestic content of a product. The index can be expressed in value or weight terms. For more details, see http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/Arquivos/produtos/download/indice_equipamentos.pdf.
- d PPB stands for Basic Productive Process; it refers to a set of criteria that a product must meet in order to benefit from special tax incentives. Criteria may include a minimum number of stages of production that must be undertaken in Brazil. See also section 3.4.2.1.
- e The long-term interest rate (TJLP) is fixed by the Brazilian Monetary Council based on inflation targets and a risk premium. It is disclosed on a quarterly basis by the Brazilian Central Bank. The TJLP rate for 1 January to 31 March 2013 was 5% p.a.
- f The pre-shipment fixed interest rate (TJFPE) is set quarterly by the BNDES to be applied to export dollar-denominated credit so as to reflect the BNDES external funding costs. The TJFPE rate between 16 July and 14 October 2012 was 3.9% p.a.

Source: WTO Secretariat, based on BNDES online information. Viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/Programas_e_Fundos/index.html [February 2013].

Table A4. 1 Brazil's Air Transport Agreements, 2012

Partner (signature)	Entry into force	Traffic rights (freedoms)			Cooperation ^a / Multiple designation ^b		Pricing					Capacity			
		5th	7th	cabotage	Cooperative arrangements	Multiple Designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre-determination	Bermuda I	Free determination	Other
Albania (initialed on 08.02.2012)		x			x	x				x				x	
Angola (signed on 16.12.1993, new ASA initialed on 18.03.2009)	27.12.1991	x			x	x			x		x				
Argentina (signed on 02.06.1948, new ASA initialed on 19.10.2006)		x			x	x			x		x				
Aruba (MoU signed on 23.06.2006)		x			x	x			x		x				
Australia (signed on 21.04.2010)		x			x	x			x		x				
Austria (signed on 16.07.1993)	10.10.1995				x	x	x				x				
Bahrain (initialed on 01.07.2010)		x			x	x				x				x	
Barbados (signed on 26.04.2010)		x				x	x				x				
Belgium (signed on 04.10.2009)	22.09.2011				x	x			x		x				
Bolivia (signed on 02.06.1951)	18.06.1954	x				x	x				x				
Burkina Faso (initialed on 18.04.2012)					x	x				x					
Cameroon (initialed on 19.01.2006)		x				x			x		x				
Canada (signed on 08.08.2011)		x			x	x				x				x	
Cape Verde (signed on 29.07.2004)	13.03.2008	x			x	x			x		x		x		
Chile (signed on 30.07.2009)	11.01.2011	x			x	x				x				x	
China (signed on 11.07.1994)	16.02.1998	x			x	x			x		x				
Colombia (initialed on 28.05.2009)		x			x	x			x		x				
Costa Rica (signed on 04.04.2011)		x			x	x				x				x	
Cuba (initialed on 25.02.2011)					x	x				x	x				
Curaçao (initialed on 01.07.2011)		x			x	x				x				x	
Dominican Republic (initialed on 07.08.2009)		x			x	x				x				x	
Ecuador (initialed on 19.04.2012)		x			x	x				x				x	
Egypt (initialed on 24.06.2005)		x			x	x			x		x				
Ethiopia (initialed on 01.07.2010)		x			x	x				x	x				
France (signed on 29.10.1965, new ASA initialed on 13.03.2008))	19.02.1967	x			x	x			x		x				
Germany (New ASA initialed on 23.11.2007)	15.08.1964	x			x	x			x		x				
Ghana (ASA signed on 12.04.05 / New MoU signed on 29.06.2010)		x			x	x				x	x				
Greece (initialed on 18.03.1997)		x			x	x	x				x				
Guiana (signed on 10.05.1974, New ASA initialed on 09.09.2005)	04.03.1975	x			x	x			x		x				
Hong Kong, China (New MoU signed on 30.06.2010)	16.03.1994	x			x	x			x					x	
Hungary (signed on 03.04.1997)	19.04.1999					x	x								
Iceland (ASA initialed on 01.07.2010)		x			x	x				x				x	
India (signed on 08.03.2011)		x			x	x				x	x				
Iraq (signed on 21.01.1977)	24.08.1977						x				x				
Israel (signed on 22.07.2009)		x			x	x			x		x				
Italy (Update by exchange of correspondence in November 2010)	04.09.1952	x			x	x				x	x				
Ivory Coast (initialed on 07.08.1986)							x				x				

Partner (signature)	Entry into force	Traffic rights (freedoms)			Cooperation ^a / Multiple designation ^b		Pricing					Capacity			
		5th	7th	cabotage	Cooperative arrangements	Multiple Designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre-determination	Bermuda I	Free determination	Other
Jamaica (MoU signed on 29.06.2010)		x			x	x				x				x	
Japan (New RoD signed on 10.12.1998)	19.10.1962	x			x	x	x				x				
Jordan (signed on 05.11.1975)	24.05.1976	x			x		x								
Lebanon (signed on 04.02.1997)	03.03.1998	x				x	x				x				
Kenya (ASA signed on 14.09.2010)		x			x	x				x				x	
Korea, Rep. of (signed on 11.08.1992, new ASA initialed on 24.04.2009)	31.05.1995	x			x	x				x				x	
Kuwait (signed on 22.07.2010)		x			x	x				x				x	
Luxembourg (initialed on 28.08.2008)		x			x	x			x		x				
Macao (signed on 15.07.1994)	21.11.1995	x			x	x	x				x				
Malaysia (signed on 18.12.1995)	06.08.1998	x				x	x				x				
Mexico (signed on 26.05.1995, new ASA initialed on 26.01.2011)	18.07.1996	x			x	x			x					x	
Morocco (New ASA initialed on 11.09.2009)	17.05.1978	x			x	x			x		x				
Mozambique (ASA signed on 17.06.2010)		x			x	x			x		x				
Netherlands (signed on 06.07.1976)	12.12.1977	x			x	x	x				x				
New Zealand (signed on 18.06.1996)	29.10.1998	x			x	x	x				x				
Nigeria (signed on 06.09.2005)	25.09.2008	x			x	x				x	x				
Oman (initialed on 01.07.2012)		x			x	x				x				x	
Panama (signed on 25.05.2007)	11.01.2010	x			x	x				x	x				
Paraguay (signed on 20.12.1952, new ASA initialed on 29.06.2007)	20.05.1954	x			x	x				x				x	
Peru (signed on 11.12.2009)	21.08.1957	x			x	x			x		x			x	
Poland (signed on 13.03.2000)	14.11.2007				x	x	x				x				
Portugal (signed on 11.11.2002)	08.03.2007	x			x		x								
Qatar (initialed on 04.05.2006)		x			x	x				x				x	
Russian Federation (signed on 22.01.1993, new ASA initialed on 09.02.2011)	07.11.1995	x			x	x				x	x				
Scandinavia (Denmark, Norway, and Sweden) (signed on 18.03.1969)		x			x		x				x				
Denmark, Norway	19.02.1970														
Sweden	08.12.1969														
Senegal (16.05.2007)	06.11.2009	x			x	x			x		x				
Singapore (signed on 25.11.2008, new ASA initialed on 27.06.2008)	02.09.1999	x			x	x				x				x	
South Africa (signed on 26.11.1996)	17.10.2001	x			x	x			x		x				
Spain (signed on 28.11.1949, new ASA initialed on 13.07.2007)	11.03.1954	x			x	x			x		x				
Suriname (signed on 28.01.1980, new ASA initialed on 21.08.2009)	13.07.1983	x			x	x			x		x			x	
Swiss (signed on 29.07.1998)	02.01.2001	x			x	x			x		x				
Thailand (signed on 21.03.1991)	22.06.1994	x					x				x				
Tanzania (initialed on 30.08.1989)		x					x				x				
Trinidad and Tobago (signed on 23.07.2008)		x				x			x		x				
Turkey (signed on 21.09.1950, new ASA initialed on 11.05.2006)	29.03.1952	x			x	x			x		x				
Ukraine (signed on 02.12.2009)					x	x			x		x				

Partner (signature)	Entry into force	Traffic rights (freedoms)			Cooperation ^a / Multiple designation ^b		Pricing					Capacity			
		5th	7th	cabotage	Cooperative arrangements	Multiple Designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre-determination	Bermuda I	Free determination	Other
United Arab Emirates (initialed on 09.06.2004)		x			x	x					x				
United Kingdom (signed on 31.10.1946, new ASA initialed on 22.10.2008)	18.08.1950	x			x	x					x	x			
United States (signed on 19.03.2011)	07.02.1992	x			x	X					x	x			
Uruguay (signed on 10.03.2009)	11.01.2011	x			x	X			x		x	x		x	
Venezuela (signed on 30.09.2008)	10.10.1991	x			x	X			x		x				
Zimbabwe (initialed on 11.03.2010)		x			x	X					x			x	

a One party's airlines may sign code-share and other cooperation agreements with the other party's airlines and with third countries' airlines.

b Parties are allowed to grant authorization to more than one airline to exploit the rights agreed.

Source: WTO Secretariat, based on information provided by ANAC.