BRAZILIAN EMBASSY IN WASHINGTON

CHALLENGES AND OPPORTUNITIES FACING BRAZILIAN EXPORTS TO THE UNITED STATES

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INTRODUCTION

The purpose of this publication by the Embassy of Brazil in Washington is to provide current and future Brazilian exporters information regarding not only the challenges but also the opportunities the United States (U.S.) market presents for their products.

Part I examines the barriers and challenges for each Brazilian product in the American market. The greatest challenges lie in agriculture, starting with production-incentive programs that protect domestic producers against market fluctuations. These programs generate surpluses that eventually compete—both internationally and in the U.S. domestic market—with Brazilian products. Other relevant issues include tariff quotas, phytosanitary barriers and technical barriers. Still other challenges affect, among other products, aluminum (additional import tariff), steel (through questionable practices related to anti-dumping -AD and anti-subsidy - AS investigations, and the imposition of quotas on Brazilian steel), textiles and apparel.

Part II considers barriers across sectors in the United States, such as programs supporting producers and exporters; trade remedies, government procurement, and restrictions on foreign investment, among others (see the table summarizing these challenges at the end of this introduction.)

Part III examines previous challenges that have been resolved. Some agricultural subsidies, barriers against certain pork imports, the cachaça tariff classification, the ethanol secondary tariff, the zeroing methodology employed in AD investigations and the difficulties Brazilian companies doing business in Cuba encounter when selling defense-related products and services to the United States.

Part IV deals with opportunities, pointing to potential areas in which Brazilian producers can begin exporting or further expand the volume of their exports to the United States. Drawing on information gathered from statistical analysis, research, and press releases, the following 10 "opportunity areas" are examined: bioactive compounds, fresh pork, ground beef and pork and muscle cut beef and pork, E-commerce, cosmetics, distance learning, ethanol, typical Brazilian products, the Generalized System of Preferences (GSP), and wine (see table at the end of this introduction).

At a time when the multilateral trading system is under threat of a proliferation of protectionist measures, it is worth noting that, even before the so called "trade wards" had begun, day-to-day trade was already fraught with a multiplicity of restrictions, quotas, technical barriers and other impediments to the free flow of goods and services. In this sense, this document provides useful subsidies for a bilateral tariff reduction agenda.

I thank the foreign trade team of the Embassy, in particular Professor Aluísio de Lima Campos, for the careful survey carried out under the supervision of Minister Fernando Pimentel.

SERGIO AMARAL
Ambassador

TABLE I: SUMMARY OF CHALLENGES

Item	Challenge
Sugar	Preferential loans to U.S. processors and producers; TRQ of 152,700 mt at US$14.60/mt; out-of-quota duty of US$357.40/mt for refined and US$338.70/mt for raw sugar.
Cotton	Subsidies; TRQ of 280,648 kg at US$0.044/kg; out-of-quota duty of US$0.314/kg.
Aluminum	National security investigation (Section 232), with the imposition of an additional 10% *ad valorem* tariff.
Shrimp	Authorization requirement for export based on adoption of fishing methods that do not involve the incidental capture of marine turtles. SIMP requirements starting in 2019.
Fresh Beef	Suspension of imports of fresh meat from Brazil on allegation of sanitary security.
Poultry	Certification requirement.
Ethanol	Annual targets set for the use of biofuels in the U.S. energy grid.
Corn	Subsidies.
Soybeans	Subsidies; tariff hike (soybean oil: 19.1% *ad valorem*).
Tobacco	TRQ of 80,200 mt at US$ 0.375/kg (along with a variable assessment tax); out-of-quota rate of 350% *ad valorem*.
Fruits & Vegetables	Complex certification process; phytosanitary requirements; import prohibitions against certain products.
Dairy Products	Subsidies; complex TRQ system.
Steel	National security investigation (Section 232), with the imposition of quotas; inappropriate calculation of trade trade remedies.
Textiles & Apparel	High tariffs (up to 30% *ad valorem*); combined tariffs (*ad valorem* + specific); inclusion, since 2012, in the U.S. Department of Labor's (DoL) List of Goods Produced under Forced Labor or Child Labor.
Agricultural Products	Subsidies.

TABLE I: SUMMARY OF CHALLENGES (CONTINUED)

Item	Challenge
Export Subsidies	Export credits; nutrition assistance programs aimed at consuming surplus stock.
Agriculture	Technical barriers: "Organic" labeling; country-of-origin labeling (COOL) for lamb cuts, seafood, fruits, vegetables, and nuts—except when these are used as ingredients in a processed food.
Trade Remedies	Retroactive method of applying AD and AS causes uncertainty and affects exporters more severely; inappropriate trade practices.
"Buy American" Act	Domestic industry stimulus package; local content rules (LCR) for government procurement.
Intellectual Property	Possible unilateral trade sanctions and autonomous decisions by customs authorities to withhold merchandise.
Defense-related Products	Complex system of regulations governing the purchase of defense-related products.
Foreign Investment	Specific restrictions related to banking, aviation, marine transport, mining, energy, landed property, and communications sectors, as well as to government procurement.

TABLE II: SUMMARY OF OPPORTUNITIES

Item	Opportunity
Bioactive Compounds	The U.S. market in this sector is growing rapidly. Because of the uniqueness of our flora and fauna, this growth presents Brazil with an excellent export opportunity.
Fresh Pork	Meet packing plant from the State of Santa Catarina obtained permission to export its products to the United States.
Ground Beef & Pork and Beef & Pork Muscle Cuts	In 2016, the United States Department of Agriculture (USDA) published a decision to discontinue country of origin labeling requirements for beef and pork muscle cuts, as well as ground beef and pork.

TABLE II: SUMMARY OF OPPORTUNITIES

Item	Opportunity
E-Commerce	In 2017, E-commerce accounted for sales in the United States in excess of US$ 453.5 billion or 8.9% of all sales transacted in the country. The relatively low proportion of e-sales suggests a great potential for expansion in the sector.
Cosmetics	The U.S. market shows growing interest in natural products, with export opportunities via GSP.
Distance Learning	Brazilian companies have found a model that has achieved large scale with quality, low price, and dropout rates that are well below those of similar companies in the United States. The distance learning market is growing.
Ethanol	The Environmental Protection Agency (EPA) aims to reach by 2022 a minimum of 36 billion gallons of biofuels for use in vehicle fuels.
Typical Brazilian Products	The greater number of Latin-American consumers in the United States having tastes and preferences more closely aligned with those of Brazilians create opportunities for Brazilian products, especially in the fashion and food industries.
GSP	Brazil could export more under the program, since there is a significant number of eligible tariff codes that have not been exported.
Wine	The U.S. offers a potential market for Brazilian wine exports.
Interior Design	There is huge potential to increase the presence of Brazilian design in homes, businesses and hospitality in the US.
Softwood Lumber Products	The end of the Softwood Lumber Agreement (SLA) between the U.S. and Canada in the end of 2015 opened up opportunities for Brazil to increase its exports of softwood products to the United States.

GLOSSARY OF SELECTED TERMS

AD	Anti-dumping
ADPM	Actual Daily Production Margin
APHIS	Animal and Plant Health Inspection Service
ARC	Agricultural Risk Coverage
AS	Anti-subsidy
CBP	Customs and Border Protection
CFIUS	Committee on Foreign Investments in the United States
CIP	Crop Insurance Program
COOL	Country of Origin Labeling
DoC	U.S. Department of Commerce
DoL	U.S. Department of Labor
DoS	U.S. Department of State
EPA	Environmental Protection Agency
FSIS	Food Safety Inspection Service
GPA	Agreement on Government Procurement
GSM-102	Export Credit Guarantee Program
GSM-103	Intermediate Export Credit Guarantee Program
GSOMIA	General Security of Military Information Agreement
GSP	Generalized System of Preferences
HACCP	Hazard Analysis and Critical Control Points
HPAI	Highly Pathogenic Avian Influenza
HTSUS	Harmonized Tariff Schedule of the United States
ICCR	International Cooperation on Cosmetics Regulation
LAS	Light Air Support
LCR	Local content rules
LDP	Loans Deficiency Payment

GLOSSARY OF SELECTED TERMS

MAA	Mutual Acceptance Agreement
MAL	Marketing Assistance Loan
MPP	Margin Protection Program
mt	Metric ton
MTB	Miscellaneous Tariff Bill
NAFTA	North American Free Trade Agreement
NCM	Mercosur's tariff schedule
NGOs	Non-governmental organizations
NOAA	National Oceanic and Atmospheric Administration
OIE	World Organization for Animal Health
PLC	Price Loss Coverage
RFS	Renewable Fuel Standard
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SIMP	Seafood Import Monitoring Program
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
STAX	Stacked Income Protection Plan
TBB	Alcohol and Tobacco Tax and Trade Bureau
TEDs	Turtle Excluding Devices
TRQ	Tariff-rate Quota
U.S.	United States
USAF	U.S. Air Force
USDA	United States Department of Agriculture
USITC	U.S. International Trade Commission
USTR	U.S. Trade Representative
WRO	Withhold Release Orders
WTO	World Trade Organization

PART I. RESTRICTIONS ON SPECIFIC PRODUCTS

The following are the main Brazilian products that are subject to entry restrictions into the U.S. market followed by brief background information on these restrictions.

1. Sugar

Barrier: Sugar Program (1982).

Description: Extension of preferential loans to sugar processors, who then passed these loans on to farmers[1] at rates of US$ 0.1875/pound for cane sugar (US$ 413.37/mt) and US$ 0.2409/pound for refined beet sugar (US$ 531.09/mt)—between one-and-half and two times the international price for the commodity.[2]

The program also allowed implementation—supposedly temporary—of TRQs that were incorporated in the World Trade Organization (WTO) as of 1995: US$ 14.60/mt in-quota rate and US$ 338.70/mt prohibitive out-of-quota rate for raw sugar; and US$ 36.61/mt in-quota with US$ 357.40/mt out-of-quota for refined sugar.

Data: Up to 1982, Brazil was the number one supplier of sugar to the United States with exports of approximately one million mt per year. Currently, the figure is 14% of total U.S. sugar imports, subject to a quota of approximately 150,000 mt per year. For fiscal year 2018 (10/01/2017 to 09/30/2018), the quota for raw sugar applied to Brazil is 152,691 mt.

2. Cotton

Barrier: TRQ and subsidies to producers.

Description: The United Sates applies import TRQs based on the aggregate of exporting countries (aggregated quota). However, within the established limit there are specific quotas allocated to certain countries (Brazil included).

The tariff applied on cotton imports is based on a product's classification in the Harmonized Tariff Schedule of the United States (HTSUS), which is defined according to fiber length and hardness. Up to the quota limit, the tariff varies from zero to US$0.044/kg.[3] Out-of-quota imports are subject to payments of up to US$0.314/kg—approximately 18.4% *ad valorem* relative to the current price of US$ 1.71/kg.[4] Some countries with which the United States has a free trade agreement (México, Canada, Australia, Chile, Israel and Bahrein, for example) can export certain varieties of cotton without submitting to tariff quota restrictions.[5]

1 *In the case of beet sugar, the farmer is also processor and receives the loan directly.*

2 *https://www.nasdaq.com/markets/sugar.aspx*

3 *http://tao.wto.org/report/TariffQuotas.aspx*

4 *https://www.ams.usda.gov/mnreports/cnmcps.pdf*

5 *https://hts.usitc.gov/current (Chapter 52)*

Data: The quota applied to Brazil (HTSUS 5201.00.14) for the period September 2017 to September 2018 remains at 280,648 kg.[6] Brazil did not export cotton to the United Sates in 2017.[7]

With respect to subsidies applied to U.S. cotton producers, owing to the U.S.-Brazil dispute at the WTO that began in September 2002 (DS 267), the 2014 Farm Bill excluded cotton among the commodities that would be eligible for subsidy programs such as Price Loss Coverage (PLC) and Agricultural Risk Coverage (ARC).

The original wording of the 2014 Farm Bill provided cotton farmers no more than supplementary insurance programs for their crop and pre-harvest preferential loans through the Stacked Income Protection Plan (STAX) and the Marketing Assistance Loan (MAL).

However, the Bipartisan Budget Act of 2018 included amendments to the 2014 Farm Bill, such that cotton (seed cotton, which covers both the cotton fiber and its seed) came to be included among the covered commodities, which, as of the 2018 harvest, could receive PLC and ARC program benefits.

3. Aluminum

Barrier: National security investigation (Section 232), with the imposition of an additional 10% *ad valorem* tariff against imports.

Description: In April 2016, the U.S. Department of Commerce (DoC) launched an investigation (based on Section 232 of the Trade Extension Act of 1972) into imported aluminum to determine whether it posed a threat to the country's national security. The finding, announced on March 8, 2018, was affirmative, leading to the application of an additional 10% import duty on these products, with the exception of those from Canada and Mexico, on March 23, 2018. On March 22, 2018, the U.S. temporarily exempted some countries from the additional tariff in order to enable negotiations. On April 26, American officials informed Brazilian counterparts of their decision to interrupt the negotiating process and immediately collect the additional tariff. On May 31, the DoC announced its final decision[8]. For Brazil, an additional 10% import duty on these products was applied, as of June 1st.

Data: Brazil's aluminum exports to the United States were US$ 115 million in 2013, US$ 89 million in 2014, US$ 52 million in 2015, US$ 98 million in 2016 and US$ 138 million in 2017.

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[6] *https://www.cbp.gov/trade/quota/tariff-rate-quotas or https://hts.usitc.gov/current*

[7] *https://dataweb.usitc.gov (HTSUS 5201.00.14)*

[8] *Proclamation 9758 of May 31, 2018 – Adjusting Imports of Aluminum Into the United States, available at: https://www.federalregister.gov/documents/2018/06/05/2018-12137/adjusting-imports-of-aluminum-into-the-united-states*

4. Shrimp

Barrier: Prohibitions against entry of Brazilian exports according to terms of Section 609 of Public Law 101-162 requiring adoption of shrimp fishing methods without risk of incidental capture of sea turtles. Such methods include use of Turtle Excluding Devices (TEDs) on shrimp trawlers.

Description: Since June 2014, the northern shrimp fishery (North and Northeast Regions of Brazil), until that time the only region authorized to export shrimp to the United States, was removed from the list of authorized exporters[9] (Annual Certification of Shrimp-Harvesting Nations) owing to difficulties ensuring compliance with the obligation. Brazil is not expected to become recertified before the conclusion of bilateral agreements, which await Brazil's compliance with TED obligations.

Data: In 2017, U.S. shrimp imports (processed and/or for human consumption) were approximately US$6.5 billion.[10] According to the latest shrimp export records, Brazil sold to the United States only US$237,000 in 2013 and US$82,000 in 2012.[11]

Uncertified and unregulated illegal fishing

The Seafood Import Monitoring Program (SIMP)[12] was launched in December 2016. Under the program, a requirement went into effect as of January 2018[13] that importers present documents ensuring that fish and derivative products entering the United States are sourced legally and sustainably. According to the National Oceanic and Atmospheric Administration (NOAA), SIMP's purpose is to adopt measures preventing the entry of illegally sourced (uncertified and/or unregulated) fish and seafood in criminal violation of laws governing international fishing practices and standards.

Currently, the rule applies to the following species: Atlantic and Pacific cod, blue crab, dourado, grouper, king crab, sea cucumber, snapper, shark, swordfish and tuna. From January 1st, 2019, abalone and shrimp imports will be submitted to SIMP requirements too.

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9 *https://www.federalregister.gov/documents/2017/05/05/2017-09164/annual-certification-of-shrimp-harvesting-nations*

10 *https://dataweb.usitc.gov (HTSUS 0306.16, 0306.17, 0306.35, 0306.36, 0306.95, 1605.20, 1605.21 and 1605.29)*

11 *http://aliceweb.mdic.gov.br (NCM subheading 0306.16 and 0306.17 – there are no more exports listed in the other tariff schedules)*

12 *https://www.regulations.gov/document?D=NOAA-NMFS-2015-0122-0111*

13 *https://www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION1415/FinalRuleTraceability.aspx*

The United States is the world's second largest importer of seafood, with purchases of US$17.9 billion in 2017.[14] Over this period, Brazil exported US$108 million[15] to the United States, or a mere 0.6% of the U.S. total imports. Brazil's lobster exports (US$41.3 million in 2017[16]) accounted for approximately 38.2% of the total value of its exports of seafood to the United Sates for that year.

5. Fresh Beef

Barrier: Phytosanitary and TRQ.

Description: On August 1, 2016,[17] letters of equivalence in sanitary inspection services were exchanged between the two countries, thereby formally opening the U.S. market to fresh beef from Brazil and directly benefiting exporters from 13 states[18] and the Federal District. The first cargo of Brazilian fresh beef reached the United States in October 2016, at ports in the sates of Pennsylvania and Florida.

However, when news of Operation Weak Flesh broke out in March 2017, obstacles again arose. Unlike other countries, the United States did not immediately suspend imports; however, it implemented a policy of inspecting 100% of the Brazilian product, refusing entry to 11% of the total volume of Brazil's exports from March to June 2017.[19] By comparison, according to USDA the rejection rate for fresh beef from other origins is approximately 1%. At the same time, between May 15 and June 2, 2017, USDA conducted on-site inspections in Brazil to verify whether its inspection system was "equivalent to that of the United States."

Finally, on June 22, 2017, USDA suspended Brazilian fresh beef imports on the grounds of recurring concerns regarding the sanitary security of products sold to the U.S. market.[20] The suspension of shipments to the United States will remain in effect until the Brazilian Ministry of Agriculture takes corrective measures to the satisfaction of USDA.

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[14] *https://www.trademap.org (SH Chapter 03)*

[15] *http://aliceweb.mdic.gov.br (SH Chapter 03)*

[16] *http://aliceweb.mdic.gov.br (NCM subheading 0306.11 and 0306.31 – no other exports were identified for the other tariff schedules)*

[17] *https://www.USDA.gov/media/press-releases/2016/08/01/USDA-announces-reopening-brazilian-market-us-beef-exports*

[18] *Bahia, Espírito Santo, Goiás, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Paraná, Rio Grande do Sul, Rio de Janeiro, Rondônia, São Paulo, Sergipe, and Tocantins.*

[19] *https://www.usda.gov/media/press-releases/2017/06/22/perdue-usda-halting-import-fresh-brazilian-beef*

[20] *https://www.fsis.usda.gov/wps/wcm/connect/eaf15cdd-49e1-475c-a3e1-8acb91f48645/Brazil-2017-FAR.pdf?MOD=AJPERES*

Even after overcoming these sanitary barriers, however, exporters would remain subject to TRQs (bounded during the Uruguay Round) limiting their product's access to the U.S. market.

Data: The WTO bound TRQ is 696,621 mt, with an in-quota tariff for most varieties of beef of US$0.044/kg, allocated mostly to Australia (378,214 mt) and New Zealand (213,402 mt). Through the North American Free Trade Agreement (NAFTA), Canada and Mexico enjoy access free of any quantitative limit. Other countries with which the United States has free trade agreements (such as Australia, and Chile) can also export certain types of fresh beef that are not subject to TRQs.

6. Poultry

Barrier: Prohibition against entry of Brazilian exports owing to certification requirement.

Description: The USDA Food Safety Inspection Service (FSIS) has imposed a certification requirement on the Brazilian sanitary inspection system. In order to export fresh poultry, Brazilian sanitary authorities must demonstrate that Brazil is free from Newcastle disease and the Highly Pathogenic Avian Influenza (HPAI).[21]

Over the past few years, interest has grown among Brazilian exporters in the U.S. market, which led to the Animal and Plant Health Inspection Service (APHIS) mission to Brazil in 2013 in order to determine the need to update compliance standards for sanitary control policies in Brazilian plants.

7. Ethanol

Barrier: Renewable Fuel Standard (RFS) restrictions.

Description: The RFS requires minimum biofuel volumes in transport vehicles, in an effort to substitute or reduce the use of petroleum based fuels. The RFS conducts annual reviews of the volume requirement, which can increase or fall in relation to the previous year.

[21] *https://www.law.cornell.edu/cfr/text/9/94.6#a*

The target for 2022 is 36 billion gallons. EPA limits stipulated for 2014 to 2019 are as follows:

Table III: Final mandatory volume – U.S. Environmental protection Agency[22] [23] (*billions of gallons*)

	2014	2015	2016	2017	2018	2019
Cellulosic biofuel	0.033	0.123	0.230	n/a	0.288	n/a
Biomass-based diesel	1.63	1.73	1.90	2.00	2.10	2.10
Advanced biofuel	2.67	2.88	3.61	n/a	4.29	n/a
Renewable fuel	16.28	16.93	18.11	n/a	19.29	n/a

Data: Although ethanol exports to the United States have tended to decrease over the past few years, Brazil remains the principal supplier of ethanol imported into the United States. In 2017, Brazil accounted for more than 99% of the 290 million liters of ethanol imported into the United States.[24]

8. Corn

Barrier: Production incentive programs.

Description: The 2014 Farm Bill granted minimum price guarantee modalities or Marketing Loans (set at US$1.95/bushel) and instituted the PLC (at a benchmark of US$3.70/bushel) and the ARC programs, all in effect until 2018. See a description of these programs in item 15 - "Subsidies for Agricultural Production".

9. Soy and Soy Oil

Barrier: Production assistance programs and high tariff.

Description: Soy oil imports (HTSUS 1507.90.40 and 1507.10.00) are taxed at a rate of 19.1% *ad valorem*, while soy oil produced by NAFTA member countries, and those participating in the African Growth and Opportunity Act, the Caribbean Basin Economic Recovery Act and in the group of less developed countries in the GSP—along with Australia, Bahrein, Chile, Singapura, Colombia, Israel, Jordan, Morocco, Oman, and Peru—are exempt from tariffs.

The 2014 Farm Bill granted Marketing Loans (set at US$5.00/bushel) and instituted PLC of US$8.40/bushel and ARC programs, effective until 2018.[25] See a description of these programs in item 15 under "Subsidies for Agricultural Production".[26]

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22 *https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuel-standards-2014-2015-and-2016-and-biomass-based*

23 *https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuel-standards-2018-and-biomass-based-diesel-volume*

24 *https://dataweb.usitc.gov (HTSUS 2207.20.00.10 and 2207.10.60.10)*

25 *https://www.ers.usda.gov/topics/crops/soybeans-oil-crops/policy/*

26 *https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/crop-commodity-program-provisions-title-i.aspx*

Data: Brazil exported 19 mt of soy oil to the United States in 2013 and 3,500 mt in 2014. In none of the following years did this figure exceed two tons.[27] The United States imported 138,000 mt of soy oil in 2017, mostly from Canada.[28]

10. Tobacco

Barrier: TRQ.

Description: Specific limit of 80,200 tons (calculated annually, from September to September[29]), along with a 350% tariff on out-of-quota imports. Even in the case of in-quota imports, the majority of Brazilian tobacco (HTSUS 2401.20.85) pays a relatively high tariff of US$0.375/kg, along with a variable assessment tax. Some countries having free trade agreements with the United States (such as Bahrain, Morocco, Oman, Peru, Chile and Singapore) can export certain types of tobacco that are not subject to TRQs.

Data: Brazil's tobacco exports to the United States in 2017 were approximately US$196.8 million. Twenty two thousand metric tons[30] (27%) were exported within the September of 2016 to September of 2017.

11. Fruits and Vegetables

Barrier: Complex certification process and phytosanitary requirements.

Description: Long delays on the part of USDA in examining data provided by producers/exporters, especially regarding pest risk analysis.

Another factor is the requirement by the Office of Management and Budget for financial assessment of regulations considered "economically significant" (having an impact greater than US$100 million). Such a requirement cannot be justified in light of the WTO Agreement on Sanitary and Phytosanitary Measures (SPS), which provides, in general terms, for a financial evaluation of possible losses to the importer in cases of infiltration or propagation of disease, or of costs associated with its control and eradication.

Worthy of note is the case of melons, which are exempt from import tariffs under GSP from December to May. It would interest Brazil, however, to push forward the exemption period by at least two months to coincide with the harvest in the state of Rio Grande do Norte, one of the fruit's main producers. The most significant obstacles in the way of a change are: a) a legislative requirement, and b) possible resistance on the part of other GSP members and competitors.

[27] *http://aliceweb.mdic.gov.br (NCM 1507.10 and 1507.90)*
[28] *https://dataweb.usitc.gov (HTSUS 1507.10 and 1507.90)*
[29] *https://www.usitc.gov/publications/docs/tata/hts/bychapter//1000c24.pdf*
[30] *https://www.cbp.gov/trade/quota/tariff-rate-quotas*

Prohibitions on Imports

Some fruits and vegetables are prohibited from entering the U.S. market owing to sanitary restrictions.

Table IV: Phytosanitary Obstacles to the Imports of Fruits and Vegetables

Fruit/Vegetable	**Obstacle to Imports**
Avocado	*Avocado seed moths* and fruit fly
Persimmon	*Anastrepha fraterculus*
Star Fruit	*Anastrepha fraterculus*
Figs	Fruit fly
Citrus Fruits	Citrus canker
Loquat	Mediterranean fruit fly and *Anastrepha fraterculus*

Fruit Juices

NAFTA, African Growth and Opportunity Act, and Caribbean Basin Economic Recovery Act member countries, along with less developed GSP countries enjoy tariff exemptions. Australia, Bahrain, Chile, Singapore, Colombia, South Korea, Israel, Jordan, Morocco, Oman and Peru export orange, grape, and lemon juices either tariff-free or at reduced tariffs of approximately 50% to 90%.

Orange Juice

Since the Uruguay Round negotiations, the United States has imposed customs tariffs of US$0.0785/liter on frozen juice (HTSUS 2009.11.00) or reconstituted concentrated juice (HTSUS 2009.12.45), and US$0.045/liter on non-concentrated juice (HTSUS 2009.12.25).[31] In 2017, tariffs on frozen orange juice corresponded to approximately 23% *ad valorem*.

12. Dairy

Barrier: TRQ.

Description: For tariff schedule number 0401.40, the in-quota rate is US$0.032/liter and out-of-quota US$0.77/liter (the total quota is approximately 6.6 million liters, of which 5.6 million are reserved for New Zealand). For tariff schedule number 0402.99, the in-quota tariff is US$0.039/kg and out-of-quota US$0.496/kg (total quota 6,857 mt, of which 2,441 are reserved for Australia, Canada, Denmark, Germany, and the Netherlands). No quota reserve is in place for Brazil.

The 2014 Farm Bill provides for a complex system of guarantees, the Margin Protection Program (MPP), based on U.S. dairy farmers' average profit margins—the Actual Daily Production Margin (ADPM). Minimum price policies were also linked to the ADPM with the establishment of a floor (US$4.00/hundredweight for

[31] *https://www.usitc.gov/publications/docs/tata/hts/bychapter/1000c20.pdf*

two consecutive months), at which price USDA, for a maximum of three months, purchases dairy products for distribution to those receiving food assistance.

Data: Brazilian dairy exports to the United States have increased considerably over the past few years. In 2016 and 2017, Brazil exported, respectively, US$ 8,988,215.00 and US$ 7,980,139.00, up from US$ 1,736,918.00 in 2015.[32]

13. Steel

Barrier: a) National security investigation resulting in the imposition of quotas on imports, and b) questionable trade remedy practices.

Description: (1) In April 2016, the U.S. Department of Commerce (DoC) launched an investigation (based on Section 232 of the Trade Extension Act of 1972) into imported steel products to determine whether they posed a threat to the country's national security. The finding, announced on March 8, 2018, was affirmative, leading to the application of an additional 25% import duty on these products, with the exception of those from Canada and Mexico, on March 23, 2018. On March 22, 2018, the U.S. temporarily exempted some countries from the additional tariff in order to enable negotiations. On May 31, the DoC announced its final decision[33]. For Brazil, negotiations concluded with the unilateral imposition of annual quotas, allocated for 54 product categories, as of June 1, equivalent to 70% of the import average of 2015-2017 for finished steel products, and to the 2015-2017 import average for semi-finished items. As of July 1, 2018, quotas from Brazil have been quarterly controlled.

Accordingly, imports in an aggregate quantity under any category during each quarter in any year that is in excess of 500,000 kg and 30 percent of the total aggregate quantity provided for a calendar year for Brazil shall not be allowed. Follow-up reports for the mentioned quotas are released weekly by the U.S. Customs and Border Protection (CBP); (2) The United States also availed itself of retroactive AD and AS remedies, as well as temporary tariff exemptions (similar to the U.S. Miscellaneous Tariff Bill) that investigation authorities consider actionable subsidies. These are examples of practices that reduce the export potential for Brazil's steel products. For additional information, see item 18 of this report titled Trade Remedies: Anti-dumping and Anti-subsidy Measures.

Another such practice involves the long period during which trade remedies remained in effect—remedies which as a rule should expire after five years but have been in force for decades. In fact, four of the trade remedies currently in effect against Brazilian products have been in force for over 20 and 30 years (iron construction castings, carbon-steel pipefittings, unalloyed steel pipes and stainless steel bars).

[32] *http://aliceweb.mdic.gov.br (HS 0401, 0402, 0403, 0405 and 0406)*

[33] *Proclamation 9759 of May 31, 2018 – Adjusting Imports of Steel Into the United States, available at: https://www.federalregister.gov/documents/2018/06/05/2018-12140/adjusting-imports-of-steel-into-the-united-states*

Data: Between 2001 and 2017, steel accounted for 57% of all AD and AS investigations initiated by the United States against Brazil, and now practically all major Brazilian finished steel products are subject to the new trade remedy policy.

14. Textiles and Apparel

Barrier: Tariff peaks and allegations of forced or child labor.

Description: The import tariffs on textiles are among the highest the United States has applied, reaching levels above 30% *ad valorem*. The United States also imposes combined tariffs (*ad valorem* + specific).

Brazil's textile and apparel industry has, since September 2012, been included in DoL's List of Goods Produced under Forced Labor or Child Labor[34] based on information from the press, non-governmental organizations (NGOs), and government agencies. Also included are products that, in accordance with U.S. law, DoL "has reason to believe were manufactured under forced labor or child labor, and in violation of international norms". Verification of this information is not required.

With the approval of the Trade Facilitation and Enforcement Act of 2015 in February 2016, the exception on import prohibitions (allowed for products considered essential to meet U.S. domestic demand) for goods produced under child or forced labor was eliminated. The law also calls for improvements in Customs and Border Protection (CBP), and came to rely on a "Law Enforcement Task Force" for its institutional implementation.

By these means, changes to U.S. law can threaten the export of Brazilian products mentioned in the DoL list, as this list can influence CBP's decisions on the entry of imported goods. It should be pointed out that CBP action is this regard can only occur based on reports from anyone of incoming merchandise produced under forced labor or child labor: CBP should not initiate an investigation of its own accord, or simply based on the DoL list.

Data: Upon revocation of the exemption in 2016 based on the domestic demand rule, CBP issued four Withhold Release Orders (WRO) on Chinese imports of chemicals, artificial sweeteners, and garlic following reports of forced labor. In 2018, a WRO was issued against toys from China.[35]

[34] *http://www.dol.gov/ilab/reports/child-labor/list-of-goods/*

[35] *https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations*

PART II. CROSS-SECTORAL MEASURES

The following are some restrictive and/or distortive trade measures that affect a number of products simultaneously.

15. Subsidies for Agricultural Production

Subsidies in support of domestic agriculture distort markets insofar as they complicate efforts to export to the United States and other markets, shield U.S. producers against normal market fluctuations, and stimulate overproduction, leading to a reduction in international prices.

Domestic support programs are often implemented at the country's border in order to maintain prices of protected products at relatively high levels and, in effect, to reduce expenditures associated with price guarantee programs.

The main aspects of U.S. agricultural policy are defined in legislation that is renewed approximately every four years. The principal provisions of the 2014 Farm Bill—covering the 2014 to 2018 harvests—are the following:

1) Minimum price guarantees, known as "Marketing Loans"

2) PLC and ARC programs

3) Crop Insurance Program[36] (CIP)

A ceiling of aggregated benefits of up to US$125,000 per producer was also established for the following programs:

a) Marketing Loans (identified under the "amber box" category according to the WTO Agriculture Agreement rules), which are the support programs causing the greatest distortion insofar as these subsidies are coupled with prices and production quantities. These programs can also include pre-harvest preferential loans (Marketing Assistance Loans) or supplementary payments to farmers' marketing prices (Loans Deficiency Payment - LDP). Due to the lack of readjustment of program's reference prices by the US government since 2008 Farm Bill, the program has seldom been used.

b) PLC subsidies can cause further market distortion through their association ("partial coupling") with prices. Whenever the annual market price is under the benchmark amount established per commodity, producers that opted for the program receive the difference between the two amounts for 85% of the acreage historically set aside for the commodity (regardless of acreage actually harvested).

[36] *Through this program, the government subsidizes 38% to 67% of the insurance offered by private companies to farmers for loss of production or income.*

c) ARC subsidies can be implemented by county (County ARC) and cover all producers of a given commodity within a specific county; or, according to the individual modality (Individual ARC), the weighted output of all commodities from a single producer. In the case of both potentially distortive programs, payment of the difference between benchmark and market price is established if the latter is lower than the former.

In contrast to the last bill of 2008, one of the 2014 Farm Bill's objectives was to reduce the U.S. government's expenditures on agriculture by up to US$16 billion over a 10-year period. This notwithstanding (and considering the impact of budget cuts on non-discretionary expenditures, including the Commodity Credit Corporation fund and harvest guarantees), the degree of the distortive effect on world trade could increase on account of other variables, such as international prices and the implementation of incentive programs. Moreover, it should be noted that, once based on 2008-2012 international prices (a period recognized for its high agricultural commodity prices), minimum benchmark prices of 2014 Farm Bill's programs increased significantly for each commodity over those initially established under discontinued programs.

16. Export Subsidies

Export subsidies in the strict sense (those contingents on export performance or on local content requirements for exporting products) are regarded as "prohibited subsidies" by the WTO, especially when applied to non-agricultural goods. The Agricultural Agreement, however, does not regulate in any restrictive way a series of measures resulting in outcomes that are equivalent to actual export subsidies—i.e., export credits, credit guarantees, and nutrition assistance programs that are used as a way to outflow overproduction. The U.S. provides considerable amounts of both export credit guarantee and food aid.

Brazilian products compete directly with subsidized U.S. products, both in the domestic U.S. market and, especially, in third country markets. Export support programs facilitate U.S. producers' efforts to develop new markets, create credit opportunities, seek out potential customers, and find infrastructure support abroad to help warehouse their agricultural products.

In response to the cotton dispute initiated by Brazil against the United States in the WTO (DS 267), the latter proceeded to eliminate a number of programs (such as the Intermediate Export Credit Guarantee Program - GSM-103) covering a broad range of commodities. The dispute between the two countries also caused further restrictions to the 2014 Farm Bill's supplementary Export Credit Guarantee Program (GSM-102), which guaranteed loans granted by U.S. exporters or banks to eligible foreign banks in countries that import agricultural products from the United States. The program went on to guarantee loans of up to 18 months, and the rates changed by the guarantees beyond 12 months now had to adhere to minimum guidelines provided in the memorandum of understanding[37] signed with Brazil in October 2014.

17. Technical Barriers to Agriculture

Labeling Law According to Country of Origin

In an amendment to the 1946 Agricultural Marketing Act, the 2002 and 2008 Farm Bills instituted a requirement for COOL. In March 2009, USDA implemented the law's provisions. The new rules covered cuts and ground beef, lamb, chicken, goat, and pork, as well as perishable agricultural commodities (fresh and frozen fruits and vegetables), macadamia nuts, ginseng, pecans, peanuts, and fish and crustaceans (both wild and farm raised).

The labeling requirement does not apply should the ingredients be from processed products or modified through physical or chemical processes, like cooking or smoking.

In response to the restrictions on beef and pork, Canada and Mexico challenged the measures at the WTO, alleging that they would lead to trade distortions as they constituted a non-tariff barrier against imported products. After losing the dispute,[38] in February 2016, the U.S. amended its legislation pertaining to COOL in order to remove the country of origin labeling requirement for beef and pork.[39]

18. Trade Remedies: Anti-dumping (AD) and Anti-subsidy (AS)

Because of its peculiar system and certain questionable practices, U.S. AD and AS investigations can jeopardize the access of Brazilian products to the U.S. market.

The determination of the final margins of an AD or AS investigation in the United States occurs at the end the first administrative review, approximately three years on from the start of the investigative process. These final margins are retroactive to the date of preliminary margin determination, occurring during the investigation's first few months. In this case, the provisional duty levied when the product is cleared through customs (and applied upon preliminary margins determination) can be modified, retroactively, by the final duty assessed years later.

The inherent uncertainty of this process encourages the importer to seek out alternative supply sources when a product is under threat of an AD or AS duty, thereby causing the level of imports to decline significantly. In the case of Brazilian products, the reduction of U.S. imports during the investigation period has been, on average, of 45% in relation to the previous year.[40]

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[37] *https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/wt/ds/267-46.pdf*

[38] *See https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm*

[39] *https://www.federalregister.gov/documents/2016/03/02/2016-04609/removal-of-mandatory-country-of-origin-labeling-requirements-for-beef-and-pork-muscle-cuts-ground*

[40] *Lima-Campos, Aluisio e Vito, Adriana, 'Abuse and Discretion–The Impact of Anti-dumping and Countervailing Duty Proceedings on Brazilian Exports to the United States' (2004) 38 Journal of World Trade, Issue 1, pp. 37–68.*

With regard to AS investigations, programs such as refunds of indirect export taxes (that are not in violation of the Agreement on Subsidies and Countervailing Measures - SCM Agreement), and temporary tariff exemptions in Brazil similar to those granted in the United States based on the Miscellaneous Tariff Bill (MTB), have been considered actionable subsidies.

19. Local Content Rules (Buy American)

In 2017, a number of measures were announced regarding the U.S. government's "Buy American" policy, a program of preferential purchasing and procurement of U.S.-made goods, products, or materials, including iron, steel, and manufactured products. Activities to promote infrastructure and energy projects were advertised, and the DoC was tasked with developing a plan for utilizing the maximum amount of material and equipment possible in the building of new pipelines in the United States, as well as the upgrading and expansion of existing ones (according to legal constraints). The matter is not yet settled, but Brazilian exports of steel pipe could be affected if the plan goes forward.

Furthermore, a number of local content measures adopted by U.S. state and federal authorities remain in place that might affect Brazil. At the federal level there are specific rules under the Buy American Act governing procurement by federal agencies. Among other restrictions,[41] these rules require that products be U.S.-made, no less than 50% local content, and allow foreign products only in situations such as "public interest," product scarcity, or excessive cost.

The standing LCR adopted by the U.S. government that can affect Brazil (2009-2018) can be found at http://www.globaltradealert.org/measure?tid=30&tid_1=494&tid_3=2641 (autonomous website).

20. Restrictions in Connection with Intellectual Property

U.S. trade law allows for the imposition of unilateral sanctions on allegations of a violation—or failure to maintain a sufficient standard—of intellectual property rights. Under the GSP, the United States can withdraw GSP tariff preferences from countries that inadequately protect intellectual property rights under GSP rules (or Special Section 301 of the 1974 Trade Act), and/or initiate dispute resolution proceedings at the WTO or under any effective trade agreement it might have with the countries concerned.

Brazil continued in the 2018 Watch List[42]. Commentary on Brazil tends to involve criticism regarding its protection policies for pharmaceuticals and clinical trials data, although such standards remain very much in line with the applicable multilateral norms. Moreover, while recognized for its achievements in these areas over recent years, Brazil is cited for its need to intensify efforts to combat counterfeiting and piracy (including online piracy).

[41] *http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/25.htm#P222_20485*

[42] *https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf*

Customs agents enjoy substantial autonomy—even the authority to suspend imports without a complaint having been registered by an owner—when responding to violations against intellectual property rights.

21. Defense-related Products

Among the instruments that impede, restrict, and inhibit companies' participation in the Pentagon's procurement processes, the following should be highlighted:

(a) Regulation 10 USC 2533 (Berry Amendment) prohibiting the purchase of all types of food, clothing, and garments; synthetic, cotton, wool, or silk fabric; and measuring tools and instruments of foreign origin. These products must be entirely made in the United States and, in the case of clothing and fabric, use U.S. material.

(b) Specific regulations, especially in the 10 USC 2534 series prevent foreign producers' acquisition, among other products and services, of steel, special metals, and any soldering service; naval products and services; ballistic missiles; machinery; buses; chemical antidotes; and engineering and architectural services on foreign military bases.

(c) Regulations 10 USC 2536(a), FAR 25.1 and DFARS 225.1 (incorporated in the Buy American Act) grant preferences to U.S. products (or those containing a minimum of 50% U.S. components), with foreign products subject to a 50% markup.

(d) Regulation DFARS 225.75 (Balance of Payments Program) establishing a market reserve for U.S companies exporting goods and services abroad, unless extraordinary conditions call for their acquisition *in loco*.

Countries that manage to include specific military procurement preferences in their free trade agreements with the United States—as well as those that demanded this concession from the United States through the WTO Agreement on Government Procurement (GPA)—benefited only marginally from these provisions.

Assessments suggest that opportunity exists for Brazilian companies to penetrate the U.S. defense procurement market. However, specific restrictions—especially in the food, textile and metals categories (together with the absence of bilateral agreements on the matter)—severely limit Brazil's prospects.

22. Restrictions on Foreign Investment

Since 1975, the United States has relied on the Committee on Foreign Investments (CFIUS) to assess any possible national security implications arising from foreign direct investment or corporate ownership.

"National security" can be interpreted in many ways. Among the criteria that CFIUS considers are economic concerns, including possible impacts on sensitive technologies and infrastructure.

Currently, CFIUS is governed by the Foreign Investment and National Security Act of 2007 (FINSA). The president of the United States, whose decision can be appealed by the investor, has the power to block or suspend foreign investments based on CFIUS evaluations. Due to concerns that foreign governments may be using foreign investment to acquire national security-critical assets, technologies, and information, the regulation is currently under revision. In 2018, both the U.S. Senate and House of Representatives forwarded the Foreign Investment Risk Review Modernization Act (FIRRMA) to the White House. The new bill can still be amended, but the final legislation should most likely, significantly expand the jurisdiction and activity of CFIUS.[43]

Foreign investors are not obligated to advise CFIUS concerning their projects in the United States; however, they tend to do so as—once they satisfy the committee's requirements—they are no longer subject to interference by the U.S. president. This notwithstanding, criticism regarding the lack of transparency in CFIUS's decision-making process and a possible hidden protectionist agenda discourage investors from moving ahead with projects that the committee takes to the investigative level.

Furthermore, the United States restricts foreign investment in specific activities through laws such as the following:

(a) Jones Act of 1920,[44] which restricts cabotage to U.S.-flag ships of U.S. construction, ownership, and crew.

(b) Title 49, Subtitle VII, paragraph 40102(a) (15), of the U.S. Code,[45] limiting foreign ownership in U.S. aviation corporations to 25% of controlling stock.

(c) Title 30, Chapter 2, paragraph 22 of the U.S. Code,[46] limiting mineral exploration in the territorial United States exclusively to U.S. citizens.

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[43] *corpgov.law.harvard.edu*

[44] *http://www.legisworks.org/congress/66/publaw-261.pdf*

[45] *http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&path=%2Fprelim%40title49%2Fsubtitle7%2FpartA%2Fsubpart1%2Fchapter401&req=granuleid%3AUSC-prelim-title49-section4010 2&num=0&saved=L3ByZWxpbUB0aXRsZTQ5L3N1YnRpdGxlNy9wYXJ0QS9zdWJwYXJ0MS9jaGFwdGVyNDAx%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGU0OS1jaGFwdGVyNDAx%7C%7C%7C0%7Cfalse%7Cprelim*

[46] *http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title30-section22&num=0&edition=prelim*

(d) Title 16, Chapter 12, Subchapter I, paragraph 797(e) of the U.S. Code[47] restricting foreign partnership in the building, development and transmission of electric power on federal government property.

(e) The Agricultural Foreign Investment Disclosure Act of 1978,[48] requiring foreign investors to advise USDA in the event of the sale, purchase, or transfer of agricultural land.

(f) Investment Advisers Act of 1940,[49] subjects foreign banks offering investment management services to mandatory tax payment reports not required of U.S. banks.

(g) Buy American Act of 1933[50] limits government procurement of non-manufactured products to those extracted or produced in the United States (see Chapter 18 of this Manual).

PART III. RECENTLY-ELIMINATED BARRIERS AND SUBSIDIES

The following barriers against Brazilian products were removed recently through negotiations with U.S. executive and legislative officials, as well as through WTO dispute resolutions and negotiations.

23. Cotton

In September 2002, Brazil filed a request for consultations with the United States at the WTO regarding domestic subsidies and export credit guarantee programs granted by the United States to its cotton producers. In 2009, the Retaliation Arbitration Panel authorized Brazil to adopt countermeasures of more than US$800 million per year on goods, services and intellectual property due to the U.S. government's merely partial observance of the WTO Appellate Body's recommendations published in 2005.

In 2010 and again in 2014, Brazil and the United States entered into agreements to review and abolish further subsidies and compensate Brazilian producers, thereby ending the dispute. It is important to point out that these agreements were limited to the cotton production sector during the period in which the 2014 Farm Bill is in effect. Therefore, Brazil's right to question the legality of the U.S. Farm Bill before the WTO as to other commodities remains, as well as to cotton, until a future Farm Bill - scheduled for 2018 - takes effect.

[47] *http://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter12&edition=prelim*
[48] *https://www.fsa.USDA.gov/programs-and-services/economic-and-policy-analysis/afida/index*
[49] *http://legcounsel.house.gov/Comps/Investment%20Advisers%20Act%20Of%201940.pdf*
[50] *http://legisworks.org/congress/72/publaw-428.pdf*

U.S. government support, however, recently increased with the inclusion of seed cotton among the commodities that can benefit (as of the 2018 harvest) from the 2014 Farm Bill's PLC and ARC programs.

24. Subsidies for Agricultural Exports

The cotton dispute between Brazil and the United States, initiated at the WTO in 2002, was of fundamental importance as far as reducing U.S. subsidies for agricultural exports. Besides compensating Brazilian cotton producers, the 2010 and 2014 agreements between the two countries provided for changes to the loan guarantees granted under the GSM-102.

GSM-102 is a program offering credit guarantees designed to encourage financing for the export of U.S. agricultural products. The agreement effectively reduced the maximum term of the U.S. government-guaranteed loans (which extended to a maximum of 10 years) to the current 18 months, and established minimum levels (greater than those that were in effect at the time) for premiums on terms loans of 12 months or more.

25. Pork

During the cotton dispute negotiations of April 2010, then USDA's Undersecretary for Marketing and Regulatory Programs, Edward Avalos, sent a letter to then Secretary General of Foreign Affairs, Ambassador Antonio Patriota, in which he committed himself to conclude the process of opening the U.S. market to Brazilian pork.

The market opening process had begun in 2007 with the granting of a sanitary certification from the World Organization for Animal Health (OIE). Brazil's Ministry of Agriculture, Livestock, and Food Supply preceded with plans for hazard analysis and critical control points (HACCP) and certification of export establishments under the USDA's Food Safety Inspection Service (FSIS). Public consultations and publication of the final rule—which would wrap up the process—were awaited as of 2009. As a result of the commitments undertaken in the cotton process, and despite the efforts of the domestic producers, the final rule was finally published in November 2010.

According to the final rule,[51] the state of Santa Catarina was declared free of swine fever and swine vesicular disease. To be eligible to export pork and pork related products, however, export establishments must be FSIS certified. Currently, the Cooperativa Central Oeste Catarinese meatpacking plant has USDA permission to export fresh pork to the United States. Exports began at the end of 2014, once differences were resolved regarding the need to register the exported products.[52]

[51] *https://www.gpo.gov/fdsys/pkg/FR-2011-03-21/pdf/2011-6538.pdf*

[52] *http://www.coopera1.com.br/aurora-primeira-e-unica-empresa-brasileira-exportar-carne-suina-para-os-estados-unidos-da-america/*

26. Cachaça

After almost 12 years from Brazil's first petition, on April 30, 2001, the United States recognized (through the amendment to paragraph (f) of article 5.22 of the Alcohol and Tobacco Tax and Trade Bureau (TBB) regulations, in effect as of 11 April 2013) cachaça as a unique product of Brazilian origin. Furthermore, it was established that both terms "cachaça" and "cachaca" are accepted.

The new regulations stipulate that the alcohol content for cachaça must be above 40% (Brazil allows between 38% and 48% content). Products whose alcohol content is below the established level can be denominated "diluted cachaça." Corn or corn syrup cannot be used when fermenting the beverage.

According to negotiations initiated with the Office of the U.S. Trade Representative (USTR), the Department of the Treasury and the Department of State, Brazil's reciprocal recognition was established for Tennessee whiskeys and Bourbon as distinctly U.S. products (as published in the Federal Official Gazette on March 27, 2013).

27. Ethanol

In December 2011, the United States finally abolished the Volumetric Ethanol Excise Tax Credit, a US$0.54/gallon secondary tariff on imported ethanol. This tariff was applied in conjunction with a US$0.45/gallon subsidy granted to domestic ethanol processors. The elimination of the tariff and discontinuation of the corresponding subsidy demanded rigorous negotiations with U.S. congressional representatives and executive branch officials. Currently, Brazilian ethanol is subject to an import duty ranging from 1.9% to 2.5%,[53] whose impact is far less severe than the secondary tariff that was abolished.

28. Defense-related Products

In 2013, EMBRAER won a bid to provide the U.S. Air Force (USAF) 20 light fighter aircraft for use in Afghanistan's "Light Air Support" (LAS) program. The US$440 million contract for 20 Super-Tucanos included training, logistical support and maintenance. On October 25, 2017, EMBRAER announced that the USAF had requested the manufacture of an additional six aircraft[54] for Afghanistan's nascent Air Force.

Brazil's success was particularly noteworthy in light of the country's high quality standards in its aerospace industry and the enormous government subsidies that competing civil and military aviation companies benefit from.

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[53] *https://hts.usitc.gov/current (Chapter 22 - HTSUS 2207.20.00.10 e 2207.10.60.10)*

[54] *https://www.embraer.com/global/en/news#/4055-U.S.-Air-Force-Adds-Six-More-A-29-Aircraft-to--A-29-Afghanistan-Program-Fleet*

Throughout the bidding process, the Brazilian Embassy carried out negotiations with U.S. executive and legislative representatives in order to present Brazil's expectations with respect to the bid and its arguments in opposition to the politically-oriented negotiations undertaken by those promoting the competing aircraft. Furthermore, the process of bilateral confidence-building - established through the Defense Cooperation Agreement, the General Security of Military Information Agreement (GSOMIA), and the implementation of the Defense Cooperation Agreement at the ministerial level - proved to be of fundamental importance.

29. Zeroing

Because of the Appellate Body's ruling in response to concerns brought before the WTO's Dispute Settlement Body by Japan and the EU, the DoC discontinued its zeroing methodology in AD investigations and reviews, except in cases of targeted dumping.

PART IV. OPPORTUNITIES

Listed below are opportunities that the U.S. market offers now that difficulties have been overcome, and thanks to information taken from statistical analyses of foreign trade data and from the Census Bureau, research, and information garnered from specialized press sources.

30. Bioactives

According to research conducted by the government of New Zealand, the U.S. bioactives market, which includes nutraceutical products (comprising vitamins, mineral salts, fibers, and other that can contribute to health and well-being, such as guarana capsules) and functional foods, like guarana fruit (having properties that benefit health and the immune system), are experiencing rapid growth. This growth represents an excellent opportunity for Brazilian exporters owing to the uniqueness of our flora and fauna, as well as the private sector's desire to invest in this area.

31. Fresh Pork

As was explained in item 25, the state of Santa Catarina was declared free of both swine fever and swine vesicular disease. For this reason, the Cooperativa Central Oeste Catarinese meatpacking plant has been allowed to export fresh pork to the United States since 2014. The state's remaining establishments are still awaiting authorization.

32. Ground Pork and Beef, and Muscle Cut Pork and Beef

In a public notice published in the Federal Register on March 2, 2016, USDA announced its decision to abolish its COOL requirement for ground pork and beef and muscle cut pork and beef. This decision opened export opportunities for Brazilian products.

33. E-commerce

Over the past five years, E-commerce's share of total retail sales in the United States rose from 5.4%[55] to 9.1%.[56] Analysts estimate that the industry's rapid growth, combined with its relatively small proportion of total sales, points to even greater opportunities for growth. There are now companies that are able to set up online stores to sell directly to the United States, or sell Brazilian products via consumer portals such as Amazon and E-bay.

34. Cosmetics

Brazil along with the United States, Canada, the European Union, and Japan joined the International Cooperation on Cosmetics Regulation (ICCR),[57] which seeks common regulatory framework to maximize consumer protection and minimize the barriers to trade in cosmetics. Similar regulations serve to facilitate the trade of these products.

Certain products in the industry, however, enjoy additional advantages through the U.S. GSP, which is due to expire in December 31, 2020. The following table shows cosmetic products that Brazil has exported through GSP (in grey), and potential ones that have yet to be exported.

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[55] *https://www2.census.gov/retail/releases/historical/ecomm/12q4.pdf*

[56] *https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf*

[57] *https://www.fda.gov/Cosmetics/InternationalActivities/ICCR/default.htm*

Table V: GSP	
HTSUS	Product description
33011910	Essential oils of grapefruit
33012400	Essential oils of peppermint (*Mentha piperita*)
33012910	Essential oils of *eucalyptus*
33012920	Essential oils of orris
33019010	Extracted oleoresins consisting essentially of nonvolatile components of the natural raw plant
33021040	Mixtures of/with basis of odoriferous substances, with 20% to 50% alcohol by weight, needs only addn of ethyl alcohol or water to be beverage
33021050	Mixtures of/with basis of odoriferous substances, over 50% of alcohol by weight, requiring only addn of ethyl alcohol or water to be beverage
33071010	Pre-shave, shaving or after-shave preparations, not containing alcohol
33071020	Pre-shave, shaving or after-shave preparations, containing alcohol
33072000	Personal deodorants and antiperspirants
33073010	Bath salts, whether or not perfumed
33073050	Bath preparations, other than bath salts
33079000	Depilatories and other perfumery, cosmetic or toilet preparations

35. Distance Learning

An education system developed in Brazil and employed on a broad scale by the company Kroton Educacional gained international notoriety when, in its June 28, 2014 edition, the Economist magazine hailed it as a recipe for success. The Economist article was part of a series of reports about higher education, and Brazil's distance learning system was pointed out as a possible working model for United States as well. According to the article, the U.S. model of higher education fails to offer reasonable costs to a majority of students in the face of great demand. Despite its ability to serve large numbers of students in the United States, distance learning had yet to attain a satisfactory level of quality, said the report.

The opportunity in the distance learning market is worthy of consideration, especially as the export market can offer these companies the means to grow over the medium and long term.

Data published in 2017 indicate that the world e-learning market size was estimated at over US$ 150 billion in 2016 and is expected to grow at over 5% CAGR in the next few years, reaching US$200 Billion by 2024. Similarly to other countries in the Latin American region, the Brazilian government has adopted programs to disseminate the use of online education platforms.[58] Private corporations also increasingly rely on the affordable prices available for e-technology to train their employees online. The US' Department of Commerce International Trade Administration expects that the education sector in Brazil will continue to grow, particularly the distance-learning segment[59].

36. Ethanol

In 2011, the United States abolished the secondary tariff on imported ethanol. In addition, according to the EPA suggested requirement for 2018, the blending mandate of advanced biofuels and renewable fuels would increase by 10 million gallons over 2017.[60]

37. Typical Brazilian Products

According to the United States Census Bureau, 1.2 people of Hispanic origin migrated to the United States between July 2014 and July 2015, representing one-half of the total 2.5 million immigrants who entered the country over the same period. In July of 2015, there were 56.6 million Hispanics in the United States, comprising 17.6% of its population. The Census Bureau predicts that by 2060 Hispanics in the United States will number 119 million, or 28.6% of the population.[61] This growth means ever more people with tastes and preferences that are similar to those of Brazilians, and opportunities for Brazilian products, especially food and fashion.

38. Generalized System of Preferences (GSP)

Brazil used no more than 1,760 of the 3,278 GSP tariff lines to which it was entitled up until December 2017. Undeniably, the program's preferential tariff treatment is being underutilized.[62] Based on Mercosur's tariff schedule (NCM), Brazil did not export to the United States in 32 GSP tariff lines in 2015, but it did export more than US$1 million to third-party countries, which, presumably, indicates the potential to export to the United States. On March 23, 2018 was signed legislation to renew the GSP program through December 31, 2020.

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[58] *Global Market Insights*

[59] *Export.gov*

[60] *https://www.gpo.gov/fdsys/pkg/FR-2017-12-12/pdf/2017-26426.pdf*

[61] *https://www.census.gov/newsroom/facts-for-features/2016/cb16-ff16.html*

[62] *See the following table on the Itamaraty website for information on tariff lines and special treatment granted via GSP, and which are being exported to the United States: http://www.itamaraty.gov.br/images/Itens-para-o-Brasil-no-SGP-EUA-revisado-setembro-2016.pdf. For more information about GSP, go to http://www.mdic.gov.br/noticias/1843-escritorio-do-representante-de-comercio-dos-eua-ustr-publica-lista-de-produtos-que-podem-ser-alterados-no-sistema-geral-de-preferencias-sgp*

39. Wine

The international market, especially the United States, is beginning to take notice of Brazil's wines. Forbes magazine published two articles in its August 2016 edition[63] about the increasing quality of Brazilian wine and its export potential. Brazilian wine is export quality, according to Forbes. In 2016 and 2017, Brazilian wine exports to the United States were US$ 830,717 and US$ 1,694,319[64], respectively, or 19% of total exports of Brazilian wine (indicating that there is room for expansion into the U.S. market).

As regards the U.S. market, experts recommend that the exporting country enter into a Mutual Acceptance Agreement (MAA) on enological practices, which exempts signatories from certification requirements when exporting to the United States and other signatory countries. Currently, seven countries are signatories to the MAA agreement with the United States: South Africa, Argentina, Australia, Canada, Chile, Georgia and New Zealand.[65] In 2006, the United States entered into a similar agreement with the EU: the Agreement between the United States and the European Community on Trade in Wine.[66]

40. Interior Design

There is huge potential to increase the presence of Brazilian design in homes, businesses and hospitality in the US - a market of more than US$ 70 billion a year. In an industry that values creativity, comfort, and sustainability, the Brazilian product is gaining international recognition among opinion-makers and specialists. One of the main hurdles for a wider presence in the US at this point is the still limited scale of Brazilian export capacity in this field.

41. Softwood Lumber Products

The end of the Softwood Lumber Agreement (SLA) between the U.S. and Canada in the end of 2015 opened up opportunities for Brazil to increase its exports of softwood products to the United States. The imposition of countervailing and antidumping duties on Canadian softwood lumber and products thereof has presented Brazilian exporters with the possibility to increase sales in the U.S. of the products covered by those measures. Brazil has long been an important source of softwood products for the United States, but rising prices resulting from the end of the SLA have already contributed to higher sales. The value of U.S. imports from Brazil of the items covered by the CVD/AD on Canadian softwood products increased more than 20% in the last two years.

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63 *Forbes' articles: http://www.forbes.com/sites/karlsson/2016/08/14/winning-brazilian-wines-from-vale-dos-vinhedos/#79d49e0b3fb5 and http://www.forbes.com/sites/karlsson/2016/08/10/fine-wines-from-brazil-to-go-with-the-olympics/#1ad52fad3e2e*

64 *Source: http://aliceweb.mdic.gov.br (NCM 2204).*

65 *https://www.trade.gov/td/ocg/oenological.htm*

66 *https://www.ttb.gov/agreements/us_ec_wine_agreement.shtml*

APPENDICES

Table VI: Brazil-U.S. bilateral trade (2010-2017)

Source: USITC
(In US$ millions)

Year	U.S. imports from Brazil	U.S. exports to Brazil	Brazilian balance	Trade flow
2010	23,958	35,418	-11,460	59,376
2011	31,737	43,019	-11,282	74,756
2012	32,123	43,771	-11,648	75,894
2013	27,541	44,106	-16,565	71,647
2014	30,021	42,432	-12,411	72,453
2015	27,441	31,641	-4,200	59,082
2016	26,054	30,107	-4,053	56,161
2017	29,427	37,077	-7,650	66,504

Table VII: Brazil-U.S. bilateral trade (2017)

Source: USITC
(In US$ millions)

Month	U.S. imports from Brazil	U.S. exports to Brazil	Brazilian balance	Trade flow
January	2,230	2,737	-507	4,967
February	2,006	2,648	-642	4,654
March	2,402	2,773	-371	5,175
April	2,336	2,809	-473	5,145
May	2,472	3,320	-848	5,792
June	2,577	2,952	-375	5,529
July	2,487	3,173	-686	5,660
August	2,887	3,233	-346	6,120
September	2,386	3,240	-854	5,26
October	2,477	3,642	-1,165	6,119
November	2,829	3,137	-308	5,966
December	2,339	3,413	-1,074	5,752
Total	29,427	37,077	-7,650	66,504

Table VIII: U.S. exports and imports (2017)

Source: USITC
(In US$ millions)

Rank	Country	Exports	Rank	Country	Imports
1	Canada	282,472	1	China	481,881
2	Mexico	242,989	2	Canada	295,190
3	China	130,370	3	Mexico	294,741
4	Japan	67,696	4	Japan	131,120
5	United Kingdom	56,329	5	Germany	124,139
6	Germany	53,493	6	South Korea	71,827
7	South Korea	48,277	7	United Kingdom	57,805
8	Netherlands	42,230	8	France	47,644
9	Hong Kong	40,024	9	India	44,741
10	Brazil	37,077	10	Italy	44,005
11	France	33,582	11	Taiwan	40,708
12	Belgium	29,911	12	Thailand	28,595
13	Singapore	29,753	13	Brazil	27,405
14	Taiwan	25,754	14	Singapore	18,235
15	India	25,700	15	Venezuela	15,564
16	Australia	24,601	16	Colombia	14,057
17	Switzerland	21,694	17	Australia	10,862
18	United Arab Emirates	20,005	18	Chile	8,880
19	Italy	18,323	19	South Africa	7,335
20	Saudi Arabia	16,261	20	Argentina	3,948
21	Chile	13,608	21	Nigeria	1,916
22	Colombia	13,272	22	Egypt	1,406
23	Malaysia	12,826	23	Uruguay	606
24	Israel	12,544	24	Paraguay	162

Table IX: Chief U.S. products exported to Brazil (2017)

Source: USITC
(In US$ millions)

Rank	Category (HS)	Product description	Exports
1	2710	Petroleum oils or bituminous mineral oils (not including unrefined oils); non-specified (or included in other categories) preparations containing, as basic constituents, at least 70% (in weight) petroleum oils or bituminous mineral oils; waste oils.	6,489
2	8800	Aircraft, aerospace equipment and parts.	5,368
3	8708	Automobile parts and accessories for positions 87.01 to 87.05.	1,648
4	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal.	1,000
5	8542	Electronic integrated circuits	957
6	8517	Telephone devices, including telephones for cellular and other wireless networks.	804
7	2711	Petroleum gases and other gaseous hydrocarbons.	784
8	2207	Non-denatured ethyl alcohol of an alcoholic strength, by volume, of at least 80 % by vol.; ethyl alcohol and spirits; denatured alcohol of any alcohol content by volume.	754
9	3004	Medications (excluding products in positions 30.02, 30.05 or 30.06) composed of blended or unblended ingredients, prepared for therapeutic or preventive treatment, and packaged for retail sale.	745
10	3105	Mineral or chemical fertilizers containing two or three of the following ingredients: nitrogen, phosphorous and potassium; other fertilizers; chapter 31 products presented in tablet or similar form, or in packages whose gross weight does not exceed 10 kg.	656

Table X: Chief Brazilian products imported into the United States (2017)

Source: USITC
(In US$ millions)

Rank	Category (HS)	Product description	U.S. import from Brazil
1	2709	Unrefined petroleum or bituminous mineral oils.	3,710
2	8802	Other aircraft (e.g., helicopters, airplanes); spacecraft (including satellites) and their launching and sub-orbiting craft.	2,477
3	9802	Articles donated for social assistance and charity; imports of exported and returned articles; articles having been upgrade or used abroad, except those under warranty.	1,847
4	9801	Export of imported articles for repair: import of exported and returned articles; import of exported and returned animals.	1,356
5	7207	Semi-manufactured unalloyed steel and iron products.	1,131
6	0901	Coffee, roasted or decaffeinated; coffee husks and skin; coffee substitutes containing coffee.	1,063
7	4703	Chemical wood pulp, soda or sulfate (excluding dissolving grades).	1,049
8	6802	Worked monumental or building stone (excluding position 68.01) and articles thereof; Glass cubes and other glass small wares for mosaics, of natural stone; colored granules, chippings and powder of natural stone, artificially-colored.	674
9	7108	Gold (including plated or with platinum), rough or semi-finished, or powdered.	630
10	2710	Petroleum oils or bituminous mineral oils (not including unrefined oils); non-specified (or included in other categories) preparations containing, as basic constituents, at least 70% (in weight) petroleum oils or bituminous mineral oils; waste oils.	611

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