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Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

BRAZIL

This report, prepared for the seventh 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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Document WT/TPR/G/358 contains the policy statement submitted by Brazil.

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CONTENTS

SUMMARY	. 7
1 ECONOMIC ENVIRONMENT	12
1.1 Main Features of the Economy	12
1.2 Recent Economic Developments	13
1.2.1 Overview	13
1.2.2 Monetary and exchange rate policy	15
1.2.3 Fiscal policy	15
1.2.4 Labour market policies	17
1.2.5 Balance of payments	17
1.3 Developments in Trade and Investment	18
1.3.1 Trends and patterns in merchandise and services trade	18
1.3.1.1 Merchandise trade	18
1.3.1.2 Services trade	21
1.3.2 Trends and patterns in FDI	21
2 TRADE AND INVESTMENT REGIMES	25
2.1 General Constitutional and Institutional Framework	25
2.2 Structure of Trade Policy Formulation	26
2.2.1 Executive branches of government	26
2.2.2 Advisory, planning and other bodies	27
2.3 Trade Policy Objectives	27
2.4 Trade Laws and Regulations	28
2.4.1 Regulatory framework and reform	28
2.4.2 Transparency	29
2.5 Trade Agreements and Arrangements	31
2.5.1 WTO	31
2.5.2 Regional and preferential trade agreements (RTAs and PTAs)	32
2.5.2.1.1 MERCOSUR	36
2.5.2.1.2 Other arrangements	37
2.6 Foreign Investment Regime	37
3 TRADE POLICIES AND PRACTICES BY MEASURE	41
3.1 Measures Directly Affecting Imports	41
3.1.1 Customs procedures, valuation, and requirements	41
3.1.2 Rules of origin	44
3.1.3 Tariffs	45
3.1.3.1 Applied MFN tariff	45
3.1.3.2 Bindings	49
3.1.3.3 Preferences	49
3.1.4 Other charges affecting imports	50
3.1.5 Import prohibitions, restrictions, and licensing	53

3.1.6 Anti-dumping, countervailing, and safeguard measures	55
3.1.7 Other measures	57
3.2 Measures Directly Affecting Exports	57
3.2.1 Customs procedures and requirements	57
3.2.2 Taxes, charges, and levies	58
3.2.3 Export prohibitions, restrictions, and licensing	58
3.2.4 Export support and promotion	59
3.2.4.1 Export support schemes	59
3.2.4.2 Export-processing zones	61
3.2.4.3 Export promotion	61
3.2.5 Export finance, insurance, and guarantees	62
3.3 Measures Affecting Production and Trade	66
3.3.1 Incentives	66
3.3.1.1 Overview	66
3.3.1.2 Free-trade zones	68
3.3.1.3 Federal financing facilities	70
3.3.1.4 Research and development (R&D) programmes	72
3.3.2 Standards and other technical requirements	73
3.3.3 Sanitary and phytosanitary requirements	75
3.3.4 Competition policy and price controls	78
3.3.4.1 Competition policy	78
3.3.4.2 Price controls	80
3.3.5 State trading, state-owned enterprises, and privatization	81
3.3.6 Government procurement	82
3.3.7 Intellectual property rights	85
3.3.7.1 Overview	85
3.3.7.2 Industrial property	88
3.3.7.3 Copyright	89
3.3.7.4 Enforcement	89
4 TRADE POLICIES BY SECTOR	91
4.1 Agriculture, Forestry, and Fisheries	93
4.1.1 Main features	93
4.1.2 Policy and institutional framework	94
4.1.3 Border measures	95
4.1.4 Domestic support	96
4.1.4.1 Agricultural/rural credit	98
4.1.4.1.1 Minimum price guarantees	103
4.1.4.1.2 Measures to promote family farming	106
4.1.4.1.3 Other measures	107
4.2 Energy	109

4.2.1 Main features	109
4.2.2 Policy and institutions	109
4.2.3 Hydrocarbons and biofuels	110
4.2.3.1 Oil	110
4.2.3.1.1 Main features	110
4.2.3.1.2 Upstream – Exploration and production (E&P) arrangements	111
4.2.3.1.3 Downstream	113
4.2.3.2 Gas	114
4.2.3.3 Biofuels	115
4.2.3.3.1 Ethanol	115
4.2.3.3.2 Biodiesel	117
4.2.4 Electricity	118
4.2.4.1 Main features	118
4.2.4.2 Policy and institutions	119
4.2.4.3 Regulatory and operational aspects	120
4.3 Manufacturing	123
4.3.1 Main features	123
4.3.2 Policy and institutions	123
4.3.3 Border measures	124
4.3.4 Domestic support	124
4.3.5 Automotive sector	126
4.3.6 Other activities	129
4.4 Services	130
4.4.1 Main features	130
4.4.2 Commitments under the General Agreement on Trade in Services and RTAs	131
4.4.3 Financial services	132
4.4.3.1 Banking and finance	133
4.4.3.2 Insurance	137
4.4.4 Telecommunications	139
4.4.5 Transport	146
4.4.5.1 Air transport	147
4.4.5.1.1 Airline services	147
4.4.5.1.2 Airport and auxiliary services	150
4.4.5.2 Maritime transport and ports	151
4.4.5.2.1 Shipping	151
4.4.5.2.2 Port services	154
4.4.6 Distribution and e-commerce	156
4.4.6.1 Distribution	156
4.4.6.2 E-commerce	156
4.4.7 Tourism	158

4.4.8 Professional serv	vices	159
4.4.8.1 Legal services		160
4.4.8.2 Accounting and	d auditing services	161
4.4.8.3 Architectural a	and urban planning services	161
4.4.8.4 Medical service	es	162
5 APPENDIX TABLES	3	164
	CHARTS	
Chart 1.1 Product comp	osition of merchandise trade, 2012 and 2016	19
Chart 1.2 Direction of m	nerchandise trade, 2012 and 2016	20
Chart 3.1 Frequency dis	stribution of MFN tariff rates, 2017	46
Chart 3.2 Tariff escalation	on, by 2-digit ISIC industry, 2017	47
Chart 3.3 Average appli	ied and bound tariff rates, by HS section, 2017	49
Chart 3.4 Product cover	rage of selected preferential agreements, 2016	50
Chart 3.5 ZFM trade bal	lance, 2012-16	69
Chart 3.6 ZFM expendit	ure on inputs and sales revenue, 2012-16	70
Chart 3.7 Industrial pro	perty applications and decisions, 2013-16	88
Chart 4.1 Main agricultu	ural exports, 2012-16	94
Chart 4.2 Interest rate s	spread, January 2008 to December 2016	136
	TABLES	
Table 1.1 Basic econom	ic and employment indicators, 2012-16	12
	roeconomic indicators, 2012-16roeconomic indicators, 2012-16	
Table 1.2 Selected macr		13
Table 1.2 Selected macro	roeconomic indicators, 2012-16	13
Table 1.2 Selected macro Table 1.3 Public sector for Table 1.4 Balance of page 1.4 Bal	roeconomic indicators, 2012-16fiscal balance, 2012-16	13 16 18
Table 1.2 Selected macro Table 1.3 Public sector for Table 1.4 Balance of pay Table 1.5 Foreign direct	roeconomic indicators, 2012-16fiscal balance, 2012-16	13 16 18
Table 1.2 Selected macro Table 1.3 Public sector for Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct	roeconomic indicators, 2012-16 fiscal balance, 2012-16 yments, 2012-16 t investment (equity) inflows by sector, 2012-16	13 16 18 21
Table 1.2 Selected macro Table 1.3 Public sector for Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct	roeconomic indicators, 2012-16	13 16 18 21 22
Table 1.2 Selected macro Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign d	roeconomic indicators, 2012-16	13 16 18 21 22 23
Table 1.2 Selected macro Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute sectors.	roeconomic indicators, 2012-16	13 16 18 21 22 23 24
Table 1.2 Selected macro Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute stable 2.2 Brazil's RTAs and Table 2.2 Brazil's RTAS an	roeconomic indicators, 2012-16	131618212223243233
Table 1.2 Selected macro Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute stable 2.2 Brazil's RTAs at Table 2.3 Indicative list	roeconomic indicators, 2012-16	13 16 21 22 23 24 32 33
Table 1.2 Selected mach Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute of Table 2.2 Brazil's RTAs at Table 2.3 Indicative list Table 3.1 Distribution of	roeconomic indicators, 2012-16	1316182122232432333943
Table 1.2 Selected mach Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute 9 Table 2.2 Brazil's RTAs 2 Table 2.3 Indicative list Table 3.1 Distribution of Table 3.2 Structure of the Table 3.2 Structure of the Table 3.3 Public sector of the Table 3.3 Public sector of the Table 3.3 Structure of the Table 3.3 Public sector of the Table 3.4 Public sector of the Table 3.5 Pub	roeconomic indicators, 2012-16	1316182122232432333943
Table 1.2 Selected macro Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute 9 Table 2.2 Brazil's RTAs 3 Table 2.3 Indicative list Table 3.1 Distribution of Table 3.2 Structure of the Table 3.3 Summary and	roeconomic indicators, 2012-16	13161821222324323339434547
Table 1.2 Selected mach Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute 9 Table 2.2 Brazil's RTAS 7 Table 2.3 Indicative list Table 3.1 Distribution of Table 3.2 Structure of the Table 3.3 Summary and Table 3.4 Federal tax research	roeconomic indicators, 2012-16	1316182122232432333943454751
Table 1.2 Selected macro Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute 3 Table 2.2 Brazil's RTAS Table 2.3 Indicative list Table 3.1 Distribution of Table 3.2 Structure of the Table 3.3 Summary and Table 3.4 Federal tax results and Table 3.5 Forgone feder Table 3.6 Import prohibitions.	roeconomic indicators, 2012-16	1316182122232432394345475153
Table 1.2 Selected macro Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute 3 Table 2.2 Brazil's RTAS Table 2.3 Indicative list Table 3.1 Distribution of Table 3.2 Structure of the Table 3.3 Summary and Table 3.4 Federal tax results and Table 3.5 Forgone feder Table 3.6 Import prohibitions.	roeconomic indicators, 2012-16	1316182122232432394345475153
Table 1.2 Selected mach Table 1.3 Public sector of Table 1.4 Balance of pay Table 1.5 Foreign direct Table 1.6 Foreign direct Table 1.7 Foreign direct Table 1.8 Foreign direct Table 2.1 WTO dispute 9 Table 2.2 Brazil's RTAs 8 Table 2.3 Indicative list Table 3.1 Distribution of Table 3.2 Structure of the Table 3.3 Summary and Table 3.4 Federal tax results Table 3.5 Forgone feder Table 3.6 Import prohibitable 3.7 Trade remedy	roeconomic indicators, 2012-16	131621222324323339434547515356

Table 3.10 PROEX implementation, 2013-16	.63
Table 3.11 BNDES total disbursements for exports of goods and services, 2013-16	.64
Table 3.12 SCE/FGE activity, 2013-16	.66
Table 3.13 Subsidy programmes notified to the WTO, 2011 and 2012	.68
Table 3.14 Brazilian development bank support, 2013-16	.70
Table 3.15 BNDES disbursements by credit scheme, 2013-16	.71
Table 3.16 Sectoral science, technology and innovation (S, T&I) funds, 2017	.72
Table 3.17 Competition enforcement, 2013-16	.79
Table 3.18 Regulated prices, 2017	.80
Table 3.19 Key features of federal state-owned enterprises (SOEs), 2017	.81
Table 3.20 Product-specific preference margins in public tendering, 2017	.84
Table 3.21 Federal administration procurement, by methods, 2013-16	.85
Table 3.22 National IPR legislation, 2017	.86
Table 4.1 Brazil's agribusiness trade balance, 2010-16	.93
Table 4.2 Agricultural support, by commodity, 2012-15	.97
Table 4.3 Direct payment and general services support, 2012-15	.97
Table 4.4 Federal Government agricultural support programmes, 2013-16 (prevailing norms for crop-year 2016/17)	.98
Table 4.5 Sources of agricultural/rural credit, 2010-16	101
Table 4.6 Price support programmes, 2014/2015 and 2015/16	
Table 4.7 PGPM operations, 2013-16	105
Table 4.8 Budget allocated to family farming programmes and measures, harvest year 2012/13	106
Table 4.9 Regulatory framework for oil and gas exploration and production, 2017	111
Table 4.10 Timetable for compliance with INOVAR-Auto Programme requirements, 2013-17	127
Table 4.11 Structure of the financial system, 2010-16	132
Table 4.12 Banking soundness indicators, 2012-16	135
APPENDIX TABLES	
APPENDIX TABLES Table A1.1 Merchandise exports, by group of products, 2012-16	164
Table A1.1 Merchandise exports, by group of products, 2012-16	165
Table A1.1 Merchandise exports, by group of products, 2012-16	165 166
Table A1.1 Merchandise exports, by group of products, 2012-16	165 166 167
Table A1.1 Merchandise exports, by group of products, 2012-16	165 166 167 168
Table A1.1 Merchandise exports, by group of products, 2012-16	165 166 167 168 169
Table A1.1 Merchandise exports, by group of products, 2012-16	165 166 167 168 169
Table A1.1 Merchandise exports, by group of products, 2012-16	165 166 167 168 169 171 172
Table A1.1 Merchandise exports, by group of products, 2012-16	165 166 167 168 1169 171 172

SUMMARY

- 1. Since its previous Trade Policy Review in 2013, Brazil's largely domestic demand-driven economy slowed down and entered a severe recession in 2015-16, triggered by deteriorating terms of trade and exacerbated by a bout of political uncertainty. Annual GDP growth dropped from 3% in 2013 to 0.9% in 2014 and then turned negative in 2015 and 2016 with consumption and gross fixed capital formation following a similar trend. The recession, one of the most severe in Brazil's history, has been accompanied by a steep rise in inflation (8.7% in 2016) and unemployment (11.3% in 2016) as well as fiscal discipline challenges. While the Brazilian financial system was not significantly impacted by the economic downturn, domestic lending became more cautious and borrower demand decreased.
- 2. During the review period, trade and trade-related reform initiatives aimed at buttressing growth were undertaken in several areas, including in trade facilitation, anti-dumping, production and trade incentives (e.g., SME support), state-owned enterprises, energy, manufacturing, transport infrastructure, and more are under consideration. Monetary policy interventions were calibrated to contain inflation, which remained at the upper limit of the tolerance range established by the Central Bank of Brazil (BCB) during most of the period under review. The easing of inflationary pressures since October 2016 has enabled the BCB to progressively cut its policy rate from a peak of 14.15%, which should help rekindle growth. The BCB has not sought to influence the exchange rate, limiting its currency market interventions to containing excessive short-term volatility. During 2013-15, the real depreciated by around 20% in real effective terms, moving towards levels more consistent with fundamentals, but appreciated by around 6% in 2016.
- 3. Fiscal policy has experienced difficulties responding to the severe economic downturn and public expenditure pressures arising from Brazil's demographic dynamics. As a result, the federal budget's primary balance registered widening deficits during 2014-16, interrupting a decade-long succession of surpluses. The downward trajectories of gross and net public sector debt were also reversed, with respective increases from 51.5% to 69.9% of GDP and from 30.5% to 46.2% of GDP between 2013 and 2016. The loss of investment grade in the last quarter of 2015 did not trigger much volatility in public debt management, due to low levels of exposure to foreign currencies and overseas investors. The authorities have taken steps towards fiscal consolidation, including measures to improve the management of public finances and state-controlled enterprises, and the adoption of a New Fiscal Regime in December 2016. Nevertheless, structural deficiencies, such as the complex and burdensome tax system, and federal and sub-federal budget rigidities, are yet to be addressed.
- 4. The Brazilian economy remains inward oriented, with aggregate two-way trade in goods and services representing about 25% of GDP throughout the review period. International trade and foreign direct investment (FDI) trends reflect the continued importance of the European Union as Brazil's main supplier and a key destination market, although in 2015 China became the single most important destination for Brazilian merchandise exports. Brazil continued to attract sizable FDI inflows, ranging between 2% and 3.3% of GDP, which fully financed the current account deficit in both 2015 and 2016.
- 5. Brazil remains open to and encourages inward FDI, which is prevalent across the economy. There are several sector-specific foreign ownership prohibitions (certain postal services, and nuclear energy) or limitations (e.g. air transport, financial institutions, health services, rural land acquisition, broadcasting and publishing media, fishing, mining, and hydrocarbons exploration). During the review period, certain healthcare services were further opened to FDI. In addition, a new model of investment agreements, built upon UNCTAD and OECD guidelines, was used to negotiate and sign a series of bilateral investment, promotion and protection treaties whose ratification is under way.
- 6. Since its last TPR in 2013, Brazil undertook several constitutional amendments including one related to curbing public spending growth. The institutional framework for trade policy formulation remained broadly unchanged except for the transfer of the Executive Secretariat of the Foreign Trade Board (CAMEX) from the Ministry of Industry, Foreign Trade and Services to the Ministry of Foreign Affairs.
- 7. The overall thrust of Brazil's trade and trade-related policies has not changed during most of the period under review. Their stated trade and trade-related policy objectives have been those of integration into global value chains and raising the competitiveness of domestic products.

Notwithstanding some adjustments, *inter alia*, due to the recent economic slowdown, its longstanding programmes aimed at fostering technological development, shielding certain domestic producers from external competition, attracting investment, and promoting and diversifying exports, remain relatively unchanged.

- 8. Brazil remains committed to, and an active participant in, the multilateral trading system. During the review period, it improved its WTO commitments by ratifying the Trade Facilitation Agreement (TFA) and depositing its instrument of acceptance of the Fifth Protocol on Financial Services. It now also grants preferential treatment to services and service suppliers from least developed countries (LDCs). During the review period, Brazil made many notifications to the WTO, though most of its trade agreements under the Latin America Integration Association (LAIA) have not yet been reviewed; according to the authorities, action is being taken to address this matter. Brazil was directly involved in seven WTO disputes, five as a complainant and two as a respondent.
- 9. While Brazil continues to work on strengthening regional economic integration through RTAs negotiated within the framework of the Southern Common Market (MERCOSUR) and the Latin American Integration Association (LAIA), it has also placed emphasis on RTAs negotiated with trading partners outside the region. During the review period, three agreements entered into force (Bolivarian Republic of Venezuela, Guyana/Saint Kitts and Nevis, and Southern African Customs Union), four were concluded with their entry into force pending (Egypt, Colombia, Palestine, and Peru), and two (European Union, and Mexico) are still being negotiated. The lack of a common nomenclature for tariff preferences granted by Brazil under its RTAs undermines their comprehension and full utilization by traders; consequently, the share of aggregate preferential imports in Brazil's total imports remains rather modest, ranging between 13% and 14.5% during 2013-16.
- 10. No major regulatory reform was undertaken during the review period. The trade-related regulatory policy agenda remains strongly focused on procedural aspects within competent agencies, rather than on an overall simplification of the relatively complex regulatory system. Carrying out regulatory impact assessments (RIA) is not yet a consistent practice across the whole administration. Negative economic growth and fiscal scarcity brought the issue of improving the regulatory system to a strategic position in the policy agenda, so as to attract investment, raise competitiveness and create jobs. Brazil attaches importance to making laws transparent and readily accessible, including by foreigners; additional efforts have been undertaken to make trade and trade-related information available online.
- 11. The tariff remains one of Brazil's main trade policy instruments, and a significant, albeit declining, source of tax revenue (3.6% of total fiscal revenue in 2016). Brazil applies the MERCOSUR Common External Tariff (CET), with some country-specific derogations. It grants at least most-favoured-nation (MFN) tariff treatment to all trading partners. Brazil's 2017 applied MFN tariff is entirely ad valorem and comprises 19 bands, with rates ranging from zero to 55%. The simple average applied MFN tariff declined slightly from 11.7% in 2012 to 11.6% in 2017; for dutiable lines, the decline was from 12.7% to 12.6%. During the review period, Brazil phased out the higher-than-CET rates introduced in 2012 on 100 tariff lines under a temporary MERCOSUR mechanism.
- 12. Brazil bound its entire tariff during the Uruguay Round at rates between zero and 55% for agricultural products (WTO definition), and from zero to 35% for non-agricultural products. The gap between the average bound and applied rates is some 18.5 percentage points. Applied MFN rates on some 134 tariff lines (up from 120 in 2012) exceed, sometimes partially (due to differences in aggregation levels), Brazil's bindings, *inter alia*, due to CET commitments; in these cases the importer may request application of the bound rate.
- 13. During the review period, in addition to ratifying the TFA, Brazil took steps to upgrade its single window and its authorized economic operator programme. Brazil maintains a system of automatic and non-automatic licences for imports of various products, regardless of their origin. At end-2016, imports classifiable under some 137 tariff lines were subject to automatic licensing, whereas imports subject to non-automatic licensing requirements spanned at least 5,460 tariff lines (more than half of Brazil's entire tariff). Import licences must be obtained prior to customs clearance; if non-automatic licensing requirements apply, importers are generally advised to obtain the licence before the goods are shipped. Non-automatic licensing is also used in the administration of duty and tax concessions, whereby imports must undergo a "similarity exam" to ascertain that no equivalent domestic production exists.

- 14. Brazil remains a significant user of trade remedies, particularly anti-dumping (AD) measures. During the period under review, 123 new AD investigations were initiated, and at 31 December 2016, 163 definitive AD measures were in place, covering a wide range of sectors. The regulatory framework for investigation and application of AD measures was amended in 2013 with a view to strengthening trade defence. The main innovations included: mandatory preliminary determinations; refinements to the definition of domestic industry; a lower industry representativeness threshold for the admissibility of AD investigation requests; retroactive application of AD duties; and formalization of on-site investigation procedures. As from end-July 2015, administrative procedures relating to AD investigations have been carried out electronically.
- 15. Brazil's legal and institutional framework relating to the implementation and administration of the TBT Agreement remained broadly unchanged during the review period. Brazil's approach to granting equivalence remains based on the acceptance of test results, without explicit recognition of foreign technical regulations. Most technical regulations enacted in Brazil are based on international or MERCOSUR standards; whenever this is not the case, they are based on performance criteria. Proposed technical regulations deemed to have trade effects are forwarded to the WTO for Members' comments; during the review period, most such notifications were made less than 60 days before entry into force.
- 16. Brazil's sanitary and phytosanitary system is based on risk analysis which 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. Brazil maintains an Importation Alert Regime (RAI) targeting foreign establishments whose shipments of animal products have been found to be non-compliant with Brazilian SPS requirements.
- 17. Export taxes remain in place for raw hides and skins, cigarettes, and arms and ammunition. Brazil maintains a number of programmes intended to enhance the competitiveness of export-oriented companies, in particular small-scale enterprises, and to increase exports. 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 is geared towards promoting 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 to securing automatic eligibility for financing.
- 18. Brazil's internal taxation regime remains overly complex, including in the treatment of imported goods and services; customs duties and other taxes on foreign trade transactions account up to 15% of federal tax revenue. Domestic and cross-border transactions are subject to various federal and sub-federal levies; their cross-cumulation for tax base purposes is not uncommon. Incentives and government assistance for production and trade are available at both the federal and sub-federal levels. The scope of Brazil's incentive programmes may be regional, sectoral, or outcome-specific (e.g. fostering research). The range of support measures includes: administered interest rate or concessional financing; tax concessions; financial contributions; accelerated depreciation; guarantees; grants; advisory services; and credit insurance. Incentives granted in the context of certain programmes promoting information technology, telecommunications and automation goods 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. Incentives conditional on compliance with PPB criteria are also granted within designated free-trade zones, with a view to promoting the development and regional integration of border areas in Brazil's north region.
- 19. Brazil, a non-party to the plurilateral Agreement on Government Procurement, maintains a decentralized system of independent procurement jurisdictions at all levels of government that share a common set of rules established by the Federal Government. Tendering via reverse auction is the main mode of awarding contracts. In case of equivalent offers, the legislation allows for preferences for goods and services produced in Brazil, or produced/supplied by domestic companies or by companies that invest in technology development in Brazil. The preferential treatment may include quotas, preference margins, as well as tendering procedures completely restricted to small enterprises based in Brazil. Specific provisions regulate the preferences applicable to micro and small enterprises, and to PPB-compliant goods and services. Seventeen

decrees establishing public procurement preference margins, ranging from 8% to 25%, for various PPB-compliant products, expired at end-December 2016 and March and June 2017.

- 20. The Federal Government still controls a relatively large number of companies with commercial activities in a wide range of industries, including hydrocarbons, electricity, port services, financial services, transportation, telecommunications, and health services. Some federal state-owned enterprises (SOEs) continue to hold dominant positions in their respective markets. In addition, there are many "public companies" owned or controlled by state and municipal governments. In 2016, Brazil amended the legal status of enterprises with public participation at any level of government, with a view to strengthening their governance and transparency, including in procurement operations.
- 21. Brazil's intellectual property rights (IPR) legislation covers all the major aspects covered by the TRIPS Agreement. In some areas, including copyright, rights exceed the minimum terms laid down in the Agreement. It continues to struggle with significant backlogs and delays in the processing of applications for IPR protection, which may be hampering technological innovation. Protection was further enhanced with the expansion of international commitments, and the introduction of penalty provisions for infractions in certain areas.
- 22. Brazil remains a major player in the global trade of certain agricultural commodities. During the review period, the sector's share in gross value added (5.5% in 2016) remained relatively stable, and labour productivity seemingly low, compared to the rest of the economy. The average MFN tariff for agricultural products (10.2%) remains unchanged and the 55% peak rate of the Customs Tariff affects only desiccated coconuts. Although it continues to provide a low and decreasing level of support to its agricultural producers compared with other countries, Brazil maintains several domestic support measures, including administered interest rate and concessional credit lines (e.g. under the equalization principle), price support mechanisms, and crop insurance premium support to which emphasis has lately been shifted. Mandatory bank reserve requirements for the financing of agricultural activities remain in place. The high level of rural debt, a major challenge, is being addressed. A state company continues to be involved in the operation of some agricultural policy measures (e.g. storage and minimum price guarantees).
- Brazil, a net exporter of crude oil with one of the greenest energy matrixes in the world, remains nearly self-sufficient in primary energy production. Its state-controlled PETROBRAS has maintained its dominant position both in upstream and downstream hydrocarbons activities. To address fuel sales-related financial losses, in 2016, PETROBRAS, a price setter in the domestic fuels market, implemented a new pricing policy for gasoline and diesel at the refinery gate. Tax incentives for oil and gas exploration and production remain in place. The requirement for a minimum 30% stake of PETROBRAS in pre-salt fields - which together with local content requirements seems to have caused development delays - and PETROBRAS' right to be the sole operator in pre-salt oil reserves were removed in November 2016. Efforts to reform the local content regime in this area are also under way. Biofuel production, an activity subject to cross-subsidization elements, continued to be assisted, inter alia, through: support to sugarcane production and fuel-flex cars; lending incentives to expand the industrial capacity for sugar and ethanol production; and, increased mandatory blending ratios for both gasoline and diesel. The state-owned ELETROBRAS continues to play a major role in the electricity sector and an alternative bidding criterion for concessions of hydropower plants was introduced. Since 2015, a tariff flag system has been applied allowing the monthly pass-through of the extra costs of generating thermal energy to consumers. Electricity tariffs, set by the regulator ANEEL, continue to ensure cross-subsidization among different consumer categories; in addition, the tax burden on end-user electricity tariffs remains significant and differs greatly across consumer groups.
- 24. Manufacturing remains large (11.7% of gross value added, 2016), albeit declining, and diversified. Activities are either thriving or facing hard times, partly because of their weak integration into the world economy (e.g. the automotive industry) as several structural issues, including the so-called "Brazil cost", continue to affect the sector's competitiveness. A 2016 More Productive Brazil initiative is aimed at implementing lean manufacturing principles to raise productivity levels. The average MFN applied tariff for manufacturing products (11.8%) remains virtually unchanged. Clothing, textiles, and transport equipment continue to benefit from the activity's highest tariff protection (35%), the main tool in an apparent tariff-jumping policy to attract FDI. In addition to several export incentives, remission of duties and taxes on exports under the Reintegra scheme, originally due to expire at end-2013, were made permanent.

Domestic support remained in place in the form of tax and other non-tax incentives including administered interest rate or concessional loans, rental subsidies, and temporarily expanded government procurement preferences to local suppliers. Production step-related local content requirements tied to domestic support measures continue to shield domestic producers from foreign competition. Industry-specific incentives were continued for some sectors, including the automotive (INOVAR-Auto, until 2017), information technology, aeronautic, fertilizer, and pharmaceutical industries. Action was taken to reduce tariffs of cell-powered and electric cars, while the duty-free treatment of motor vehicles from Argentina, Mexico and Uruguay was delayed until 2019.

- 25. Services, a key component of overall export competitiveness, remain the main contributor to Brazil's gross value added (73.3% in 2016) and job creation. However, despite improvements in certain areas, services continue to suffer from structural weaknesses hindering the growth potential of the entire economy. During the review period, Brazil's GATS commitments were improved and three of Brazil's RTAs now contain WTO-plus services commitments. The Government-owned banks' share of total bank assets rose, and high interest spreads remain in place, *inter alia*, due to the lack of competitive pressure on major banks. Although non-independent the Central Bank continues to enjoy administrative autonomy; legislation allowing for more autonomy could possibly be considered in the future. A significant relaxation was undertaken of reinsurance requirements on foreign insurance companies, such as the obligation to make a cession to a local reinsurer and an intra-group cession cap.
- 26. Strong market competition continued to lead to further improvements in the quality and tariffs of telecommunication services. During the review period, local content requirements were used for auctioning radio spectrum frequencies. Certain audiovisual and broadcasting services remain, *inter alia*, subject to foreign investment limitations and local content requirements or preferences.
- 27. Initiatives were undertaken to address transport and related infrastructure bottlenecks. The domestic aviation market remains highly concentrated and domestic public air transport services (cabotage) reserved for Brazilian legal persons. The main commercial airports remain state owned and operated by a public enterprise. In maritime transport, the national flag fleet remains concentrated and dominated by vessels of the state company PETROBRAS. Cabotage remains reserved for Brazilian flag vessels, except under certain conditions. The main ports continue to be either operated by state or municipal governments or are administered by a public-owned firm, although the majority of cargo movements are undertaken by private terminals. Foreign vessels remain subject to a lighthouse fee.
- 28. Foreign entry into wholesale trade services is allowed except for solid, liquid and gaseous fuels and related products unless domestic requirements are met, whereas commercial presence in retail services and franchising remains unrestricted. A 2014 digital marketing law established the framework for the use of the Internet. Virtually all international e-purchases are charged with a 60% flat equalization tax. In addition to existing tax incentives, tourism-specific concessional or administered interest rate finance programmes were introduced to cope with the high demand from the mega events hosted during the review period.
- 29. Regarding professional services, bilateral arrangements were signed in 2014 (architects and urban planners, Portugal), 2015 (engineers) and, 2016 (architects and urban planners, France). A 2013 More Doctors Programme has allowed foreign doctors to work in Brazil without meeting the standard working requirements. In 2015, healthcare services were opened to foreign investment.
- 30. The Brazilian economy is projected to enter a gradual recovery in 2017, but growth is expected to remain weak for a prolonged period. Despite Brazil's mainly solid economic fundamentals, downside risks to the economic outlook remain. The economy remains vulnerable to a re-intensification of political uncertainty, as well as to delays in addressing fiscal imbalances. Future prosperity and sustainable growth depend on the implementation of productivity-enhancing structural reforms in several areas including revamping the overly complex tax and incentives regime and reducing the regulatory burden on businesses, as well as closing infrastructure gaps and addressing pension and labour market issues. These reforms would increase the resilience of the Brazilian economy, thus enabling it to continue to meet its broad-based economic and welfare objectives, including inclusive growth and a narrower wealth divide.

1 ECONOMIC ENVIRONMENT

1.1 Main Features of the Economy

- 1.1. Underpinned by immense natural resources, a strong industrial base and a sizeable domestic market, the Brazilian economy is among the ten largest in the world. Economic activity is relatively diversified, with the GDP share of services on an upward trend and those of manufacturing and mining on a downward path (Table 1.1). Despite their comparatively modest contributions to GDP, agriculture and mining remain important drivers of Brazilian exports.
- 1.2. The Brazilian economy is inward oriented, with aggregate two-way commercial flows in goods and services representing about 25% of GDP throughout 2012-16. Moreover, the share of exporters among Brazilian companies is remarkably small, pointing to limited integration into international value chains. Besides policies in favour of Brazilian-based economic activity, these outcomes also reflect Brazil's relatively modest network of preferential trade agreements and structural deficiencies, including gaps in physical infrastructure, limited access to long-term capital, and low overall skill levels.

Table 1.1 Basic economic and employment indicators, 2012-16

	2012	2013	2014	2015	2016
Real GDP at market prices (R\$ billion, 1995 prices)	1,194.4	1,230.3	1,236.5	1,189.8	1,147.1
Real GDP at market prices (US\$ billion, 1995 prices)	611.5	570.6	525.5	357.6	328.8
Current GDP at market prices (R\$ billion)	4,814.8	5,331.6	5,779.0	6,000.6	6,266.9
Current GDP at market prices (US\$ billion)	2,465.2	2,472.8	2,456.0	1,803.6	1,796.2
GDP per capita at current market prices (US\$)	12,363.8	12,278.2	12,106.0	8,791.9	8,713.5
GDP by economic activity at constant 1995 prices	(%age ch				
Agriculture	-3.1	8.4	2.8	3.6	-6.6
Mining and quarrying	-1.9	-3.2	9.1	4.8	-2.9
Transformation/manufacturing	-2.4	3.0	-4.7	-10.4	-5.2
Electricity, gas, water, sewage, and urban cleaning	0.7	1.6	-1.9	-1.5	4.7
Construction	3.2	4.5	-2.1	-6.5	-5.2
Services	2.9	2.8	1.0	-2.7	-2.7
Trade	2.4	3.4	0.6	-8.7	-6.3
Transport, storage, and courier services	2.0	2.6	1.5	-6.6	-7.1
Information services ^a	7.0	4.0	5.3	-0.5	-3.0
Financial intermediation and insurance	1.5	1.8	-0.6	-0.8	-2.8
Real estate	5.1	5.1	0.7	-0.1	0.2
Public administration, education, and public health	1.3	2.2	0.1	-0.1	-0.1
Other services	3.6	1.6	1.9	-1.9	-3.1
Value added by economic activity at current price	es (%)				
Agriculture	4.9	5.3	5.0	5.0	5.5
Mining and quarrying	4.5	4.2	3.7	2.0	1.0
Transformation/manufacturing	12.6	12.3	12.0	11.8	11.7
Electricity, gas, water, sewage, and urban cleaning	2.4	2.0	1.9	2.7	2.9
Construction	6.5	6.4	6.2	5.9	5.6
Services	69.1	69.9	71.2	72.7	73.3
Trade	13.4	13.5	13.6	12.8	12.5
Transport, storage, and courier services	4.5	4.5	4.6	4.5	4.4
Information services ^a	3.6	3.5	3.4	3.2	3.1
Financial intermediation and insurance	6.4	6.0	6.4	7.3	8.3
Real estate	8.8	9.2	9.3	9.7	9.8
Public administration, education, and public health	15.9	16.4	16.4	17.4	17.5
Other services	16.5	16.9	17.4	17.7	17.6
Structure of national employment (% of occupied	l populatio				
Agriculture	13.3	13.1	13.4		
Industry	12.8	12.8	12.2		
Construction	8.5	8.6	8.7		
Services	65.3	65.4	65.7		
Wholesale trade	18.4	18.1	18.4		
Accommodation and food supply	5.1	4.9	5.1		
Transport, storage, and courier services	4.5	4.5	4.5		
Real estate	0.4	0.4	0.4		

¹ Otaviano Canuto, Cornelius Fleischhaker and Philip Schellekens, "The curious case of Brazil's closedness to trade", Vox, 11 January 2015. Viewed at: http://voxeu.org/article/brazil-s-closedness-trade [30 January 2017].

	2012	2013	2014	2015	2016
Financial intermediation and insurance	1.1	1.1	1.2		
Information services ^a	1.3	1.3	1.3		
Public administration	5.3	5.3	5.0		
Education, health, and social services	10.2	10.8	10.8		
Domestic services	6.5	6.4	6.3		
Other collective, social, and personal services	8.5	8.7	8.8		
Other activities	4.0	3.9	4.0		

.. Not available.

a Including telecommunications; computer and related activities (excl. maintenance and repair of office, accounting and computing machinery); motion picture and video activities; radio and television activities; and news agency activities.

Source: Instituto Brasileiro de Geografia e Estatística (IBGE) online information; IFS online information; and data provided by the authorities.

- 1.3. In the decade through 2014, Brazil achieved steady economic growth coupled with poverty reduction and improvements in most social indicators. Healthcare coverage improved markedly, contributing to higher life expectancy and lower child mortality, and primary education enrolment became almost universal. Brazil's estimated Gini coefficient was also on a downward trend, declining from 56.88 in 2004 to 51.48 in 2014.² Despite the extended period of economic and social gains, inequality remains a problem in Brazil. Moreover, it still lags behind other advanced economies in terms of both the educational attainment of its workforce and the quality of its primary education.³ Amid high levels of workforce informality, Brazil's demographic dynamics (a declining birth rate and a growing share of elderly citizens in the total population) are projected to put significant pressure on pension- and health-related public spending within the next decade.⁴
- 1.4. Various studies point out that Brazil has been underinvesting in infrastructure and R&D, and that private investment in both areas has been rather modest.⁵ Reversing the trend of underinvestment and creating a more dynamic business environment would make a significant contribution towards setting the Brazilian economy on a higher growth path. To this end, Brazil would need to streamline public sector governance, both at the federal and sub-federal levels, with a view to: reforming the notoriously complex tax system and, *inter alia*, ending fiscal competition among federative states; modernizing the outdated labour regime; cutting red tape and delays (e.g. for starting a business and for processing IPR applications); and increasing transparency, including in the operations of enterprises with public participation.

1.2 Recent Economic Developments

1.2.1 Overview

1.5. The Brazilian economy expanded between 2012 and 2014 but contracted markedly during 2015-16, mainly on account of eroding confidence in the domestic policy framework, a period of political uncertainty triggered by corruption investigations at PETROBRAS, and a tightening of credit conditions (Table 1.2). Worsening terms of trade and weak global demand also played an important role. The recession, one of the most severe in Brazil's history, has been accompanied by a steep rise in unemployment which reached 12% in December 2016 (averaging 11.3% in 2016).

Table 1.2 Selected macroeconomic indicators, 2012-16

	2012	2013	2014	2015	2016	
National accounts	(Percentage change, unless otherwise indicated)					
Real GDP (at 1995 prices)	1.9	3.0	0.5	-3.8	-3.6	
Consumption	3.2	3.0	1.9	-3.3	-3.5	

² World Bank online information. Viewed at:

http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators [21 April 2017].

⁴ IMF (2016), *Brazil: Selected Issues*, IMF Country Report No. 16/349.

³ Ricardo de Menezes Barboza, Gilberto Borça Jr., Guilherme Tinoco de Lima Horta, João Marco Braga da Cunha, and Felipe Guatimosim Maciel, *A indústria, o PSI, o BNDES e algumas propostas* (2017), BNDES discussion paper 114.

⁵ Ricardo de Menezes Barboza, Gilberto Borça Jr., Guilherme Tinoco de Lima Horta, João Marco Braga da Cunha, and Felipe Guatimosim Maciel, *A indústria, o PSI, o BNDES e algumas propostas* (2017), BNDES discussion paper 114.

Private consumption		2012	2013	2014	2015	2016
Government consumption	Private consumption					
Exports of goods and non-factor services		2.3	1.5	0.8	-1.1	-0.6
Imports of goods and non-factor services 0.7 7.2 1.9 1.14 1.0.3 XGS/GDP (%) (at current market prices) 11.7 11.6 11.0 12.0 12.5 MGS/GDP (%) (at current market prices) 7.3 7.2 4.9 8.3 11.5 11.5		0.8	5.8	-4.2	-13.9	-10.2
XGS/GDP (%) (at current market prices) 11.7 11.6 11.0 12.9 12.5 MGS/GDP (%) (at current market prices) 13.1 13.9 13.7 14.1 12.1 Urban unemployment rate (%) 7.3 7.2 4.9 8.3 11.3 Inflation and interest rates (annual average) 7.3 7.2 4.9 8.3 11.3 Inflation and interest rates (annual average) 7.5 7.2 7.0 8.7 SELIC rate 7.5					6.3	
MGS/GDP (%) (at current market prices) 13.1 13.9 13.7 14.1 12.1						
Urban unemployment rate (%) 7.3 7.2 4.9 8.3 11.3 Inflation and interest rates (annual average) (%) (%) Inflation (CPI, % change) 5.4 6.2 6.3 9.0 8.7 SELI C rate 5.50 5.00 5.00 7.00 7.50 Non-earmarked new credit to non-financial corporations 9.05 7.21 7.70 9.38 11.68 Non-earmarked new credit to households 45.56 42.54 49.18 59.25 71.32 Earmarked new credit to households 7.68 7.15 8.15 9.27 10.25 Earmarked new credit to households 7.68 7.15 8.15 9.27 10.25 Example ate 6 4.56 42.54 49.18 59.27 71.32 Example ate 6 4.15 8.1 1.7 9.38 11.68 Example ate 6 4.15 8.2 47.3 1.8 1.7 1.7 2.2 71.02 71.2 7.2 7.2 7.2 </td <td></td> <td></td> <td></td> <td></td> <td></td> <td></td>						
Inflation (CPI, % change)						
Inflation (CPI, % change)		7.3	7.2		8.3	11.3
SELIC rate 12.93 12.37 15.22 17.65 18.65 10.00 10.00 17.00		Г 4		. ` ′	0.0	0.7
Long-term interest rate TIJP	- ·					
Non-earmarked new credit to non-financial corporations 21.53 20.65 23.85 27.98 30.34 21.68 Non-earmarked new credit to non-financial corporations 9.05 42.54 49.18 59.25 71.32 23.70 9.38 71.32 23.70 7.32 23.70			-			
Earmarked new credit to non-financial corporations 9.05						
Non-earmarked new credit to households 7.56 42.54 49.18 59.25 71.32						
Exchange rate R\$/US\$ (annual average) Real effective exchange rate (% change) Real effective exchange rate (% change) Rominal effective exchange rate (%	·					
Exchange rate						
RS/USS (annual average) Real effective exchange rate (% change) Central government balance Revenue Re		7.00	71.10	31.10	,,_,	
Real effective exchange rate (% change) -10.0 -5.6 -1.0 -15.8 6.7 Nominal effective exchange rate (% change) -11.1 -8.0 -3.5 -20.9 0.1 Central government balance -11.1 -8.0 -1.1 -1.1 Revenue -18.5 -18.7 -17.7 -17.4 -17.4 Tax revenue -18.5 -18.7 -17.7 -17.0 -7.2 Expenditure -16.9 -17.3 -18.0 -19.3 -19.8 Expenditure -16.9 -17.3 -18.0 -19.3 -19.8 Primary balance -1.3 -2.1 -4.7 -8.6 -7.6 Gross general government debt -13.3 -2.1 -4.7 -8.6 -7.6 Gross general government debt -13.2 -14.7 -8.6 -7.6 Saving and investment -19.5 -19.8 Gross national savings -18.0 -18.3 -16.0 -14.4 -13.9 Private sector -17.5 -18.8 -18.8 -1.2 -1.2 Gross domestic investment -21.4 -21.7 -2.5 -17.6 -15.4 Private sector -18.7 -19.0 -17.6 -1.5 -1.6 Private sector -18.7 -19.0 -17.6 -1.5 -1.6 External sector -2.7 -2.7 -3.0 -1.0 Current account balance -3.0 -3.0 -4.2 -3.3 -1.5 External sector -1.6 -1.9 -2.0 -2.0 -1.7 Current account balance -3.0 -3.0 -4.2 -3.3 -1.3 Merchandise imports -3.8 -9.8 -9.8 -9.8 -9.8 -9.8 Direct investment, net" -3.3 -2.2 -2.9 -3.4 -4.0 Direct investment, net" -3.3 -3.2 -1.0 Direct investment, net" -3.3 -3.2 -1.9 Direct investment, net" -3.3 -3.2 -1.9 Direct investment, net" -3.3 -3.2 -3.3 -1.9 Direct investment, net" -3.3 -3.2 -3.3 -3.3 -3.3 -3.3 Direct investment, net" -3.3 -		1.95	2.16	2.35	3.33	3.49
Central government balance Revenue 18.5 18.7 17.7 17.4 17.4 17.4 Tax revenue 7.3 7.2 7.0 7.0 7.0		-10.0				6.7
Central government balance 18.5 18.7 17.7 17.4 17.4 Tax revenue 7.3 7.2 7.0 7.0 7.2 Expenditure 16.9 17.3 18.0 19.3 19.8 Primary balance 1.3 2.1 4.7 -8.6 -7.5 Overall balance -1.3 -2.1 4.7 -8.6 -7.6 Gross general government debt 32.2 30.5 35.6 46.2 Net public debt 32.2 30.5 35.6 46.2 Net general government debt 32.8 31.1 33.2 37.9 47.8 Saving and investment 32.8 31.1 33.2 37.9 47.8 Saving and investment 17.5 18.8 18.8 Gross national savings 18.0 18.3 16.0 14.4 13.9 Private sector 17.5 18.8 18.8 Gross domestic investment 21.4 21.7 20	Nominal effective exchange rate (% change)					
Revenue		(%	of GDP, ur	less otherv	vise indicate	ed)
Tax revenue	Central government balance					
Expenditure 16.9 17.3 18.0 19.3 19.8						
Primary balance						
Overall balance -1.3 -2.1 -4.7 -8.6 -7.6 Gross general government debt 53.7 51.5 56.3 65.5 69.9 Net gublic debt 32.2 30.5 32.6 35.6 46.2 Net general government debt 32.8 31.1 33.2 37.9 47.8 Saving and investment 8 31.1 33.2 37.9 47.8 Gross national savings 18.8 18.8 16.0 11.4 13.9 Private sector 0.6 -0.5 -2.8 Public sector 18.7 19.0 17.6 15.4 Private sector 2.7 2.7 3.0 Public sector 2.7 2.7 3.0 Public sector 2.7 2.7 3.0 Saving-investment gap -3.4 -3.4 -4.5 -3.2 -1.6 External sector 2.7						
Gross general government debt 33.7 51.5 56.3 65.5 69.9 Net public debt 32.2 30.5 32.6 35.6 46.2 Net general government debt 32.8 31.1 33.2 37.9 Saving and investment						
Net public debt 32.2 30.5 32.6 35.6 46.2 Net general government debt 32.8 31.1 33.2 37.9 47.8 Saving and investment 32.8 31.1 33.2 37.9 47.8 Gross national savings 18.0 18.3 16.0 14.4 13.9 Private sector 17.5 18.8 18.8 Public sector 0.6 -0.5 -2.8 Gross domestic investment 21.4 21.7 20.5 17.6 15.4 Private sector 18.7 19.0 17.6 Public sector 2.7 2.7 3.0 Saving-investment gap -3.4 -3.4 -4.5 -3.2 -1.6 External sector 2.7 2.7 3.0 Current account balance -3.0 -3.0 -4.2 -3.3 -1.3 Net merchandise trade 0.7 0.0 -0.3 1.0 2.5 Merchandise exports 9.8 9.8 9.1 10.5 10.3 Merchandise imports 9.1 9.8 9.4 9.6 7.8 Services balance -1.6 -1.9 -2.0 -2.0 -1.7 Capital account 0.01 0.01 0.01 0.03 0.02 Financial account ^a -3.3 -2.2 -2.9 -3.4 -4.0 Balance of payments ^a -3.3 -2.2 -2.9 -3.4 -4.0 Balance of payments ^a -5.8 -2.0 -3.4 -11.0 -10.0 Merchandise exports ^b (% change) -5.2 -0.3 -7.2 -15.2 -3.0 Merchandise exports ^b (% change) -5.2 -0.3 -7.2 -15.2 -3.0 Merchandise imports ^b (% change) -5.0 -2.1 5.1 -15.5 -1.4 Service imports ^b (% change) -5.0 -2.1 5.1 -15.5 -1.4 Service imports ^b (% change) -5.0 -2.1 5.1 -15.5 -1.4 Service imports ^b (% change) -5.8 374.1 368.7 372.2 Gross external debt (US\$ billion) 327.7 321.6 352.8 334.7 323.7						
Net general government debt 32.8 31.1 33.2 37.9 47.8 Saving and investment						
Saving and investment 18.0 18.3 16.0 14.4 13.9 Private sector 17.5 18.8 18.8 Public sector 0.6 -0.5 -2.8 Gross domestic investment 21.4 21.7 20.5 17.6 15.4 Private sector 18.7 19.0 17.6 Public sector 2.7 2.7 3.0 Saving-investment gap -3.4 -3.4 -4.5 -3.2 -1.6 External sector 2.7 2.7 3.0 Current account balance -3.0 -3.0 -4.2 -3.3 -1.6 External sector 9.7 0.0 -0.3 1.0 2.5 Merchandise trade 0.7 0.0 -0.3 1.0 2.5 Merchandise imports 9.1 9.8 9.4 9.6 7.8 Services balance -1.6 -1.9 -						
Gross national savings 18.0 18.3 16.0 14.4 13.9 Private sector 17.5 18.8 18.8 Public sector 0.6 -0.5 -2.8 Gross domestic investment 21.4 21.7 20.5 17.6 15.4 Private sector 18.7 19.0 17.6 Public sector 2.7 2.7 3.0 Saving-investment gap -3.4 -3.4 -4.5 -3.2 -1.6 External sector -3.0 -3.0 -4.2 -3.3 -1.3 Merchandise exports 9.8 9.8 9.1 10.5 10.3 Merchandise imports balance -1.6 -1.9 </td <td></td> <td>32.8</td> <td>31.1</td> <td>33.2</td> <td>37.9</td> <td>47.8</td>		32.8	31.1	33.2	37.9	47.8
Private sector		18 0	18.3	16.0	1/1/	13.0
Public sector 0.6 -0.5 -2.8 Gross domestic investment 21.4 21.7 20.5 17.6 15.4 Private sector 18.7 19.0 17.6 Public sector 2.7 2.7 3.0 Saving-investment gap -3.4 -3.4 -4.5 -3.2 -1.6 External sector						
Gross domestic investment 21.4 21.7 20.5 17.6 15.4 Private sector 18.7 19.0 17.6 Public sector 2.7 2.7 3.0 Saving-investment gap -3.4 -3.4 -4.5 -3.2 -1.6 External sector						
Private sector 18.7 19.0 17.6 Public sector 2.7 2.7 3.0 Saving-investment gap -3.4 -3.4 -4.5 -3.2 -1.6 External sector						
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Gross external debt (US\$ billion) 327.7 321.6 352.8 334.7 323.7						
	% of GDP	13.3	13.0	14.4		17.9

Not available.

а

Net lending (+) / net borrowing (-). Calculations based on flows data denominated in US\$. b

Includes repo lines of credit and foreign currency loans positions.

Instituto Brasileiro de Geografia e Estatística (IBGE) online information; Central Bank of Brazil online Source: information.

1.6. According to IMF projections, the Brazilian economy would enter a gradual recovery in 2017, but growth would remain weak for a prolonged period. Output is expected to grow by 0.5% in 2017, 1.5% in 2018, and 2% in each of the following three years. Inflation is expected to decelerate to 6.1% in 2018 and stabilize at around 5% thereafter. Gross public debt is projected to remain on an upward path, increasing from 82.9% of GDP in 2017 to 93.5% of GDP in 2021. The current account deficit is expected to stabilize at around 2% of GDP. This scenario is based on the assumption that the authorities would implement planned fiscal consolidation reforms and infrastructure concessions in a reasonable time frame, and that there would be no re-intensification of political uncertainty.

1.7. The authorities' economic performance projections for 2017 include: 0.5% GDP growth, 4.3% inflation, a current account deficit at 1.4% of GDP, and inward FDI at 3.8% of GDP. Real GDP growth is projected at 2.5% in 2018-19, while inflation is expected to ease down to 5% in 2019. The Central Bank of Brazil (BCB) also considers that reforms addressing fiscal imbalances would significantly contribute to restoring investor and consumer confidence, thereby supporting economic recovery. Maintaining the disinflation momentum and preserving the financial system's stability would be other key elements of an adequate environment for sustainable economic growth.

1.2.2 Monetary and exchange rate policy

- 1.8. Headline and core inflation have been around the upper limit of the tolerance range established by the BCB for several years. The Brazilian real's depreciation and a realignment of certain energy prices in 2015 (Section 4.3) contributed to the acceleration of inflation, but second-round inflationary pressures were successfully contained. The BCB maintained an appropriately calibrated monetary policy stance, raising the overnight rate (SELIC) from 7.11% in January 2013 to 14.15% at end-July 2015 and gradually reducing it from October 2016 to 11.25% at mid-April 2017. In parallel, the National Monetary Council gradually raised the long-term interest rate (TJLP), a keystone in the provision of earmarked credit (funded with public resources), from 5% to 7.5%, mostly in the course of 2015. The TJLP was reduced to 7% in the second quarter of 2017. Although differences in the nature and maturity of loans preclude strict comparison, on average, earmarked loans earned significantly lower interest rates than credit provided by the private sector (Table 1.2).
- 1.9. The Brazilian financial system remained stable during the period under review, although the unprecedented recession increased delinquency rates, resulting in a cautious credit granting policy and low borrower demand. Provisions were prudently strengthened, raising banks' capacity to absorb short-term liquidity shocks. Structural liquidity risks remained broadly unchanged, with long-term assets fully supported by sources of stable funding. According to the authorities, Brazil's financial system continues to outperform the prudential regulatory requirements, which are closely aligned with the Basel III global standards.
- 1.10. Brazil maintains a floating exchange rate system with no restrictions on currency conversion and transfers for current international transactions. The BCB has not sought to influence the exchange rate, limiting its currency market interventions to containing excessive short-term volatility. During 2013-15, the Brazilian real depreciated by around 20% in real effective terms, moving towards levels more consistent with fundamentals, but it appreciated by around 6% in 2016. Having remained broadly stable throughout the period under review, at end-2016 Brazil's gross international reserves represented some 21% of GDP and 330% of external debt maturing within the following twelve months. The high level of international reserves played a major role in providing stability to the Brazilian economy.

1.2.3 Fiscal policy

1.11. Brazil's decentralized public administration operates on the basis of framework arrangements determining the allocation of taxation powers, expenditure responsibilities and transfer mechanisms among the three levels of government (federal, state and municipal). Fiscal management rules, applicable to all levels of government, are mainly set out in the Fiscal Responsibility Law.⁸

 $^{^6}$ Certain foreign exchange operations remain subject to a financial transaction tax (IOF) of 6.38% (Section 4.5.3).

⁷ IMF (2016), Brazil: 2016 Article IV Consultation—Press Release; Staff Report; and Statement by the Executive Director for Brazil. IMF Country Report No. 16/348.

⁸ Supplementary Law No. 101 of 4 May 2000.

1.12. At all levels of government, fiscal policy has faced difficulties in responding to the severe economic downturn. As a result, the federal budget's primary balance registered widening deficits during 2013-16 (Table 1.3). Most sub-federal governments were also unable to maintain fiscal discipline, struggling to cope with sharply falling revenues and rising mandatory spending (chiefly on salaries and pensions). In 2016, the primary deficit of the non-financial public sector amounted to 2.5% of GDP and the overall deficit was 8.9% of GDP.

Table 1.3 Public sector fiscal balance, 2012-16

(% of GDP, unless otherwise indicated)

(70 of OD) A whose other wise managed by	2012	2013	2014	2015	2016
A. Central government					
Total revenue	22.0	22.1	21.1	20.8	21.0
Treasury revenue	16.3	16.4	15.3	15.0	15.3
Taxes	7.3	7.2	7.0	7.0	7.2
Income tax (IR)	5.1	5.1	4.9	5.0	5.4
Tax on industrial products	0.9	0.8	0.9	0.8	0.7
Financial transaction tax (IOF)	0.6	0.6	0.5	0.6	0.5
Import tax (II)	0.6	0.7	0.6	0.6	0.5
Social contributions	6.1	6.3	5.8	5.7	5.9
Contribution to social security financing (COFINS)	3.6	3.8	3.4	3.4	3.3
Other contribution	2.5	2.5	2.4	2.3	2.7
Other revenue	2.8	2.8	2.5	2.2	2.2
Fiscal incentives	-0.003	-0.001	-0.0001	-0.0002	-0.003
Social security revenue	5.7	5.8	5.8	5.8	5.7
Transfers to states and municipalities	3.6	3.4	3.4	3.4	3.6
Total net revenue	18.5	18.7	17.7	17.4	17.4
Total expenditure	16.9	17.3	18.0	19.3	19.8
Treasury expenditure	10.3	10.6	11.2	12.0	11.7
Payroll	3.9	3.8	3.8	4.0	4.1
Other mandatory expenditures	2.1	2.4	2.7	3.8	3.1
Workers' support fund (FAT)	0.8	0.8	0.9	0.8	0.9
Economic subsidies	0.2	0.1	0.1	0.9	0.4
Assistance benefits (LOAS/RMV)	0.6	0.6	0.7	0.7	0.8
Other current and capital expenditures	0.6	0.8	1.0	1.5	1.0
Discretionary expenditures	4.3	4.3	4.7	4.2	4.5
Social security benefit	6.6	6.7	6.8	7.3	8.1
Sovereign fund of Brazil	0.3	0.0	0.0	0.0	0.0
Central government primary balance ^a	1.8	1.4	-0.4	-1.9	-2.5
Nominal interest	-3.1	-3.5	-4.3	-6.6	-5.1
Central government overall balance	-1.3	-2.1	-4.7	-8.6	-7.6
B. General government					
General government primary balance	2.3	1.7	-0.5	-1.8	-2.4
General government overall balance	-2.7	-3.5	-6.2	-10.6	-8.9
C. Consolidated public sector					
Consolidated public sector primary balance (including public enterprises)	2.2	1.7	-0.6	-1.9	-2.5
Consolidated public sector overall balance (including public enterprises)	-2.3	-3.0	-6.0	-10.2	-8.9
Memorandum items (end-period):					
Gross general government debt (R\$ billion)	2,583.9	2,748.0	3,252.4	3,927.5	4,378.5
Gross general government debt	53.7	51.5	56.3	65.5	69.9
Net public debt	32.2	30.5	32.6	35.6	46.2
Net general government debt	32.8	31.1	33.2	37.9	47.8
Net BCB debt	-1.2	-1.2	-1.2	-3.1	-2.5

a Including methodological adjustments and statistical discrepancies.

Source: National Treasury of Brazil online information and data provided by the authorities.

1.13. Despite the loss of investment grade in the last quarter of 2015, Brazil had no major difficulties in placing new debt, partly due to the favourable composition of public debt by instrument and creditor. Gross general government debt increased from 53.7% of GDP in December 2012 to 69.9% of GDP at end-2016. Foreign debt accounted for 5.2% of gross public sector debt and 3.6% of GDP in December 2016; it was mainly attributable to the federal government (52.5% of gross foreign public debt) and the state governments (42.8%). Net public debt rose from 32.2% of GDP in December 2012 to 46.2% of GDP in December 2016.

1.14. Whereas the benchmark for minimum spending on health by the federal government was raised in 2015, the authorities have been taking steps to correct fiscal imbalances since

⁹ In 2015, more than half of Brazil's 27 federative states breached limits established by the Fiscal Responsibility Law. Specifically, 15 states exceeded the maximum limit for personnel expenditures (49% of current net revenues) and 2 states (Rio de Janeiro and Minas Gerais) exceeded the alert limit for debt (180% of net current revenues).

¹⁰ Brazil's gross debt statistics do not include PETROBRAS and ELETROBRAS.

mid-2016.¹¹ In September 2016, a constitutional amendment reduced the share of earmarked public spending in budgets at all levels of government with a view to facilitating fiscal adjustment.¹² In addition, a New Fiscal Regime for the federal government, established in December 2016 for a period of 20 years, froze primary spending in real terms.¹³ Discussions on credit relief measures for the state governments and on a social security reform are also ongoing.

1.15. While these initiatives seek to address the recent aggravation of fiscal imbalances, they would not tackle long-standing flaws in Brazil's tax system, which continue to discourage entrepreneurship. It is reported that with its multiplicity of taxes, tax regimes, and sub-national jurisdictions, the Brazilian tax system remains overly complex, burdensome and unpredictable (notably with respect to the settlement of tax credits and the legality of tax concessions granted). The Consequently, Brazil ranked 181st out of 190 economies on the ease of paying taxes in the 2017 World Bank *Doing Business* survey, with an estimated tax compliance time of 2,038 hours (85 days). According to the authorities, reforming the tax system is one of the Brazilian Government's priorities; the reform process is expected to begin in 2017.

1.2.4 Labour market policies

- 1.16. In 2016, the authorities revised their approach to minimum wage indexation, abandoning a formula based on recent rates of real GDP growth and inflation, which was not prescribed in the legislation. In addition, a legislative amendment allowing for broader use of outsourced temporary labour by enterprises (legal persons) entered into force on 31 March 2017. By specifically providing for the outsourcing of both "non-core" and "core" operations, the new law is expected to clear up a matter previously open to interpretation in labour courts, thereby helping to reduce workforce informality in Brazil. As an indication, pension contributors represent about 46% of the Brazilian working age population, compared with 86% in advanced economies. ¹⁷
- 1.17. According to a recent study, the Brazilian labour regime would merit a broader reform, which should also address: the extensive and complex body of legislation and case law; the propensity to resolve labour matters, both of legal and economic nature, through litigation rather than through collective negotiations, mediation, or arbitration; and disincentives to lasting work relations and investment in staff training. Reducing the costs and delays associated with the large number of labour lawsuits (4.4 million ongoing and 3.9 million new in 2014) would also be beneficial for the Brazilian economy's competitiveness. According to the authorities, a draft bill addressing some of the shortcomings of the Brazilian labour regime is under discussion in the Senate.

1.2.5 Balance of payments

1.18. Brazil's current account was in deficit throughout the period under review (Table 1.4). Having reached 4.2% of GDP in 2014, the deficit narrowed to some 1.3% of GDP in 2016 as the trade-in-goods balance returned to a surplus, driven by the real's depreciation and the declining demand for imports. The services and primary income deficits also narrowed from 2015 onward. The financial account balance continued to register capital inflows, reflecting strong interest by foreign investors in equity deals made attractive by the weaker real. Debt liability flows fell sharply, especially in 2015, reflecting the hardening of access to credit for PETROBRAS and other large corporations. Foreign direct investment fully financed the current account deficit in both 2015 and 2016.

¹¹ Constitutional amendment No. 86 of 17 March 2015.

¹² Constitutional amendment No. 93 of 8 September 2016.

¹³ Constitutional amendment No. 95 of 15 December 2016.

¹⁴ Ricardo de Menezes Barboza, Gilberto Borça Jr., Guilherme Tinoco de Lima Horta, João Marco Braga da Cunha, and Felipe Guatimosim Maciel, *A indústria, o PSI, o BNDES e algumas propostas* (2017), BNDES discussion paper 114.

Data in *Doing Business 2017* are current as of 1 June 2016. For Brazil's country profile, as well as notes on the methodology and its limitations, see: http://www.doingbusiness.org/~/media/wbg/doingbusiness/documents/profiles/country/bra.pdf.

¹⁶ Law No. 13,429 of 31 March 2017.

¹⁷ IMF, *Brazil Selected issues* (2016), IMF Country Report No. 16/349.

¹⁸ Ricardo de Menezes Barboza, Gilberto Borça Jr., Guilherme Tinoco de Lima Horta, João Marco Braga da Cunha, and Felipe Guatimosim Maciel, *A indústria, o PSI, o BNDES e algumas propostas* (2017), BNDES discussion paper 114.

Table 1.4 Balance of payments, 2012-16

(US\$ million)

(US\$ Million)	2012	2013	2014	2015	2016
Current account	-74,218.4	-74,838.9	-104,181.3	-59,434.3	-23,530.7
Goods and services balance	-22,748.5	-45,983.5	-54,736.0	-19,248.5	14,589.1
Balance on goods (f.o.b.)	17,419.6	388.6	-6,629.2	17,669.9	45,037.0
Exports	242,283.2	241,577.3	224,097.8	190,092.1	184,452.9
Imports	224,863.6	241,188.7	230,727.0	172,422.2	139,415.9
Services and primary income (net)	-94,475.6	-78,910.6	-100,277.1	-79,827.9	-71,528.2
Services balance	-40,168.1	-46,372.1	-48,106.8	-36,918.4	-30,447.9
Credit	38,816.3	38,010.5	39,965.3	33,777.5	33,300.3
Debit	78,984.4	84,382.7	88,072.1	70,695.9	63,748.2
Primary income balance	-54,307.5	-32,538.5	-52,170.3	-42,909.5	-41,080.3
Credit	8,618.2	12,129.9	12,849.3	11,930.7	11,527.5
Debit	62,925.7	44,668.3	65,019.6	54,840.2	52,607.8
Secondary income balance	2,837.6	3,683.1	2,725.0	2,723.8	2,960.5
Capital account	207.9	322.3	231.5	461.2	273.8
Balance on current and capital account	-74,010.5	-74,516.7	-103,949.8	-58,973.1	-23,257.0
Financial account ^a	-73,953.8	-72,695.6	-100,598.5	-55,154.8	-16,467.0
Direct investment	-81,398.9	-54,239.7	-70,855.3	-61,175.3	-71,113.4
Brazil's direct investment abroad	5,207.6	14,941.8	26,039.7	13,518.4	7,815.1
Equity capital	4,742.7	16,300.3	25,328.0	14,357.4	8,040.4
Debt instruments	464.9	-1,358.5	711.6	-839.1	-225.3
Direct investment in Brazil	86,606.5	69,181.4	96,895.0	74,693.6	78,928.5
Equity capital	64,065.6	30,835.3	57,918.2	56,640.3	54,020.9
Debt instruments	22,540.9	38,346.1	38,976.7	18,053.4	24,907.6
Portfolio investments	-15,825.8	-32,786.5	-38,707.6	-22,269.4	19,216.4
Net acquisition of financial assets	7,402.7	8,981.1	2,819.7	-3,567.9	-598.6
Equity and investment fund shares	6,941.8	6,219.2	2,144.3	-118.0	-693.0
Debt securities	460.8	2,761.9	675.4	-3,450.0	94.5
Net incurrence of liabilities	23,228.5	41,767.6	41,527.3	18,701.5	-19,815.0
Equity and investment fund shares	5,601.8	11,636.3	11,773.0	9,811.3	10,585.9
Debt securities	17,626.7	30,131.3	29,754.3	8,890.2	-30,400.9
Financial derivatives	-24.6	-110.3	1,568.2	3,449.7	-968.9
Net acquisition of financial assets	-301.1	-497.2	-7,614.1	-20,659.1	-13,873.5
Net incurrence of liabilities	-276.4	-386.8	-9,182.2	-24,108.7	-12,904.6
Other investments	4,396.1	20,367.4	-3,436.4	23,271.5	27,161.5
Net acquisition of financial assets	23,840.5	39,413.3	50,666.5	43,970.0	33,440.1
Net incurrence of liabilities	19,444.4	19,045.9	54,102.9	20,698.5	6,278.6
Reserve assets	18,899.6	-5,926.5	10,832.7	1,568.8	9,237.4
Errors and omissions	56.7	1,821.0	3,351.3	3,818.4	6,790.0

a Net lending (+) / net borrowing (-).

Source: Central Bank of Brazil online information.

1.3 Developments in Trade and Investment

1.3.1 Trends and patterns in merchandise and services trade

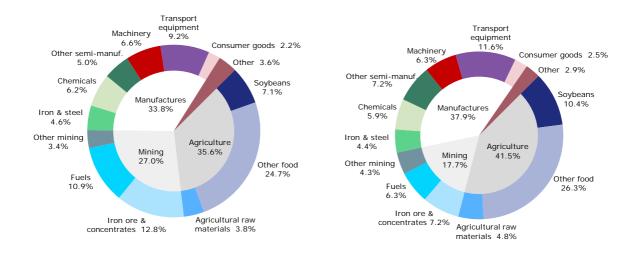
1.3.1.1 Merchandise trade

- 1.19. Brazil's total merchandise trade grew by 3.5% (year-on-year) in 2013 and contracted at an annual average rate of 12.3% during 2014-16. Exports of goods declined faster than imports between 2012 and 2014, mainly on account of falling commodity prices. The real's depreciation and Brazil's economic downturn translated into a sharper fall in demand for imports in 2015 and a rebound of the merchandise trade balance into a surplus. Total services trade expanded at an annual average rate of 4.3% during 2013-14 and shrank at an annual average rate of 12.8% over 2015-16.
- 1.20. In 2016, Brazilian merchandise exports stood at 76.4% of their 2012 value. The contraction was mainly driven by exports of mining products, particularly fuels and iron ores which were adversely affected by world price developments. Agriculture exports continued to dominate, increasing their share in total exports from 35.6% in 2012 to 41.5% in 2016. The share of manufactures increased from 33.8% to 37.9% of Brazil's exports between 2012 and 2016, largely on account of machinery and transport equipment, and iron and steel exports (Chart 1.1 and Table A1.1).

Chart 1.1 Product composition of merchandise trade, 2012 and 2016

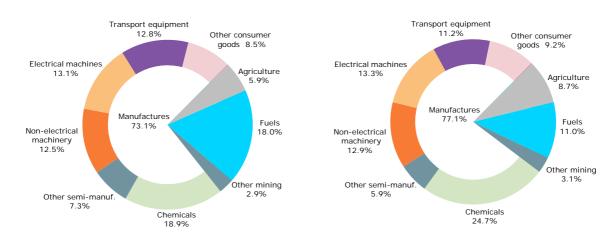
2012 2016

Exports (f.o.b.)



Total: US\$242.6 billion Total: US\$185.2 billion

Imports (f.o.b.)



Total: US\$223.1 billion Total: US\$137.6 billion

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

1.21. Merchandise imports grew by 7.4% (year-on-year) in 2013, but shrank to 61.6% of their 2012 value during 2014-16. The drop was mainly attributable to weaker demand for fuel imports at the height of the Brazilian economy's recession. Notwithstanding some fluctuation, demand for manufactures remained strong and they accounted for some 77.1% of Brazil's total imports in 2016. The main import categories were chemicals, machinery and transport equipment. The share of agricultural imports also registered a modest increase in 2015-16 (Table A1.2).

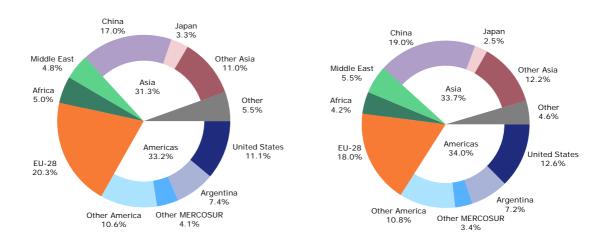
1.22. Bilateral flows between Brazil and most of its major trading partners contracted in nominal terms during 2012-16. The EU remained Brazil's main source of imports throughout 2012-16, but

was overtaken by China as the main destination for Brazilian exports from 2015 onward (Tables A1.3 and A1.4). China was Brazil's second most important supplier of merchandise during 2012-15, but was outpaced by the United States in 2016 (Chart 1.2). During 2012-16, two-way trade flows with the United States intensified, expanding their shares of total exports and imports by 1.5 and 2.9 percentage points respectively. The relative weight of trade with other MERCOSUR members declined somewhat, notably on the exports side.

Chart 1.2 Direction of merchandise trade, 2012 and 2016

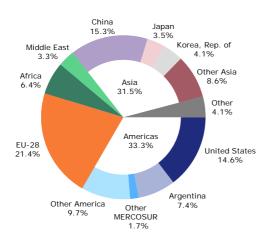
2012 2016

Exports (f.o.b.)



Total: US\$242.6 billion

Imports (f.o.b.)



Total: US\$223.1 billion

China Japan 17.0% 2.6% Korea, Rep. of Middle East 2.6% Africa Other Asia 3.3% 8.5% 32.1% Other EU-28 Americas 22.6% 35.3% United States 17.5% Other America Argentina Other 6.6% 9.0% MERCOSUR 2.1%

Total: US\$185.2 billion

Total: US\$137.6 billion

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

1.3.1.2 Services trade

- 1.23. As at the time of its previous Review, Brazil remains a net importer of services. The overall deficit widened to US\$48.1 billion in 2014 but contracted to US\$30.5 billion in 2016 amid the sharp economic downturn. The main drivers of the negative balance were leasing and travel services (Table A1.5). Most of the expenditures on leasing contracts were attributable to the oil and gas industry. During 2012-15, the deficits in the transport and telecommunications and information services segments narrowed considerably, whereas the deficit related to charges for the use of intellectual property widened somewhat. As at the time of its previous Review, Brazil maintained a positive balance in other business services, including architecture and engineering.
- 1.24. According to data from Brazil's Integrated System of Trade in Foreign Services, Intangible Assets and Other Operations (SISCOSERV), which became fully operational in October 2013 (Section 3.1.1), the main Brazilian services exports were: management and management consulting; other professional, technical and management services; auxiliary financial services; freight transport by water; and maintenance and repair of fabricated metal products, machinery and equipment. Parazil's main services imports included: operational leasing; freight transport by water; licensing on copyright and related rights; and other professional, technical and management services.
- 1.25. In 2015, the United States was Brazil's main partner in services trade, accounting for 28.6% of Brazil's total imports and 32.5% of its total exports. The EU, notably the Netherlands, ranked as Brazil's second most important partner, accounting for 26.1% of total imports and 9.4% of total exports.

1.3.2 Trends and patterns in FDI

1.26. During 2012-16, Brazil continued to attract sizable equity inflows, ranging between 2% and 3.3% of GDP, which constituted a factor of strength amid the eroding confidence in the domestic policy framework. Inward FDI dropped by 18.5% (year-on-year) in 2013, nearly recovered in 2014-15 and contracted again in 2016. It significantly outpaced Brazilian investment abroad throughout 2012-16. During that period FDI inflows totalled US\$277.6 billion, spread across a wide range of economic activities. The main FDI recipients were commerce, oil and gas extraction, financial services and transport equipment (Table 1.5). The EU remained the leading investor, with a considerable share attributable to the Netherlands. The United States also remained an important source of inward direct investment (Table 1.6).

Table 1.5 Foreign direct investment (equity) inflows by sector, 2012-16

	2012	2013	2014	2015	2016
Total inflows (US\$ million)	60,542.7	49,345.3	56,099.1	57,907.2	53,672.8
(% of GDP)	2.5	2.0	2.3	3.3	3.0
			% of total		
Crop, livestock and mineral extraction	10.8	20.2	10.0	14.4	16.2
Oil and gas extraction	6.1	14.5	3.8	7.9	7.9
Metallic mineral extraction	2.7	1.7	3.8	2.6	4.6
Mining support service activities	1.0	2.5	1.4	2.4	1.3
Crop, livestock, and related services	0.6	1.2	0.6	0.9	1.7
Non-metallic mineral extraction	0.2	0.1	0.1	0.1	0.5
Forestry production	0.1	0.3	0.3	0.4	0.1
Industry	36.7	30.8	30.2	36.2	37.5
Basic metallurgy	8.8	3.0	4.3	1.5	2.7
Foodstuff	8.4	3.0	2.8	4.0	2.4
Chemical products	3.1	4.1	3.9	4.2	4.0
Pharmaceuticals	2.6	2.2	1.5	1.0	1.5
Motor vehicles, trailers, semi-trailers, and related parts	2.1	3.8	5.2	7.8	12.2
Machinery and equipment	1.6	1.8	1.5	1.9	2.9
Electrical machines, devices, and apparatuses	1.3	1.1	1.8	1.8	2.0
Pulp, paper, and paper products	1.2	1.1	0.9	1.2	0.6
Computer equipment, electronic, and optical products	1.2	2.9	2.7	1.9	1.0
Plastic and rubber products	1.1	1.6	1.2	1.5	0.8
Non-metallic mineral products	1.0	0.5	0.4	1.1	2.3
Other manufacturing	1.0	0.4	0.4	0.6	0.5

¹⁹ SISCOSERV data are not directly comparable with data obtained from the Services Account of the Balance of Payments, due to the use of different classifications and statistics collection methods. SISCOSERV trade in services statistics can be viewed at: http://www.mdic.gov.br/comercio-servicos/estatisticas-do-comercio-exterior-de-servicos [23 April 2017].

	2012	2013	2014	2015	2016
Beverages	0.8	1.2	0.0	0.2	0.7
Coke, oil derivatives, and biofuels	0.6	1.2	1.1	0.2	0.7
Metal products, except machinery and equipment	0.6	0.5	0.7	1.4	1.3
Other transportation equipment	0.6	1.0	0.7	0.7	1.5
Wood products, except furniture	0.4	0.2	0.4	0.7	0.2
Textile products	0.3	0.2	0.1	0.2	0.2
Publishing activities	0.1	0.0	0.2	0.3	0.1
Repair of computers and personal and household goods	0.1	0.1	0.5	0.0	0.1
Tobacco products	0.0	0.1	0.0	3.8	0.2
Other industries	0.0	0.0	0.1	0.6	0.1
Services	51.9	48.4	59.5	49.1	45.9
Commerce, except vehicles	9.4	12.6	10.1	9.4	10.6
Financial and auxiliary services	8.1	6.0	8.5	2.4	3.4
Insurance, reinsurance, complementary social security and	7.7	3.9	3.6	2.4	0.9
health assistance	7.7	3.9	3.0	1.1	0.9
Real estate activities	6.0	4.1	2.9	3.7	3.6
	3.4	3.1	2.9 4.5	6.8	3.6 5.5
Electricity and gas Office services and other services rendered to corporations	2.0	0.6	4.5 0.2	0.6	2.0
·	1.8	4.3	2.6	1.1	1.4
Transportation Buildings and specialized construction activities	1.6	1.5	1.5	1.1	0.9
Nonfinancial holdings	1.6	1.5	1.5	1.1	1.5
	1.3	1.0	0.8	0.8	0.5
Architectural and engineering services	1.2	1.0	2.1	1.7	1.0
Information technology services Infrastructure works	1.2	1.2	2.1	1.7	0.8
Non real estate lease and intangible assets	1.1	1.3	2.6	0.7	1.1
Storage and transportation auxiliary activities	1.1	0.8	0.8	1.4	2.9
Mail services	0.9	0.8	0.8	0.0	0.0
Telecommunications	0.9	0.1	8.8	7.9	1.8
Headquarter consulting and management activities	0.6	0.7	0.6	0.6	1.6
Advertising and market research	0.6	0.7	0.4	1.0	1.2
Commerce and maintenance of vehicles	0.3	0.2	0.2	1.0	1.0
Food and beverage service activities	0.2	0.8	0.7	0.1	0.4
Lodging	0.2	0.2	0.2	0.1	0.4
Travel agencies and tour operators	0.1	0.1	0.3	0.6	0.5
Education	0.1	0.1	1.9	0.4	0.1
	0.1	0.1	0.1	0.1	0.2
Scientific research and development Auxiliary radio and television activities	0.0	0.0	0.1	0.1	0.1
Collection, treatment and distribution of water	0.0	0.1	0.0	0.2	0.1
Other services	1.6	1.9	2.9	3.7	3.0
Acquisition and sale of property	0.6	0.5	2.9 0.4	0.4	3.0 0.4
Acquisition and sale of property	0.0	0.5	0.4	0.4	0.4

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

Table 1.6 Foreign direct investment (equity) inflows by trading partner, 2012-16

	2012	2013	2014	2015	2016
Total inflows (US\$ million)	60,542.7	49,345.3	56,099.1	57,907.2	53,672.8
(% of GDP)	2.5	2.0	2.3	3.3	3.0
			% of total		
Netherlands	20.2	21.3	15.7	20.0	19.6
Luxembourg	9.9	10.3	11.9	11.4	13.8
United States	20.3	18.3	15.3	11.5	12.2
United Kingdom	3.3	2.4	3.1	2.8	6.7
Spain	4.2	4.6	10.6	11.3	6.5
Italy	1.6	1.8	1.5	3.0	5.3
France	3.6	3.0	5.2	4.9	5.2
Norway	1.5	0.8	1.0	4.2	4.1
Germany	1.4	2.0	2.8	6.0	3.4
British Virgin Islands	1.4	0.5	1.4	1.3	3.1
Japan	2.4	5.1	6.7	5.0	2.6
Switzerland	7.2	4.7	3.5	1.9	1.8
Chile	3.3	6.0	2.3	1.8	1.6
China	0.3	0.2	1.5	0.4	1.6
Mexico	0.6	1.1	0.2	1.0	1.5
Belgium	1.1	1.0	0.6	1.7	1.1
Ireland	0.7	0.3	0.2	0.6	1.1
Canada	3.2	2.5	1.6	1.7	1.0
Korea, Rep. of	1.4	1.1	0.7	0.5	1.0
Cayman Islands	1.0	0.4	1.0	0.9	0.7
Sweden	0.8	0.8	1.2	0.7	0.7
Portugal	0.9	1.2	5.6	0.7	0.5
Uruguay	0.9	0.3	0.3	0.5	0.5
Bermuda	0.2	0.3	0.2	0.4	0.5
Hong Kong, China	0.8	0.3	0.8	1.0	0.4

	2012	2013	2014	2015	2016
Singapore	1.7	0.5	0.4	0.5	0.4
Cyprus	0.2	0.4	0.0	0.0	0.4
Denmark	0.8	0.7	0.5	0.6	0.3
Australia	0.9	0.7	0.6	0.3	0.2
Bahamas	0.2	1.1	0.3	0.3	0.2
Peru	0.2	0.0	0.2	0.3	0.2
Austria	0.2	0.2	0.5	0.1	0.2
Argentina	0.4	0.2	0.1	0.1	0.2
Panama	0.4	0.6	0.4	0.5	0.1
Finland	0.0	0.1	0.1	0.3	0.1
Colombia	0.3	0.1	0.2	0.2	0.1
New Zealand	0.0	1.5	0.0	0.0	0.0
Hungary	0.1	0.0	0.0	0.0	0.0
Other trading partners	2.4	3.4	1.5	1.6	1.0

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

1.27. During 2012-15, Brazilian equity investment overseas increased in nominal terms but did not exceed 0.5% of GDP. Outward FDI flows targeted a variety of economic activities, the main recipients being telecommunications, financial, and electricity and gas services (Table 1.7). The EU remained Brazil's main outward FDI destination, followed by the United States (Table 1.8).

Table 1.7 Foreign direct investment (equity) outflows by sector, 2012-16

Total outflows (US\$ million) (% of GDP) (% of GDP) (0.3 0.3 0.3 0.4 0.5 0.5 0.5 0.5 0.5 0.5 0.5 0.5 0.5 0.5		2012	2013	2014	2015	2016
Crop, livestock and mineral extraction	Total outflows (US\$ million)					
% of total						
Crop, livestock and mineral extraction	(70 01 001)	0.5	0.5		0.5	0.5
Metallic mineral extraction 1.5 0.1 2.3 1.1 0.1	Crop. livestock and mineral extraction	10.4	1.9		12.5	6.2
Oil and gas extraction					_	-
Mining support service activities 0.0 0.2 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.1 0.1 0.4 17.7 0.1 0.1 0.1 0.1 0.1 0.1 0.1 0.0		1.5	0.1	2.3	1.1	0.1
Mining support service activities 0.0 0.2 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.0 0.0 0.1 0.1 0.1 0.4 17.7 0.1 0.1 0.1 0.1 0.1 0.1 0.1 0.0	Forestry production	0.0	0.1	0.1	0.2	0.0
Others 0.7 0.2 0.1 0.1 0.4 Industry 9.9 30.4 9.3 21.4 17.7 Chemical products 1.9 8.7 2.2 0.5 13.7 Plastic and rubber products 1.6 0.1 0.1 0.1 0.0 Motor vehicles, trailers, semi-trailers, and related parts 1.5 1.2 0.1 1.7 0.1 Foodstuff 1.5 1.2 0.1 1.7 0.1 Machinery and equipment 1.3 0.5 0.5 0.0 0.1 Pulls, paper, and paper products 0.5 0.4 0.0 1.0 0.2 Publishing activities 0.4 0.4 0.2 3 0.0 0.1 0.0 Other manufacturing 0.3 0.0 0.0 0.8 0.4 Beverages 0.2 7.5 0.4 0.1 0.1 Coke, oil derivatives, and biofuels 0.2 0.4 0.0 0.0 Textile products <t< td=""><td></td><td>0.0</td><td>0.2</td><td>0.0</td><td>0.1</td><td>0.0</td></t<>		0.0	0.2	0.0	0.1	0.0
Industry	Non-metallic mineral extraction	0.0	0.0	0.1	0.0	0.0
Chemical products	Others		-		0.1	0.4
Plastic and rubber products						
Motor vehicles, trailers, semi-trailers, and related parts			-			-
Foodstuff			_			
Machinery and equipment 1.3 0.5 0.5 0.0 0.1 Pulp, paper, and paper products 0.5 0.4 0.0 1.0 0.2 Publishing activities 0.4 0.4 0.4 2.3 0.0 0.1 Other manufacturing 0.3 0.0 0.0 0.8 0.4 Beverages 0.2 7.5 0.4 0.1 0.1 Coke, oil derivatives, and biofuels 0.2 0.4 0.0 0.0 0.0 Textile products 0.2 0.4 0.0 0.0 0.0 Textile products 0.2 0.1 0.3 0.1 0.0 Electrical machines, devices and apparatuses 0.2 0.2 0.2 0.0 0.0 Electrical machines, devices and apparatuses 0.2 0.2 0.2 0.2 0.0 0.0 Basic metallurgy 0.0 0.2 0.2 0.2 0.0 0.0 Metal products, except machinery, and equipment 0.0 0.0 0.2		-				
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Beverages						
Coke, oil derivatives, and biofuels 0.2 0.4 0.0 0.0 0.0 Textile products 0.2 0.1 0.3 0.1 0.0 Electrical machines, devices and apparatuses 0.2 0.2 0.2 0.0 0.1 Computer equipment, electronic, and optical products 0.1 0.5 0.0 0.2 0.0 Basic metallurgy 0.0 0.0 0.2 0.7 1.5 Metal products, except machinery, and equipment 0.0 0.4 0.2 0.3 0.0 Non-metallic mineral products 0.0 0.3 0.0 3.7 0.0 Pharmaceuticals 0.0 0.1 2.0 0.3 0.5 Other industries 0.1 0.3 0.2 0.1 0.0 Services 77.0 65.9 84.7 65.2 17.7 Electricity and gas 25.3 5.0 3.4 2.4 75.7 Electricity and gas 25.3 5.0 3.4 2.4 1.5						
Textile products			-			
Electrical machines, devices and apparatuses						
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Insurance, reinsurance, complementary social security, 0.1 3.1 0.6 0.4 0.3				_		
and health assistance	, , , , , , , , , , , , , , , , , , , ,	5	J. 1	5.5	5. 1	5.5

	2012	2013	2014	2015	2016
Transportation	0.1	0.3	0.0	0.4	1.1
Commerce and maintenance of vehicles	0.0	0.1	0.0	0.7	0.8
Other services	12.7	2.8	3.2	2.1	0.0
Acquisition and sale of property	2.6	1.8	1.3	0.9	0.4

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

Table 1.8 Foreign direct investment (equity) outflows by trading partner, 2012-16

	2012	2013	2014	2015	2016
Total outflows (US\$ million)	7,707.0	7,697.5	8,878.7	8,631.1	8,788.8
(% of GDP)	0.3	0.3	0.4	0.5	0.5
			% of total		
United Kingdom	4.4	4.3	0.4	1.7	57.1
Luxembourg	9.9	2.3	4.8	2.5	13.6
United States	16.0	38.7	18.4	11.0	12.8
Netherlands	41.4	13.9	23.1	17.7	4.4
Spain	6.7	9.4	6.2	11.8	2.8
Uruguay	0.6	5.3	3.0	0.4	2.2
France	0.4	0.4	0.4	32.4	1.9
British Virgin Islands	0.8	0.4	0.5	0.4	0.7
Australia	0.0	3.2	0.2	0.3	0.7
Bermuda	0.1	0.0	0.9	0.7	0.5
Japan	6.7	1.9	2.4	12.1	0.4
Canada	1.8	0.3	1.5	1.1	0.4
Italy	1.5	0.3	0.6	0.3	0.4
Germany	0.9	1.7	1.2	0.3	0.4
Cayman Islands	1.1	0.1	0.5	0.8	0.2
Switzerland	1.4	3.8	0.6	0.7	0.2
Chile	0.1	0.7	0.0	0.3	0.2
Bahamas	1.3	0.2	0.1	0.2	0.2
Portugal	0.8	2.2	30.2	0.6	0.1
Panama	0.2	0.1	0.2	0.1	0.1
Belgium	0.0	0.0	0.9	0.0	0.1
Korea, Rep. of	0.0	0.7	0.0	1.4	0.0
Argentina	0.4	2.1	0.6	0.5	0.0
Ireland	0.0	0.1	0.0	0.5	0.0
Norway	1.3	0.0	1.6	0.1	0.0
Denmark	0.0	0.0	0.0	0.1	0.0
Mexico	0.8	0.1	0.0	0.0	0.0
Hong Kong, China	0.1	0.0	0.0	0.0	0.0
Austria	0.3	0.0	0.2	0.0	0.0
Sweden	0.1	0.3	0.1	0.0	0.0
Other trading partners	0.6	7.3	1.1	2.0	0.8

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

2 TRADE AND INVESTMENT REGIMES

- 2.1. Since its last TPR in 2013, Brazil undertook several constitutional amendments including one related to curbing public spending growth. The institutional framework for trade policy formulation remained broadly unchanged except for the transfer of the Executive Secretariat of the Foreign Trade Board (CAMEX) from the Ministry of Industry, Foreign Trade and Services to the Ministry of Foreign Affairs. Brazil's stated trade and trade-related policy objectives have been integration into global value chains and raising the competitiveness of domestic products; its longstanding programmes aimed at fostering technological development, shielding certain domestic producers from external competition, attracting investment, and promoting and diversifying exports remain relatively unchanged.
- 2.2. Brazil remains committed to, and is an active participant in, the multilateral trading system. During the review period it improved its WTO commitments by ratifying the Trade Facilitation Agreement (TFA) and depositing its instrument of acceptance of the Fifth Protocol on Financial Services; it now also grants preferential treatment to services and service suppliers from least developed countries (LDCs). At the same time, it continues to focus on strengthening regional economic integration through the Southern Common Market (MERCOSUR) and Latin American Integration Association (LAIA) RTAs with an emphasis on negotiating agreements with trading partners outside the region; three agreements entered into force (Bolivarian Republic of Venezuela, Guyana/Saint Kitts and Nevis, and Southern African Customs Union), four were concluded with their entry in force pending (Egypt, Colombia, Palestine, Peru), and two (European Union, Mexico) are still being negotiated. During the review period, Brazil was directly involved in seven WTO disputes, five as a complainant and two as a respondent.
- 2.3. Brazil remains open to and encourages inward foreign direct investment (FDI) which is prevalent across the economy despite foreign ownership prohibitions (certain postal services and nuclear energy) or limitations in certain sectors (e.g. air transport, financial institutions, health services, rural land acquisition, broadcasting and publishing media, fishing, mining and hydrocarbons exploration). During the review period, FDI access to certain healthcare services was improved. Legally registered domestic and foreign companies compete on an equal footing when bidding on contracts or seeking tax and non-tax incentives. To address the legal loopholes existing in bilateral investment protection treaties, a new model of investment agreements built upon UNCTAD and OECD guidelines was used to negotiate and sign a series of treaties whose ratification is under way.

2.1 General Constitutional and Institutional Framework

- 2.4. The 1988 Constitution of the Republic remains the fundamental law of the State. During the review period, 23 new amendments to the Constitution were promulgated, thus bringing to 95 the number of total amendments since its entry in force. On 16 December 2016, the National Congress promulgated a constitutional reform to curb public spending growth for the next 20 years (Section 1.2.3).
- 2.5. The Federative Republic of Brazil is composed of the Union, the states, the municipalities, and the Federal District. The Government comprises the executive, legislative, and judiciary branches.² The President, assisted by the appointed Cabinet of Ministers, exercises executive power. Presidential terms are four years, and re-election is possible once. Presidential, congressional and state elections are held every four years; the next elections are due in October 2018.³ 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.

¹ These amendments, *inter alia*, involved: copyrights of Brazilian authors and/or works generally interpreted by Brazilian artists; the delivery of resources by the Union to the Municipal Participation Fund; the treatment of science, technology and innovation activities; the mandatory execution of the budgetary programming on tax collection relating to the movement of goods to another State; the extension of the period for allocating minimum percentages of the resources destined for irrigation in the Central-West and Northeast Regions; and issues relating to the Superior Labour Court. Presidência da República online information. Viewed at: https://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/quadro_emc.htm.

² The bicameral national Congress consists of: an 81-seat Senate (the upper house) with representatives of the 26 states, plus the Federal District of Brasília; and, a 513-member directly elected Chamber of Deputies (the lower house). Each state, as well as the district of Brasília, has its own legislature.

³ The last elected President was impeached by Congress on 31 August 2016 and subsequently replaced.

- 2.6. Legislative bodies at the federal, state, and municipal levels are in charge of drafting and issuing specific legislation as stipulated by the Constitution. Legislation for matters such as monetary policy, foreign trade, telecommunications, maritime and air transport, insurance, and utilities, is dealt with by the National Congress with the sanction/approval of the President of the Republic; in addition, the Congress has responsibility for legislating on all matters within the competence of the Union, including approving international treaties by legislative decree prior to their promulgation by the President of the Republic (ordinary law or constitutional amendments). Legislation on tax, 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 wherever pertinent. The legislative process includes the preparation and enactment of ordinary, supplementary, and delegated laws, as well as amendments to the Constitution. Due to the bicameral structure of the Congress, all laws and amendments proposal has to pass through the same process of analysis and voting in both houses and, if approved, the proposal is sent to the President of the Republic for sanction, publication, and entry into force. Amendments to the Constitution are an exception, as they are promulgated directly after congressional approval. Legislative decrees are administrative in nature and require a simple majority in Congress.
- 2.7. 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 a timeframe of 60 days which may be extended once for an identical period of time; since 17 May 2013, 153 such measures have been adopted.⁵ In the case of tax issues, provisional measures passed before the end of the fiscal year may only be applied to the following year's budget, except for customs duties on imports, export taxes, the tax on industrial products (IPI) and the financial transactions tax (IOF), or extraordinary taxes introduced in case of war (Sections 3.1.4, 3.3.1, and 4.5.3.1).
- 2.8. International treaties and conventions must be approved by the National Congress to enter into force domestically. Upon enactment, through a legislative decree and a Presidential decree, international treaties have the same legal status as ordinary laws; nevertheless, the Supreme Federal Court has the power to deem them incompatible with the Federal Constitution and hence revoke them, but the authorities indicated that there have been no such cases so far.

2.2 Structure of Trade Policy Formulation

2.2.1 Executive branches of government

2.9. The Foreign Trade Board (CAMEX) remains in charge of the formulation, implementation and coordination of policies and activities relating to foreign trade in goods and services, including tourism, with a view to promoting foreign trade, investment and the country's international competitiveness.⁶ As from mid-2016, it has been part of the Presidency of the Republic and its main decision body is the Council of CAMEX, which is chaired by the Chief of Staff of the Presidency of the Republic and consists of the Ministers of Foreign Affairs, of Finance, of Agriculture, Livestock and Food Supply, of Industry, Foreign Trade and Services, and of Planning, Development and Management, and the Executive Secretary of the Secretariat of the Programme of Investment Partnerships of the Presidency of the Republic.⁷ As of 5 August 2016, the Executive Secretariat of CAMEX was transferred from the Ministry of Industry, Foreign Trade and Services to the Ministry of Foreign Affairs which represents Brazil in the WTO and assists CAMEX in regional integration and trade matters.⁸ The authorities indicated that together with the transfer of the

 $^{^4}$ Articles 22, 24 and 30 of the Federal Constitution; and Federal Constitution, Title IV (Chapter I, Section II).

⁵ Portal da Legislação online information. Viewed at: http://www4.planalto.gov.br/legislacao/portal-legis/legislacao-1/medidas-provisorias.

⁶ CAMEX, *inter alia*, approves anti-dumping duties, changes tariffs and has an active role in the negotiations of investment agreements. Decree No. 4,732 of 10 June 2003; Decree No. 8,807 of 12 July 2016; and Decree No. 8,906 of 21 November 2016.

Law No. 13,341 of 29 September 2016. CAMEX online information. Viewed at: http://www.camex.itamaraty.gov.br/.
 B Decree No. 8,823 of 28 July 2016. Viewed at:

[°] Decree No. 8,823 of 28 July 2016. Viewed at: http://www.internationaltradecomplianceupdate.com/2016/08/24/brazil-executive-secretariat-of-camex-is-incorporated-into-the-itamaraty/.

chairmanship of the Council of CAMEX to the Presidency this shift is aimed at strengthening the coordination of government bodies responsible for trade and investment policies; furthermore, the Executive Secretariat of CAMEX was placed within a ministry with a traditional coordination and chief negotiator role for trade.

2.10. The Ministry of Industry, Foreign Trade and Services (MDIC) implements trade policy in line with CAMEX guidelines through its Secretariat of Foreign Trade (SECEX). SECEX was last restructured on 29 November 2016 (Decree No. 8,917) and it now consists of five departments: Foreign Trade Operations (DECEX); Trade Remedies (DECOM); International Trade Negotiations (DEINT); Statistics and Export Support (DEAEX); and Foreign Trade and Competitiveness (DECOE). 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).

2.2.2 Advisory, planning and other bodies

2.11. The main policy advisory bodies remain the public sector's Institute for Applied Economic Research (IPEA) under the Ministry of Planning, Development and Management (MPOG), and the Brazilian Industrial Development Agency (ABDI) under the MDIC.¹⁰ IPEA provides technical and institutional support to government actions for the formulation and revision of public policies and development programmes in Brazil; the ABDI's sectoral work covers capital goods, industrial intelligence, mining, pharmaceuticals, innovation, oil and gas, textiles and clothing, and telecommunication. Furthermore, non-governmental bodies such as the National Confederation of Industry (CNI) and the Centre for Global Trade and Investment (CGTI) of the Getúlio Vargas Foundation (FGV) remain active in research and consultative work relating to trade policy formulation. In 2016, the CNI launched a priorities agenda promoting the integration of Brazilian companies into the world market.¹¹ Since May 2014, the CGTI has been a member of the WTO Chairs Programme and hosts workshops on trade dispute settlement; recently it also undertook joint research activities with IPEA and private sector chambers.¹²

2.3 Trade Policy Objectives

2.12. According to the authorities, during the review period trade policy was revised to overcome economic challenges and to meet its objectives of industrial development, production diversification, technological upgrading, raising competitiveness of domestic products, integration into global value chains and international markets, and intensifying and diversifying exports. At the same time, notwithstanding regulatory and institutional changes driven, inter alia, by public expenditure tightening due to the recent economic slowdown, Brazil's longstanding trade and trade-related policy objectives of shielding certain domestic producers from external competition and attracting investment remained broadly unchanged (Section 4). The policy tools for attaining these objectives in certain activities remain to some extent characterized by persisting "infant industry" protection and tariff jumping principles. They comprise border measures coupled with complex and possibly distortive tax and non-tax incentives, inter alia, involving production step-related local content requirements, administered interest rate or subsidized credit and other targeted subsidies often leading to cross-subsidization elements affecting the economy and its prospects (Section 4). 13 As a result, Brazil remains an inward-oriented and relatively closed economy - as reflected by its low international trade penetration/openness (Section 1.1), favouring production step-related local content over competitiveness-inducing international market integration and thereby impeding integration into global value chains by raising the costs of imported inputs. A small number of companies are responsible for the overwhelming share of the country's exports, which contain a particularly high share of domestic value added (93%). 14 By

⁹ MDIC online information. Viewed at: http://www.mdic.gov.br/institucional/organograma.

¹⁰ IPEA online information. Viewed at: http://agencia.ipea.gov.br/; and ABDI online information. Viewed at: http://www.abdi.com.br/Paginas/default.aspx.

¹¹ CNI online information. Viewed at: http://www.portaldaindustria.com.br/cni/.

¹² CCGI online information. Viewed at: http://ccgi.fgv.br/.

¹³ Tariff jumping refers to the establishment of a production facility within a foreign country, through FDI or licensing, in order to avoid a tariff. The authorities consider that the determination of whether tax and non-tax incentives are "distortive" needs to be made on a case-by-case basis, and only after having assessed specific data on a given industry.

¹⁴ The top 1% of Brazilian exporters generates 59% of total exports, while the top 25% of them account for 98% of export revenues. Otaviano, C., C. Fleischhaker, and P. Schellekens (2015), *The curious case of*

protecting the domestic market, Brazil reduces the incentives to raising efficiency and quality or product differentiation while preventing domestic producers from sourcing from the lowest cost or better quality input suppliers. As a result, Brazilian manufactured products continue to lack competitiveness and their world market shares in most activities remain small, thus keeping Brazil as a marginal player in international trade of industrial goods.¹⁵

2.13. Brazil continued to focus on strengthening regional economic integration through MERCOSUR and LAIA, which are now proceeding with negotiations with trading partners outside the region (Section 2.6.2.1.1). Brazil's trade strategy targets "productive" integration with Latin America and RTAs with major trading partners. ¹⁶ Action was taken to strengthen trade relations with traditional partners and open new markets for Brazilian products through the negotiation and conclusion of trade agreements covering tariffs but also provisions on aspects such as investment, services, public procurement, trade facilitation and technical regulations. Brazil's priority is, *inter alia*, to end agricultural protectionism abroad and to discipline subsidies and other distorting domestic support policies in this sector. ¹⁷

2.4 Trade Laws and Regulations

2.4.1 Regulatory framework and reform

- 2.14. During the review period, Brazil's legal instruments remained unchanged. They comprise, in the following hierarchical order from highest to lowest: amendments to the Constitution; supplementary laws; ordinary laws; delegated laws; provisional measures; and, legislative decrees. These legal instruments are higher than other instruments such as resolutions, ministerial ordinances (*portarias*), contracts and sentences. ¹⁸ Since its last TPR, new trade and trade-related legislation has been passed in several areas including trade facilitation, anti-dumping, state enterprises, public procurement, tax refunds (*Reintegra*), intellectual property rights, automotive, and digital marketing (Sections 3 and 4). No data on the number of laws/regulations at federal, state and municipal levels or appraisals on the impact of regulatory barriers/burdens to the economy were available from the authorities.
- 2.15. No major regulatory reform was undertaken during the largest part of the review period. The regulatory policy agenda dates back to 2007 when the Programme for the Strengthening of Institutional Capacity for Regulatory Management (PRO-REG) was established, and it has so far strongly focused on the procedures of regulatory agencies. ¹⁹ In November 2015, CAMEX and the International Trade Administration of the United States Department of Commerce signed a Memorandum of Intent on the promotion of good regulatory practices and increased transparency

Brazil's closedness to trade, World Bank Policy Research Working Paper 7228, April. Viewed at: http://documents.worldbank.org/curated/en/345971468186871924/pdf/WPS7228.pdf.

¹⁵ Araújo, S. and D. Flaig (2016), *Quantifying the Effects of Trade Liberalisation in Brazil: A Computable General Equilibrium Model (CGE) Simulation*, OECD Economics Department Working Papers, No. 1295. Viewed at: http://dx.doi.org/10.1787/5jm0qwmff2kf-en.

¹⁶ Telesur online information, "Brazilian Trade Minister Outlines Foreign Trade Policies", 9 August 2014. Viewed at: http://www.telesurtv.net/english/news/Brazilian-Trade-Minister-Outlines-Foreign-Trade-Policies-20140809-0047.html.

17 Statement by President Michel Temer at the opening of the general debate of the 71st session of the United Nations General Assembly, 20 September 2016. Viewed at: <a href="http://www.itamaraty.gov.br/pt-BR/discursos-artigos-e-entrevistas-categoria/presidente-da-republica-federativa-do-brasil-discursos/14756-pronunciamento-do-senhor-do-presidente-da-republica-michel-temer-durante-abertura-do-debate-geral-da-71-assembleia-geral-das-nacoes-unidas-nova-york-20-de-setembro-de-2016; Statement by Minister Mauro Vieira on the occasion of the Opening Session of the 10th WTO Ministerial Conference in Nairobi on 16 December 2015. Viewed at: http://www.itamaraty.gov.br/pt-BR/discursos-artigos-e-entrevistas-categoria/ministro-das-relacoes-exteriores-discursos/12730-discurso-do-ministro-mauro-vieira-por-ocasiao-dasessao-de-abertura-da-x-conferencia-ministerial-da-omc-nairobi-16-de-dezembro-de-2015-ingles#eng.

¹⁸ The very detailed Constitution touches on numerous economic issues, thus requiring frequent amendments to update the constitutional framework when significant reforms are envisaged. Article 59 of the Constitution; OECD (2008), "Government capacity to assure high quality regulation in Brazil", *Reviews of Regulatory Reform: Brazil 2008.* Viewed at: http://www.oecd-ilibrary.org/governance/oecd-reviews-of-regulatory-reform-brazil-2008/government-capacity-to-assure-high-quality-regulation-in-brazil-9789264042940-4-en.

¹⁹ WTO document WT/TPR/S/283/Rev.1, 26 July 2013; OECD online factsheet, "Indicators of Regulatory Policy and Governance for Latin America 2016 – Brazil". Viewed at: http://www.oecd.org/gov/regulatory-policy-ireg-2016.pdf.

in the rule-making process in order to promote bilateral commerce and investment.²⁰ Negative economic growth and fiscal scarcity brought the issue of improving Brazil's regulatory system (so as to attract investment, raise competitiveness and create jobs) to a strategic position in the Federal Government's agenda. In 2016, the Executive prepared a bill on the administration, organization and social control of the Federal Regulatory Agencies. The bill, which, *inter alia*, proposes new rules on the standardization of the decision-making process through consultation and public hearings as well as the adoption of RIAs for the development of new regulations or the revision of existing ones, was approved by the Senate, and by January 2017 was at the National Congress. A working group, coordinated by Casa Civil and composed of public servants with previous experience in regulatory impact assessments (RIAs) from all federal regulatory agencies, was created to elaborate a decree introducing the general standards for RIAs at federal level. Casa Civil is also, *inter alia*, working to invigorate the PRO-REG. As of 2016, CAMEX reinforced its authority to in advance approve the introduction or modification of administrative requirements and direct and indirect control over trade operations proposed by federal agencies.²¹

2.16. During the review period, the use of evidence in the regulatory process through *ex ante* RIAs has been adopted by several regulatory agencies; although according to the OECD this is not yet a consistent practice across the whole administration, all federal regulatory agencies have implemented at least one RIA pilot project.²² The systematic use of *ex post* evaluation to assess whether regulations achieve their objectives is mostly unexplored, but some agencies are starting to revise the existing regulations aiming to simplify and revoke unnecessary or out-of-date regulations/acts.²³ Moreover, Brazilian agencies have established fairly advanced consultation systems to ensure stakeholder engagement and public participation in the process of regulation.²⁴ In August 2016, in partnership with the private sector and government regulatory agencies, the Brazilian Association of Regulatory Agencies (ABAR), a non-governmental organization, launched a guide on the dimension and indicators for the monitoring and evaluation of regulatory activity at federal level.²⁵ Many agencies, including the National Agency for Surface Transportation (ANTT) and the National Waterways Transportation Agency (ANTAQ), have been using these indicators.

2.4.2 Transparency

2.17. Brazil attaches importance to making laws transparent and readily accessible, including by foreigners. Since 2012, the Federal Government has provided citizens, under the Access to Information Act (FOIA), with a unified platform for registering online access to information requests. Recently, the platform has been improved so that it is now possible for foreigners to file an online access to information request (http://www.informacao.gov.br). Under the 2016 National Policy on Open Data, the Federal Official Gazette must be available in an open format within

²⁰ Viewed at: http://arquivos.portaldaindustria.com.br/app/conteudo 18/2013/01/31/3081/2015-MDIC-DOC-19-nov-MOI-Coerencia-Regulatoria-PT.pdf.

²¹ CAMEX promotes transparency of trade regulation, reviews the regulatory stock and sets priority areas for regulatory improvement related to trade and investment. Decree 4.732/2003 as amended by Decree No. 8,807/2016.

²² At the time of the previous TPR, six out of 10 federal regulatory agencies benefited from RIA pilot projects. They consisted of the National Motion Pictures Agency (ANCINE), the National Agency of Energy Electricity (ANEEL), the National Petroleum, Natural Gas and Biofuels Agency (ANP), the National Agency for Supplementary Health (ANS), the National Waterways Transportation Agency (ANTAQ) and the National Health Surveillance Agency (ANIVSA).

²³ For example, in November 2016, ANP opened a public consultation to revoke 343 rules considered out of date in relation to the current technology and regulatory framework. In 2014, after a similar procedure, 174 rules were revoked. Likewise, in December 2016, Anatel opened for public consultation the proposal to abolish 36 rules regarding the certification and homologation of telecommunications products. Also in 2016, Anvisa, in cooperation with the National Confederation of Industry (CNI), revised and consolidated 1,200 rules issued in the last 16 years affecting food industries, health products, medicines, among others. For information see ANP online information. Viewed at: http://www.anp.gov.br/wwwanp/consultas-audiencias-publicas/em- andamento/3165-consulta-e-audiencia-publicas-n-21-2016; ANATEL online information. Viewed $\underline{https://sistemas.anatel.gov.br/SACP/Contribuicoes/TextoConsulta.asp?CodProcesso=C1968\&Tipo=1\&Opcao=final Contribuicoes/TextoConsulta.asp?CodProcesso=C1968\&Tipo=1\&Opcao=final Contribuicoes/TextoConsulta.asp.CodProcesso=C1968\&Tipo=1\&Opcao=final Contr$ online information. Portal Industria Viewed nalizadas; and da http://www.portaldaindustria.com.br/cni/imprensa/2016/11/1,101816/cooperacao-entre-cni-e-anvisa-damais-transparencia-a-1-200-normas-que-impactam-a-industria.html.

²⁴ OECD (2016), *Government at a Glance: Latin America and the Caribbean 2017*, OECD Publishing. Viewed at: http://www.oecd.org/gov/government-at-a-glance-latin-america-and-the-caribbean-2017-9789264265554-en.htm.

²⁵ ABAR online information. Viewed at: http://abar.org.br/wp-content/uploads/2016/08/Manual-Abar-03-08-16-SITE-1.pdf.

180 days of publication.²⁶ Brazilian laws can be obtained from the main legislation website (http://www4.planalto.gov.br/legislacao), as well as the websites maintained by relevant ministries and agencies. Citizens have access to webcasting on the Federal Government's legislation portal and they can receive updates on laws of interest to them to their e-mail accounts (http://www.saj.planalto.gov.br/saj/Boletins.nsf/frmInscricaoWeb?OpenForm). laws are available in English or Spanish on the websites of the Ministry of Foreign Affairs and the Ministry of Industry, Trade and Services. Moreover, the Brazilian Legal and Legislative Information Portal (LexML) consolidates within a single database legislative and legal information from the main bodies of the legislative, judiciary and executive branches, as well as some sub-national entities (http://projeto.lexml.gov.br/documentacao/resumo-em-ingles). Both the House of Representatives (http://www2.camara.leg.br/atividade-legislativa/legislacao) and the Senate (http://www25.senado.leg.br/web/atividade) have a legislation portal through which it is possible to keep track of all the phases of the law-making process. In order to enhance transparency, as from 2013 CAMEX has required that all international trade-related information be published online.²⁷ In 2014, MDIC and the Ministry of Foreign Affairs (MRE) created an online information dissemination platform, Invest & Export Brazil (http://www.investexportbrasil.gov.br/home?l=en), to provide information including on legislation, documentation and procedural requirements, taxation, export financing, trade promotion, and business opportunities.

- 2.18. During the review period, Brazil made many notifications to the WTO (Table A2.1); it also submitted tariff and trade data annually to the WTO Integrated Data Base. 28 Nevertheless, most of its trade agreements under the Latin America Integration Association (LAIA) have not yet been notified (Section 2.6.2 and Table 2.1).
- 2.19. In all countries, lack of transparency, and thus lack of public accountability, creates scope for administrative discretion and therefore corruption. With a view to fighting corruption, since 17 December 1997, Brazil has been a signatory to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (ratification on 24 August 2000, implementation 11 June 2002), whose 41 parties (as at May 2014) are required to make foreign bribery a crime.²⁹ It is also a signatory to the 2005 UN Convention against Corruption, the first global comprehensive international anti-corruption agreement, whose 181 parties (as at end-2016) are required to establish criminal and other offences to cover a wide range of acts of corruption; Brazil ratified the convention on 15 June 2005.30 According to the 2014 report of the OECD Working Group on Bribery, of the 14 allegations since Brazil joined the OECD Convention, only five have been investigated and three investigations were still ongoing - a very low number in light of the size of Brazil's economy; it, inter alia, recommended that Brazil be more proactive in detecting, investigating and prosecuting foreign bribery.³¹
- 2.20. During the review period, Brazil introduced and implemented legislation, the so-called Clean Company Act, establishing a corporate anti-corruption regime.³² The Law, inter alia, prohibits

²⁶ In addition to the Federal Government, several states and municipalities are already disclosing legislation in an open format, as has been done by the City Hall of Sao Paulo-SP (http://dados.prefeitura.sp.gov.br/) and the City Hall of Recife-PE (http://dados.recife.pe.gov.br/es/dataset/diario-oficial). Decree No. 8,777/2016.

27 CAMEX Resolution No. 78/2013.

²⁸ WTO document G/MA/IDB/2/Rev.44, 3 October 2016.

²⁹ In 2015, Brazil ranked 76thout of 168 countries (69th out of 174 in 2012) on Transparency International's Corruption Perceptions Index (CPI), which measures the perceived level of public sector corruption. Brazil received a transparency score of 38/100 (higher is better), slightly below the Americas regional average (40/100) and the global average (43/100). According to the Transparency International Global Corruption Barometer 2013, the political parties, the legislature and the police were perceived as among the most corrupt institutions in Brazil. Transparency International online information. Viewed at: http://www.transparency.org/cpi2012/results, http://www.transparency.org/cpi2015,

http://www.transparency.org/gcb2013/in_detail/, and

http://www.transparency.org/gcb2013/country/?country=brazil; OECD online information. Viewed at: http://www.oecd.org/dataoecd/59/13/40272933.pdf; and UNODC online information. Viewed at: http://www.unodc.org/unodc/en/treaties/CAC/signatories.html.

³⁰ UN online information. Viewed at: http://www.unodc.org/unodc/en/treaties/CAC/signatories.html. ³¹ OECD (2014), Phase 3 Report on Implementing the OECD Anti-bribery Convention in Brazil, October.

Viewed at: http://www.oecd.org/corruption/anti-bribery/Brazil-Phase-3-Report-EN.pdf.

32 Law No. 12,846 of 1 August 2013 and implementing Decree No. 8,420 of 18 March 2015; Jones Day online information. Viewed at: http://www.jonesday.com/files/Publication/3c9b0192-a812-4849-b9fb-

direct and indirect acts of bribery or attempted bribery of Brazilian public officials or foreign public officials as well as bid rigging and fraud in the public procurement process. Administrative fines range from 0.1% to 20% of the responsible company's prior year's gross revenue (taxes excluded). If, however, authorities are unable to assess the gross revenues for the prior year, an alternative fine applies, which ranges from R\$6,000 (approx. US\$3,000) to R\$60 million (about US\$30 million). It is important to note that the Law states that these fines can never be lower than the benefit obtained by the responsible company. The judicial penalties for responsible companies include: disgorgement of benefits obtained by the illegal act, suspension or partial interruption of the company's activities, or dissolution of the legal entity. Companies may also be banned from receiving government assistance in the form of subsidies, grants, donations, or loans for a period ranging from one to five years. Administrative authorities may execute leniency agreements with companies that self-report violations and, inter alia, may benefit from a reduction of up to two thirds of the fines that could have been imposed. As at January 2017, more than twenty leniency agreements were under discussion; furthermore, four companies involved in the "Car Wash Operation" were debarred from contracting with the Brazilian government (Mendes Júnior, Skanska Brasil, Iesa Óleo e Gás, and Jaraguá Equipamentos Industriais). Regarding public officials, the number of annual expulsion punishments for corruption charges ranged from 420 (2014) to 550 (2016).³³ Furthermore, in 2016 a Brazilian firm (Odebrecht), Latin America's biggest construction company, and its affiliated petrochemical company (Braskem), were involved in a corruption case abroad.³⁴ Under the Brazilian investigation into the state-controlled PETROBRAS (Section 4.4.3.1.1), by December 2016 the authorities had secured 112 convictions of 83 people, including Odebrecht executives.

2.21. Since 2003, the Ministry of Transparency, Oversight and the Comptroller General (CGU) has been in charge of increasing administrative transparency through internal control actions, public auditing, prevention and fighting of corruption, and its ombudsman role. In 2010, the CGU launched the Pro-Ethics Company certification initiative to encourage the voluntary adoption of integrity measures by companies through the public recognition of those that, regardless of their size and field of activity, are truly committed to preventing and fighting corruption and other types of fraud.³⁵ In 2016, almost two hundred companies applied for the certification and twenty-five companies were recognized as Pro-Ethics.

2.5 Trade Agreements and Arrangements

2.5.1 WTO

2.22. Brazil, a founding Member of the WTO, participates actively in its work, including as a prominent voice for developing countries, and within the BRICS group of leading emerging economies, and remains committed to strengthening the multilateral trade system and to the successful conclusion of the Doha Development Agenda (DDA).³⁶ It accords at least MFN treatment to trading partners, including non-WTO Members. Brazil's trade policies have been reviewed six times; the last Review took on 24 and 26 June 2013.

2.23. During the review period, Brazil improved its WTO commitments by ratifying the WTO Trade Facilitation Agreement (TFA) on 29 March 2016 and depositing its instrument of acceptance of the Fifth Protocol on Financial Services; it also implemented the decisions adopted at the WTO's Eighth

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³³ CGU online information. Viewed at: http://www.cgu.gov.br/assuntos/atividade-disciplinar/relatorios-de-punicoes-expulsivas/arquivos/consolidado-por-ano-de-2003-a-2015.pdf.

³⁴ From 2007 to 2015, more than 70% of financing support for overseas infrastructure projects through Brazil's national development bank (BNDES), equivalent to an estimated amount of US\$ 2.5 billion, went to Odebrecht (Sections 4.2.4.1, 4.3.4, 4.3.6, 4.4.2, 4.4.3.3.1, 4.5.3.1, 4.5.4, 4.5.5.3.1 and 4.5.7). *The New York Times* International Edition, "A path of kickbacks for Brazilian firm", 23 December 2016.

³⁵ CGU online information. Viewed at: http://www.cgu.gov.br/assuntos/etica-e-integridade/empresa-etica

pro-etica.

36 Brazil also participated in the Friends of Anti-Dumping Negotiations (FANs) and in the Coalition of Agricultural Exporting Nations Lobbying for Agricultural Trade Liberalization (NAMA-11), W52 sponsors and the G20. Statement by Minister of State and External Relations, Ambassador Mauro Vieira, on the occasion of the Opening Session of the 10th Ministerial Conference of the World Trade Organization (Nairobi, 16 December 2015). Viewed at: http://www.itamaraty.gov.br/pt-BR/discursos-artigos-e-entrevistas-categoria/ministro-das-relacoes-exteriores-discursos/12730-discurso-do-ministro-mauro-vieira-por-ocasiao-da-sessao-de-abertura-da-x-conferencia-ministerial-da-omc-nairobi-16-de-dezembro-de-2015-ingles#eng.">http://www.itamaraty.gov.br/pt-BR/discursos-artigos-e-entrevistas-categoria/ministro-das-relacoes-exteriores-discursos/12730-discurso-do-ministro-mauro-vieira-por-ocasiao-da-sessao-de-abertura-da-x-conferencia-ministerial-da-omc-nairobi-16-de-dezembro-de-2015-ingles#eng.

and Ninth Ministerial Conferences relating to the granting of preferential treatment to services and service suppliers from least developed countries (LDCs) (Sections 3.1.1 and 4.4.2).

2.24. Brazil has continued to protect its trade interests and prevent allegedly unreasonable import restrictions of other countries through effective use of the multilateral dispute settlement mechanism. Between its last Review in 2013 and April 2017, Brazil was directly involved in seven disputes, five as a complainant, and two as a respondent (Table 2.1). During the same period it also participated as a third party in 28 cases.³⁷

Table 2.1 WTO dispute settlement cases involving Brazil, January 2013-April 2017

Subject of dispute	Respondent/ complainant	Status	WTO document series
Respondent			
Certain Measures Concerning Taxation and Charges	Brazil/ European Union	The European Union requested consultations with Brazil on 19 December 2013. No mutually agreed solution was reached and the European Union requested the establishment of a panel on 16 March 2015; the panel was established on 26 March 2015.	WT/DS472
Certain Measures Concerning Taxation and Charges	Brazil/Japan	Japan requested consultations with Brazil on 2 July 2015. No mutual agreed solution was reached and Japan requested the establishment of a panel on 17 September 2015; the panel was established on 29 March 2015.	WT/DS497
Complainant			
Measures Concerning the Importation of Chicken Meat and Chicken Products	Indonesia/Brazil	Brazil requested consultations with Indonesia on 16 October 2014. No mutual agreed solution was reached and Brazil requested the establishment of a panel on 15 October 2015. Indonesia objected to the establishment of the panel because a corrigendum to the panel request had been circulated at the request of Brazil. Given Indonesia's objection, Brazil requested that the establishment of the panel be deferred to the next meeting. The panel was established on 3 March 2015.	WT/DS484
Measures Concerning the Importation of Bovine Meat	Indonesia/Brazil	Brazil requested consultations with Indonesia on 16 October 2014. No mutual agreed solution was reached and Brazil requested establishment of a Panel on 22 February 2016; the panel was established on 3 March 2016.	WT/DS506
Subsidies Concerning Sugar	Thailand/Brazil	Brazil requested consultations with Thailand on 4 April 2016.	WT/DS507
Countervailing Measures on Cold- and Hot-Rolled Steel Flat Products	United States/ Brazil	Brazil requested consultations with the United States on 11 November 2016.	WT/DS514
Aircraft Subsidies	Canada/Brazil	Brazil requested consultations with Canada on 8 February 2017.	WT/DS522

Source: WTO Secretariat.

2.5.2 Regional and preferential trade agreements (RTAs and PTAs)

2.25. During the review period Brazil concluded several RTAs within the framework of the Latin American Integration Association (LAIA) and MERCOSUR, while the negotiation of other agreements is under way (Table 2.2). Several of its RTAs (e.g. with Guyana/Saint Kitts and Nevis (a LAIA agreement), and individual MERCOSUR agreements) remain reviewed at either the WTO Committee on Regional Trade Agreements or the Committee on Trade and Development. The entry into force of others is pending (Egypt, Colombia, Palestine, and Peru). The scope of the different RTAs varies widely and three of them also cover services (Table 2.2 and Section 4.5.2).

(SACU) Agreement was to be presented to the WTO by the beginning of 2017. The state of play and views expressed on the non-notification of LAIA agreements are found in WTO documents: WT/COMTD/W/217 - WT/REG/W/105, 14 June 2016; WT/REG/M/81, 12 July 2016; and, WT/REG/W/111, 1 November 2016.

³⁷ WTO online information. Viewed at: https://www.wto.org/english/thewto_e/countries_e/brazil_e.htm.
³⁸ The authorities indicated that the notification of the MERCOSUR and Southern African Customs Union

Table 2.2 Brazil's RTAs and PTAs in force: main features 2017

RTAS entered into force during the review period (2013-17)	
Brazil - Guyana/San Kitts and Nevis (AAP.A25TM-38)	
Type of agreement	Partial scope agreement
Date of signature	25/05/2012
Entry into force	05/07/2012
End of the transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with Guyana/San Cristobal (2016)	0.005% of total imports; 0.016% of total exports
WTO consideration status	Not yet notified
WTO document series	
Brazil – Bolivarian Republic of Venezuela (ACE 69)	
Type of agreement	Partial scope agreement
Date of signature	26/12/2012
Entry into force	14/10/2014
End of the transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with the Bolivarian Republic of Venezuela	0.3% of total imports; 0.7% of total exports
WTO consideration status	Not yet notified
WTO document series	
Mercosur - Southern African Customs Union (SACU)	
Type of agreement	Partial scope agreement
Date of signature	15/12/2008
Entry into force	01/04/2016
End of the transition period	
Coverage (selected features)	Goods
Mercosur's merchandise trade with SACU (from 09/2015 to 09/2016)	0.24% of total imports; 0.87% of total exports
WTO consideration status	
WTO document series	

RTAs entered into force before 2013	
Global System of Trade Preferences among Developing	
Countries (GSTP)	
Type of agreement	Partial scope agreement
Date of signature	13/04/1988
Entry into force	18/04/1989
End of transition period	10/04/1707
Coverage (selected features)	Goods
Brazil's merchandise trade with GSTP countries	Goods
WTO consideration status	Factual presentation not distributed
WTO document series	ractual presentation not distributed
Protocol on Trade Negotiation (PTN)	
Type of agreement	Dortial coops agreement
	Partial scope agreement 08/12/1971
Date of signature	11/02/1973
Entry into force	11/02/19/3
End of transition period	Coods
Coverage (selected features)	Goods
WTO consideration status	Factual presentation not distributed
WTO document series	
Latin American Integration Association (LAIA)	De Mal Constant
Type of agreement	Partial Scope Agreement
Date of signature	12/08/1980
Entry into force	18/03/1981
End of transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with LAIA countries (2016)	16.1% of total imports; 18.6% of total exports
WTO consideration status	Factual presentation not distributed
WTO document series	L/5342
Mercosur (ACE-18)	
Type of agreement	Customs union and economic integration agreement
Date of signature	26/03/1991 (goods); 15/12/1997 (services)
Entry into force	29/11/1991 (goods); 07/12/2005 (services)
End of transition period	
Coverage (selected features)	Goods and services
Brazil's merchandise trade with Mercosur (2016)	8.7% of total imports; 10.6% of total exports
WTO consideration status	Factual presentation distributed for services and
	factual abstract distributed for goods
WTO document series	WT/REG238/1 (services)
Mercosur – India	1
Type of agreement	Partial scope agreement
Date of signature	25/01/2004
Entry into force	01/06/2009
End of the transition period	2009
Coverage (selected features)	Goods
Mercosur's merchandise trade with India (from 09/2015 to 09/2016)	1.80% of total imports; 2.23% of total exports
WTO consideration status	Factual presentation distributed
WTO document series	WT/COMTD/RTA/6/1

DTAs automod into force before 2012	
RTAs entered into force before 2013	
Mercosur - Israel Type of agreement	Free trade agreement
Date of signature	18/12/2007
Entry into force	3/04/2010 (for Brazil)
End of transition period	5. 5 25 . 6 (.6. 5. dz.i.)
Coverage (selected features)	Goods
Mercosur's merchandise trade with Israel (from 09/2015 to 09/2016)	0.41% of total imports; 0.35% of total exports
WTO consideration status	In process of notification
WTO document series	
Mercosur – Chile (ACE-35)	Doubted assure assured
Type of agreement	Partial scope agreement
Date of signature Entry into force	25/06/1996 01/12/1996
End of the transition period	01/01/2014
Coverage (selected features)	Goods and services
Mercosur's merchandise trade with Chile (2016)	2.1% of total imports; 2.2% of total exports
WTO consideration status	Not yet notified
WTO document series	·
Mercosur – Plurinational State of Bolivia (ACE-36)	
Type of agreement	Partial scope agreement
Date of signature	17/12/1996
Entry into force End of the transition period	28/02/1997 01/01/2014
Coverage (selected features)	Goods
Mercosur's merchandise trade with Plurinational State of Bolivia	1.6% of total imports. 0.8% of total exports
(2016)	, and a second of the second o
WTO consideration status	Not yet notified
WTO document series	
Mercosur – Mexico (ACE-54 and ACE-55)	Doubted assure assured
Type of agreement	Partial scope agreement
Date of signature Entry into force	27/09/2002 01/01/2003
End of transition period	01/01/2003
Coverage (selected features)	Goods (ACE-54) / Automotive Agreement (ACE-55)
Mercosur's merchandise trade with Mexico (2016)	2.6% of total imports; 2.1% of total exports
WTO consideration status	Not yet notified
WTO document series	·
Mercosur – Peru (ACE-58)	
Type of agreement	Partial scope agreement
Date of signature Entry into force	30/11/2005 02/01/2006
End of the transition period	01/01/2019
Coverage (selected features)	Goods
Mercosur's merchandise trade with Peru (2016)	0.9% of total imports; 1.1% of total exports
WTO consideration status	Not yet notified
WTO document series	
Mercosur – Colombia, Ecuador and the Bolivarian Republic of	
Venezuela (ACE-59)	Dartial coops agreement
Type of agreement Date of signature	Partial scope agreement 30/11/2005
Entry into force	02/01/2006
End of the transition period	01/01/2018
Coverage (selected features)	Goods
Mercosur's merchandise trade with Colombia, Ecuador, and the	
Bolivarian Republic of Venezuela (2016)	1.1% of total imports; 2.2% of total exports
WTO consideration status	Not yet notified
WTO document series Mercosur – Cuba (ACE-62)	
Type of agreement	Partial scope agreement
Date of signature	r artial 3cope agreement
Entry into force	02/07/2007
End of the transition period	
Coverage (selected features)	Goods
Mercosur's merchandise trade with Cuba (2016)	0.04% of total imports; 0.17% of total exports
WTO design and agriculture	Not yet notified
WTO document series Brazil – Uruguay (ACE-02)	
Brazil – Uruguay (ACE-02) Type of agreement	Partial scope agreement
Date of signature	Tartial scope agreement
Entry into force	01/12/1986
End of the transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with Uruguay	N. J. and J. C. J.
WTO degree series	Not yet notified
WTO document series	

RTAs entered into force before 2013	
Brazil - Argentina (ACE-14)	
Type of agreement	Partial scope agreement
Date of signature	
Entry into force	20/12/1990
End of the transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with Argentina	
WTO consideration status	Not yet notified
WTO document series	
Brazil – Guyana (AAP.A25TM-38)	
Type of agreement	Partial scope agreement
Date of signature	27/07/2001
Entry into force	31/05/2004
End of the transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with Guyana (2016)	0.004% of total imports; 0.014% of total exports
WTO consideration status	Not yet notified
WTO document series	
Brazil – Suriname (ACE-41)	
Type of agreement	Partial scope agreement
Date of signature	21/04/2005
Entry into force	26/07/2006
End of the transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with Suriname (2016)	0% of total imports; 0.014% of total exports
WTO consideration status	Not yet notified
WTO document series	
Brazil – Mexico (ACE-53)	
Type of agreement	Partial scope agreement
Date of signature	03/07/2002
Entry into force	02/05/2003
End of the transition period	
Coverage (selected features)	Goods
Brazil's merchandise trade with Mexico (2016)	2.6% of total imports; 2.1% of total exports
WTO consideration status	Not yet notified
WTO document series	

Agreements pending entry into force	
Mercosur – Egypt	
Type of agreement	Partial scope agreement
Date of signature	02/08/2010
Entry into force	Pending
End of the transition period	10 years after entering into force
Coverage (selected features)	Goods
Mercosur's merchandise trade with Egypt (from 09/2015 to 09/2016)	0.059% of total imports; 1.45% of total exports
WTO consideration status	Not yet notified
WTO document series	
Mercosur - Palestine	
Type of agreement	Partial scope agreement
Date of signature	20/12/2011
Entry into force	Pending
End of the transition period	10 years after entering into force
Coverage (selected features)	Goods
Mercosur's merchandise trade with Palestine	
WTO consideration status	Not yet notified
WTO document series	
Agreement on Economic and Trade Expansion between Brazil	
and Peru	
Type of agreement	Partial scope agreement
Date of signature	29/04/2016
Entry into force	90 days after both parties notify each other of the
Entrolly to a War and to I	notification of completion of internal procedures
End of the transition period	Investment convices and government non-
Coverage (selected features) Brazil's services with Peru	Investment, services, and government procurement
WTO consideration status	Not yet patified
WTO document series	Not yet notified
WTO document series	

Agreements pending entry into force	
Additional Protocol to Mercosur-Colombia (ACE 59) on Trade	
in Services	Partial scope agreement
Type of agreement	Pending
Date of signature	Pending
Entry into force	30 days after Colombia and at least one of the other
	signing Parties have deposited the respective
	ratification instruments
End of the transition period	
Coverage (selected features)	Services
WTO consideration status	Not yet notified
WTO document series	

WTO Secretariat, based on information from the WTO RTA database. Viewed at: http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=130, and MDIC online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/negociacoes-internacionais/132-acordos-dosquais-o-brasil-e-parte.

2.5.2.1.1 MERCOSUR³⁹

2.26. The Southern Common Market (MERCOSUR) remains Brazil's main preferential agreement in terms of value of trade, accounting for some 10.6% of its total merchandise exports and 8.7% of its total merchandise imports in 2016 (Tables A1.3 and A1.4). Brazil is a MERCOSUR founding member together with Argentina, Paraguay, and Uruguay; the Bolivarian Republic of Venezuela was ratified as a full member of MERCOSUR in 2012 and was required to comply with all the requirements and schedules to become a full member by 12 August 2016.40 13 September 2016, the parties to the Treaty of Asunción issued a joint statement on the fact that the Bolivarian Republic of Venezuela had not fulfilled its obligations under its Protocol of Accession to MERCOSUR; the case was reviewed on 1 December 2016 and, as a result of the continuing lack of compliance, the Bolivarian Republic of Venezuela can no longer exercise the rights inherent to the condition of State Party to MERCOSUR. This cessation does not affect the validity of the preferential trade agreement between Brazil and the Bolivarian Republic of Venezuela. As part of MERCOSUR, Brazil maintains preferential trade agreements (Economic Complementarity Agreements) with Chile, the Plurinational State of Bolivia, Mexico, Peru, Colombia, Ecuador, the Bolivarian Republic of Venezuela, Cuba, India, and the South African Customs Union, as well as a free trade agreement with Israel (Table 2.2).

2.27. The Common Market Group (GMC) and the Council for the Common Market (CMC) are the main executive and decision-making bodies of MERCOSUR. MERCOSUR's Trade Commission is responsible for the application of common trade policy instruments. 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. In July 2015, Decision CMC 26/15 authorized Brazil to maintain a basic list of national exceptions to the CET within its WTO bound rates; it can also request temporary reduction of the CET and import capital goods and informatics and telecommunication Goods with tariffs lower than those of the CET (Section 3.1.3.1). There are also exceptions to the CET for toys, dairy products and peaches. The sugar and automotive sectors are the only exclusions to the free movement of goods within MERCOSUR, and there is no schedule for the inclusion of sugar in MERCOSUR's free trade regime. Trade in the automotive sector between Brazil and MERCOSUR members remains largely regulated by bilateral agreements, which were renegotiated in the period under review. During the review period, Brazil renegotiated its bilateral free trade agreement with Argentina, Uruguay and Mexico (imposing a tariff rate quota limiting the duty-free entry of motor vehicles until 2019) (Section 4.3.5). According to the authorities, plans to consolidate parallel RTAs involve the improvement of the existing agreement with Mexico, and the conclusion of an RTA between MERCOSUR and the Bolivarian Republic of Venezuela to be possibly implemented in 2018 (ACE 69 has already been signed, and the automotive sector is already partially covered by ACE 59).

³⁹ More information on MERCOSUR issues may be found in WTO document WT/TPR/S/283/Rev.1,

²⁶ July 2013.

40 The block was established in 1991 by the Treaty of Asunción, and its institutional structure was defined in the 1994 Protocol of Ouro Preto. MERCOSUR is incorporated into the LAIA legal regime under Economic Complementarity Agreement No. 18. LAIA economic complementarity agreements must be open for accession by any LAIA country.

⁴¹ MERCOSUR authorizes its members to conduct bilateral negotiations with trading partners in areas where it has proven difficult to reach consensus when negotiating as a block with that particular partner.

- 2.28. The 2004 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 stages. The first stage entails the granting of a zero CET rate to all merchandise imported by a member country that is subject to 100% preferential tariff treatment under MERCOSUR agreements with third parties. The second stage would cover the remaining goods. The third stage would 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.
- 2.29. During the review period, the negotiations on a comprehensive free trade agreement between MERCOSUR and the European Union, a priority for Brazil, progressed and they are to be completed by 2018. 44 In May 2016, Brazilian and EU representatives exchanged offers in goods, services, government procurement, and investment. In 2016, there was an exchange of offers related to the expansion of the existing MERCOSUR–India agreement. 45 In 2016, MERCOSUR and the European Free Trade Association (EFTA) completed a free trade agreement scoping exercise to identify negotiation issues and in early 2017 announced the intention to launch negotiations on a comprehensive free trade agreement. Since the last TPR, MERCOSUR has held discussions with Canada and Japan with a view to exploring the possibility of negotiating free trade agreements. As at early March 2017, MERCOSUR and Korea (Rep. of) had concluded their exploratory process in this area and Brazil was holding internal consultations to examine the possibilities of a trade agreement with this trading partner. Brazil also attaches high priority to trade negotiations between MERCOSUR and Mexico.
- 2.30. Dispute settlement in MERCOSUR is regulated by the 2002 Protocol of Olivos, in force since January 2004. Member States may choose to file trade disputes either within the MERCOSUR or the WTO dispute settlement mechanism. Brazil did not participate in any disputes within MERCOSUR during the review period.⁴⁶

2.5.2.1.2 Other arrangements

- 2.31. Brazil continues to participate in the 1998 Global System of Trade Preferences among Developing Countries (GSTP), and grants preferences to participating countries on some 98 HS96 tariff headings (Table 2.2). These preferences range from 10% to 100% and their scope includes agricultural products, fuels, chemical products, hides and skins, ferrous and steel products.
- 2.32. Brazil remains a beneficiary of the Generalized System of Preferences (GSP) schemes of Australia, Belarus (since 2015), Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Switzerland (since 2014), and the United States.⁴⁷

2.6 Foreign Investment Regime

2.33. Brazil remains open to and encourages foreign direct investment (FDI) which is prevalent across the economy despite foreign ownership limitations in certain sectors. Notwithstanding a drop in FDI inflows in 2015 due to economic recession and political turmoil, Brazil's huge market opportunities maintained its position as the most attractive investment location in Latin America

⁴² MERCOSUR CMC/DEC 10/10.

 $^{^{\}rm 43}$ 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.

⁴⁴ Negotiations between MERCOSUR and the European Union began in 1999, were interrupted in 2004 and were relaunched in 2010. MDIC online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/1566-mercosul-uniao-europeia; and http://www.mdic.gov.br//noticias/2159-ministros-do-brasil-e-da-argentina-definem-2018-como-meta-para-fechar-acordo-mercosul-ue.

⁴⁵ MDIC online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/negociacoes-internacionais/9-assuntos/categ-comercio-exterior/1567-ampliacao-do-acp-mercosul-india.

⁴⁶ MERCOSUR online information. Viewed at: http://www.mercosur.int/t_generic.jsp?contentid=374&site=1&channel=secretaria&seccion=5.

<u>site=1&channel=secretaria&seccion=5</u>.
⁴⁷ UNCTAD (2015), Generalized System of Preferences – List of Beneficiaries, 1 February. Viewed at: http://unctad.org/en/PublicationsLibrary/itcdtsbmisc62rev6_en.pdf.

and the Caribbean, capturing 42% of FDI to the region.⁴⁸ Despite some improvement, new investment undertakings in Brazil seemingly remain cumbersome, bureaucratic and expensive in terms of the rigidity involved in both starting and closing a business, owing to the many procedures required and their high cost. The tax burden and labour market rigidities also remain an issue.⁴⁹

Regulatory framework

2.34. During the review period, the main legislation governing foreign investment in Brazil remained largely unchanged.⁵⁰ Its 2014 amendments covered improvements on issues relating to non-resident investors, foreign capital in Brazil and Brazilian capital in foreign countries.⁵¹ Since the 1995 constitutional amendments, foreign and national capital have received the same legal treatment under equal circumstances which prohibit all forms of discrimination not explicitly foreseen in the law. Legally registered companies compete on an equal footing when bidding on contracts or seeking tax and non-tax incentives. Although no rules expressly prohibit foreign takeovers, special authorization is required for deals made via share purchase on the stock market.

Restricted activities

2.35. Brazil continues to follow a "negative" list approach in restricting FDI and national interest provisions are found in its Constitution. According to the authorities, during the review period, 95% of FDI applications were approved and rejections were due to non-compliance with domestic legal requirements. Restrictions on foreign investment affect some activities including nuclear power and certain postal services (Table 2.3 and Section 4.5). In 2015, healthcare services were opened to foreign investment by allowing the participation of foreign capital companies in supplementary healthcare services thus providing new opportunities for companies and investments in the health sector (Section 4.5.8.4). As of January 2017, in an effort to pull the economy out of a two-year recession, the Government was to propose legislation to lift restrictions on foreign ownership of airlines and agricultural land in Brazil. Foreigners and foreign-controlled

⁴⁸ According to UNCTAD data, Brazil dropped from the world's fourth-largest recipient of FDI inflows in 2014 to the eighth position in 2015. United Nations Conference on Trade and Development (2016), *World Investment Report 2016 - Investor Nationality: Policy Challenges*, Geneva. Viewed at: http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf; UN Economic Commission for Latin America and the Caribbean (2016), *Foreign Direct Investment in Latin America and the Caribbean 2016*, June. Viewed at: http://repositorio.cepal.org/bitstream/handle/11362/40214/6/S1600662_en.pdf; and EIU (2016), *Country Commerce – Brazil*, September.

⁴⁹ According to the World Bank's Doing Business 2016 Report, Brazil's rank improved from 126th out of 183 countries in 2012 to 116th out of 189 countries in 2016 in overall terms of the ease of doing business. Brazil was ranked 174th in 2016 in terms of ease of starting a business, down from 120th in 2012. There was an improvement in the number of days needed to start a business from 119 days in 2012 to 83 days in 2016. Furthermore, in terms of access to credit, Brazil ranked 97th in 2016 compared to 98th in 2012. World Bank (2016), *Doing Business 2016: Measuring Regulatory Quality and Efficiency.* Viewed at: http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB16-Full-Report.pdf; and http://portugues.doingbusiness.org/reports/global-reports/doing-business-2016; and EIU (2016), Country Commerce-Brazil, September.

⁵⁰ Foreign investment is regulated by: Law No. 4,131 of 3 September 1962 (Foreign Capital Law); Decree No. 55,762 of 17 February 1965; Law No. 4,390 of 29 August 1964; and Resolution No. 3,844 of 23 March 2010.

⁵¹ Resolution No. 4,373 of 29 September 2014; Resolution No. 4,319 of 27 March 2014.

⁵² Article 172 of the Constitution stipulates that the law shall regulate, based on national interests, the foreign capital investments, shall encourage reinvestments and shall regulate the remittance of profits.

53 Law No. 13,097 allows for the direct or indirect participation, including control, of companies or foreign capital in healthcare; it is, *inter alia*, permitted in the following cases: donations from international organizations linked to the United Nations, technical cooperation entities, and financing and loans; legal entities intended to install or operate general hospitals, including philanthropic, specialized hospitals, polyclinics, general clinics and specialized clinics, and family planning actions and research; health services maintained by non-profit making companies for the care of their employees and dependents, without any burden for social security; and, other cases provided for in specific legislation. Direct or indirect participation of companies or foreign capital in health actions and services, as well as healthcare support activities by human genetics laboratories, production and delivery of medicines and health products, clinical analysis laboratories, pathological anatomy and diagnostic imaging, is free. Law No. 13,097 of 19 January 2015 which modifies Law No. 8,080/1990. Viewed at: http://www.planalto.gov.br/CCIVIL_03/Ato2015-2018/2015/Lei/L13097.htm.

⁵⁴ The opening of airlines to foreign investment would be aimed at reopening regional routes that were abandoned. The lifting of the agricultural land ban could be subject to the condition that 10% of any purchase

companies and businesses may not own land in specified areas within 150 kilometres of Brazil's national borders, directly on its coasts or in any other geographical areas designated and defined as sensitive for national security; foreign-ownership of these areas requires authorization from the Brazilian National Security Council, among other procedures.

Table 2.3 Indicative list of FDI closed and restricted sectors, 2017

Sector/business	FDI limitation
A. Closed	
Postal services	Pick-up, transport and delivery of letters, postcards and grouped correspondence, as well as issuance of stamps and other postage payments
Nuclear energy	Wholly closed
B. Restricted	
Air transport	Allowed with most of the capital share belonging to Brazilians (up to 20% of foreign ownership) and 80% of voting share capital belonging to Brazilians
Financial institutions	Subject to authorization, which depends on technical analysis and on the issuance of a presidential decree stating that the operation is beneficial to Brazil
Health services	Allowed for specific activities
Rural land acquisition	Allowed up to a certain surface and subject to authorization of the National Institute of Colonization and Agrarian Reform (INCRA) and other public agencies; FDI in rural areas close to the boarder requires authorization from the Brazilian National Security Council, among other procedures
Broadcasting (TV and radio) and	Up to 30% of the capital in open-broadcast and publishing media companies
publishing media	Broadcasting subject to local content requirement
Fishing, mining and hydrocarbons	Subject to specific authorization requirements

Source: WTO Secretariat based on information supplied by the Brazilian authorities.

Registration and approval

- 2.36. Incoming foreign investment in all forms must be registered online 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 in specific modules according to the following classification: foreign direct investment (IED); financial operations (e.g. loans, long-term import financing, technical assistance and royalties contracts (ROF)); and, portfolio investments. Guarantees provided by international organizations in internal credit operations must be registered as well. Foreign capital must be registered within 30 days of the date it enters Brazil or after customs clearance in the case of goods. Femittances 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 registered. The invested sum must be registered in the currency in which the investment was made.
- 2.37. No restrictions on remittance of dividends or profits abroad, other than their adequate registration in the RDE-IED module, remain in place. 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 IED 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.

Investment promotion

2.38. During the review period Brazil continued to promote foreign and local investment through tax incentives, concessional finance, cash grants and industrial site support in several areas including transport infrastructure and the energy sector where FDI participation is allowed through Public-Private Partnerships, joint ventures or concessions (sections 3 and 4). The Ministry of Foreign Affairs (MRE) — along with the Brazilian Trade and Investment Promotion Agency (Apex-Brasil)—, in coordination with the Ministry of Industry, Foreign Trade and Services (MDIC)

is destined to land reform to benefit landless farmers and peasants. Reuters online information, "Brazil to open airlines, agricultural land to foreign buyers – sources", 30 January 2017. Viewed at: http://finance.yahoo.com/news/brazil-open-airlines-agricultural-land-212205876.html.

⁵⁵ Resolution No. 3,844 of 23 March 2010.

 $^{^{\}rm 56}$ Resolution No. 3,844 of 23 March 2010.

along with other agencies (e.g. Ministry of Agriculture and Ministry of Science and Technology) and the National Confederation of Industry (CNI) develop tools for attracting FDI in Brazil. As from 2003 Apex-Brasil is, *inter alia*, in charge of promoting Brazilian products and services abroad as well as attracting FDI to strategic sectors of the economy and supporting investors during the entire investment process. The MDIC is responsible for managing in cooperation with other federal states departments of industry and trade as well as entrepreneurs associations the 2003 National Investment Information Network (RENAI), which provides information about legislation and government programs and projects to investors. Furthermore, the MRE continues to promote investment in Brazil through its Trade Promotion Sections (SECOMs) located in 104 embassies and consulates around the world; SECOMs budget stood at R\$30.4 million in 2013, R\$52.7 million in 2014, R\$46.8 million in 2015, and R\$70 million in 2016. In 2016 the National Investment Committee (CONINV) was established to elaborate proposals aimed at encouraging incoming FDI.

Bilateral treaties and international cooperation

- 2.39. Since the 1990s, Brazil has become a signatory to 14 bilateral investment, promotion and protection agreements (BITs) that are being replaced by cooperation and facilitation investment agreements (CFIAs) (see below). ⁶¹ Brazil has negotiated two MERCOSUR protocols on investment: the Buenos Aires Protocol (extra-MERCOSUR), and the Colonia Protocol (intra-MERCOSUR). ⁶² However, none of these bilateral agreements or MERCOSUR protocols has ever entered in force, either because the Executive did not submit the agreement to the National Congress (e.g. Colonia Protocol) or because it withdrew the agreement prior to voting by the Congress (e.g. Buenos Aires Protocol and all the above-mentioned BITs). This situation reflected the concerns of the National Congress about the constitutionality of these agreements with respect to issues such as upholding the principle of full equality for investors under the law. ⁶³
- 2.40. To address key shortcomings in traditional BITs' legal loopholes, a new model of investment agreements, the Cooperation and Facilitation Investment Agreement (CFIA) built upon CAMEX, UNCTAD and OECD guidelines and based on risk mitigation, institutional governance and thematic agendas, was developed and used as from 16 July 2013.⁶⁴ Brazil has signed CFIAs with Mozambique (30 March 2015), Angola (1 April 2015), Mexico (26 May 2015), Malawi (25 June 2015), Colombia (9 October 2015), Chile (23 November 2015), and Peru (29 April 2016). Nevertheless, as they are pending the approval of Congress, these agreements are not yet in force. By 1 January 2017, the CFIAs with Angola, Malawi and Mozambique had been approved by the Chamber of Deputies and approval by the Senate was pending; their ratification is expected in the course of 2017. The remaining agreements are still being reviewed by the National Congress. Further CFIA negotiations are ongoing and the signing of at least three new CFIAs is expected in early 2017 (e.g. India, and Jordan). A Cooperation and Facilitation of Investments Protocol of MERCOSUR (PCFI) was signed in April 2017 and exploratory discussions are under way with Ethiopia, Morocco, South Africa, Thailand, Tunisia and The former Yugoslav Republic of Macedonia to which Brazil presented its CFIA model.
- 2.41. Brazil adhered to the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) 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 it considers that its rules of procedure would provide better protection to foreign investors compared to domestic investors. Prior to becoming an OECD observer, Brazil subscribed to its 1976 Declaration and Decisions on International Investment and Multinational Enterprises.

⁵⁷ APEX online information. Viewed at: http://www.apexbrasil.com.br/en/home.

⁵⁸ MDIC online information. Viewed at: http://investimentos.mdic.gov.br/.

⁵⁹ SECOM online information. Viewed at: <u>www.investexportbrasil.gov.br</u>.

⁶⁰ Federal Decree No. 8.807/2016.

⁶¹ These BITs involve Belgium-Luxembourg, Chile, Cuba, Denmark, Finland, France, Germany, Italy, the Republic of Korea, the Netherlands, Portugal, Switzerland, the United Kingdom, and the Bolivarian Republic of Venezuela. MDIC online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/negociacoes-internacionais/9-assuntos/categ-comercio-exterior/1565-acordo-de-cooperacao-e-facilitacao-de-investimentos.

⁶² MERCOSUR Decision No. 11/94, Protocol on Promotion and Protection of Investment Proceeding from Non-Member Countries of the MERCOSUR; and MERCOSUR Decision No. 11/93, Protocol of Colonia for the Promotion and Reciprocal Protection of Investments in MERCOSUR (investment within member countries).

 $^{^{63}}$ More information on this matter is available at WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

⁶⁴ MDIC online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/negociacoes- http://www.mdic.gov.br/comercio-exterior/negociacoes- http://www.mdic.gov.br/comercio-exterior/negociacoes- http://www.mdic.gov.br/comercio-exterior/negociacoes- http://www.mdic.gov.br/comercio-exterior/1565-acordo-de-cooperacao-e-facilitacao-de-investimentos.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Measures Directly Affecting Imports

3.1.1 Customs procedures, valuation, and requirements

- 3.1. Since 2014, work on streamlining foreign trade procedures and formalities has been taking place under Brazil's Single Window Programme (*Programa Portal Único de Comércio Exterior*). The programme's focus is on optimizing the interventions and information flows among all stakeholders involved in the import, export and transit of goods. Unless exempted, commercial imports must be declared in the Integrated Foreign Trade System (SISCOMEX), which is being redesigned to become a full-fledged single window for trade in goods by the end of 2018.¹
- 3.2. Access to SISCOMEX is managed by the Secretariat of Federal Revenue of Brazil (RFB), which issues user accreditations (habilitação) free of charge and with unlimited validity. Depending on their estimated financial capacity, applicants may qualify for one of the following three accreditation types: express (c.i.f. value of imports capped at US\$50,000 per semester)²; limited (c.i.f. value of imports capped at US\$150,000 per semester); or unlimited.³ According to the authorities, the transaction value caps associated with the first two accreditation types are maintained for risk-mitigation purposes. To qualify for an unlimited accreditation, importers must demonstrate that their actual financial capacity exceeds US\$150,000 per semester.⁴ If an applicant's request for accreditation/revision of financial capacity estimate has been rejected, a subsequent application would not be considered in the six months following the rejection.⁵
- 3.3. Upon completing their first transaction in SISCOMEX, importers are automatically registered in the Registry of Exporters and Importers (REI) maintained by the Secretariat of Foreign Trade (SECEX) at the Ministry of Industry, Foreign Trade and Services (MDIC). Inscription in the REI is free of charge and with unlimited validity, but may be suspended (for up to two years) or cancelled as a sanction for import-related fraud.⁶ Import transactions with payment terms exceeding 360 days remain subject to registration with the Central Bank.⁷
- 3.4. All services and intangible transactions between a Brazilian and a foreign resident must be registered in the Integrated System of Trade in Foreign Services, Intangible Assets and Other Operations (SISCOSERV), whose gradual implementation was completed in October 2013. The reporting requirement applies to the buyer or seller (provider) resident in Brazil. Penalties for non-compliance include fines and the withdrawal of fiscal concessions awarded for the respective transactions. Legal entities under the simplified (*simples nacional*) tax regime, individual micro-entrepreneurs, and natural persons without for-profit economic activity (monthly turnover not exceeding US\$30,000) qualify for an exemption, as long as they have not engaged in transactions benefitting from public support for foreign trade. According to the authorities, SISCOSERV is maintained for statistics collection purposes; registration in the system is neither a prerequisite for the transaction's execution nor a means of imposing any restrictions.

¹ Exemptions include goods declared with a simplified import declaration or an express shipment declaration (DIRE).

² Express accreditation may be granted to publicly traded companies, companies with the status of an authorized economic operator, state-controlled companies, and government agencies.

³ RFB Normative Instruction No. 1,603 of 15 December 2015 and Ordinance No. 123 of 17 December 2015.

⁴ In principle, the methodology and the time-frame for assessment of applications are identical for all accreditation types. The analysis is based on the applicant's turnover over a five-year period.

⁵ RFB Normative Instruction No. 1,603, Art. 21.

⁶ MDIC Ordinance No. 249 of 21 December 2010.

⁷ Central Bank of Brazil Circular No. 3,691 of 16 December 2013.

⁸ Law No. 12,546 of 14 December 2011 and joint RFB/SCS Ordinance No. 1,908 of 19 July 2012.

⁹ SISCOSERV online information. Viewed at: http://www.siscoserv.srv.br/multas-e-penalidades-

¹⁰ MDIC Ordinance No. 113 of 17 May 2012 and its subsequent amendments.

¹¹ Transactions may be registered in SISCOSERV, without incurring a penalty, by the last working day of the third month following commencement of supply. The reporting may be done either online or offline and is free of charge.

- 3.5. Engaging the services of a customs broker is not a prerequisite for the fulfilment of Brazilian customs formalities. Apart from a Brazilian citizenship requirement, there are no regulatory restrictions to competition among customs brokers in Brazil. Both the customs brokers and their clients must obtain accreditation to use SISCOMEX. Customs brokers must also be registered in the Customs Register.
- 3.6. Each import declaration (ID) registered in SISCOMEX is subject to a fee of R\$185; additional fees, ranging from R\$29.50 (first two items) to R\$2.95 (item 51 and more), are payable for each item listed on the ID.¹² As from December 2014, supporting documentation must be digitally signed and submitted electronically through SISCOMEX. 13 Most online systems that facilitate the fulfilment of formalities related to foreign trade, including SISCOMEX and SISCOSERV, require a digital certificate compliant with the Brazilian Public Key Infrastructure (ICP-Brazil).
- 3.7. Brazil ratified the WTO Trade Facilitation Agreement (TFA) on 29 March 2016. Brazil's National Committee on Trade Facilitation (Confac), comprising a broad range of public and private sector representatives, was established in 2016.14 Co-chaired by the MDIC and the Ministry of Finance, Confac has a mandate to coordinate TFA implementation activities and other trade facilitating measures. In March 2017, Brazil notified its enquiry point to the WTO and updated its notification of category commitments, designating all but three of the provisions contained in Section I of the TFA under Category A. 15 The three remaining provisions, all designated as Category B commitments, have indicative implementation time-frames that do not go beyond end-2019. Brazil has already put in place mechanisms that are partially compliant with the provisions on facilitation measures for authorized operators¹⁶ and pre-arrival processing.¹⁷
- 3.8. In 2014, Brazil established an authorized economic operator (AEO) programme, which replaced the pre-existing "blue line" express clearance facility. 18 Participation in the AEO programme is voluntary and is open to international supply chain participants with low-risk operations, both in terms of their cargo's physical security and of compliance with customs requirements. Depending on the type of AEO certification, participants' benefits may include: a dedicated communication channel with the RFB; a lower rate of document and physical inspections on importation and/or exportation; expedited clearance at ports of entry; a 40-day deadline for the provision of advance rulings; and simplified accreditation (habilitação) for access to SISCOMEX and special customs regimes and/or zones. At 31 January 2017, the RFB had received 343 applications for AEO certifications, of which 95 were approved and 205 were refused. The authorities' aim is that AEOs would account for 50% of all registered import and export declarations by 2019. 19 Brazil has concluded a mutual recognition agreement on AEO programmes with Uruguay and is developing joint work programmes to this end with Argentina and the United States. Exploratory talks on the mutual recognition of AEO programmes are also underway with several trading partners, including Mexico, the Republic of Korea and the Russian Federation.
- 3.9. IDs are processed according to a risk assessment method that provides for four channels: green (automatic clearance), yellow (documentary inspection), red (documentary and physical inspection), and grey (documentary, physical and fraud-related inspection). The risk analysis factors are regularly updated and include: the importer's fiscal compliance record; operational and financial capacity; frequency of use of SISCOMEX; the nature, volume, and value of imports; taxation value; country of origin; and the import regime. In 2015, the authorities introduced machine learning and artificial intelligence methodologies for targeting and selecting high-risk shipments. During the review period, the share of IDs processed through the yellow channel decreased steadily, whereas those of the green and red channels increased (Table 3.1).

¹² RFB Normative Instruction No. 1,158 of 24 May 2011.

¹³ Normative Instruction No. 680 of 2 October 2006, as amended by RFB Normative Instruction No. 1,532 of 19 December 2014.

¹⁴ Presidential Decree No. 8,807 of 12 July 2016 and CAMEX Resolution No. 122 of 23 November 2016.

 $^{^{15}}$ WTO documents G/TFA/N/BRA/1 and $\bar{2,}$ 17 March 2017.

¹⁶ SRF Normative Instruction No. 476 of 13 December 2004, replaced by RFB Normative Instruction No. 1,598 of 9 December 2015.

¹⁷ RFB Normative Instruction No. 680 of 2 October 2006 and its subsequent amendments.

¹⁸ RFB Normative Instruction No. 1,521 of 4 December 2014, replaced by RFB Normative Instruction No. 1,598 of 9 December 2015.

19 RFB online information. Viewed at:

Table 3.1 Distribution of IDs by risk assessment channel, 2013-16

	2013	2014	2015	2016
Total IDs	2,547,190	2,491,676	2,221,295	2,063,073
		(%	%)	
Green	88.8	88.9	90.8	91.8
Yellow	7.6	7.2	5.1	3.9
Red	3.6	3.8	3.9	4.2
Grey	0.1	0.1	0.1	0.1

Source: RFB.

- 3.10. Importers may use a simplified import declaration (SID) for certain shipments whose value does not exceed US\$3,000 and for some non-commercial imports.²⁰ SID processing is done through SISCOMEX free of charge.
- 3.11. Airborne expedited shipments (valued at US\$3,000 or less) are declared with an express shipment declaration (*Declaração de Importação de Remessas Expressas* (DIRE)), 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.
- 3.12. Brazil maintains 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.²¹ The regime requires both the importer and the Paraguayan seller to be authorized and registered in a computerized system (*Sistema RTU*) maintained by the RFB.²² Eligible imports comprise mainly consumer electronics (some 250 items under NCM tariff chapters 84, 85 and 90), subject to annual and quarterly value limits.²³ Under the RTU, the cumulative rate of the import duty, the excise duty (*imposto sobre produtos industrializados*), and PIS and COFINS (Section 3.1.4) contributions is 25%; it is applied on the goods' purchase price, as per the commercial invoice. According to the authorities, statistics on participation in the RTU are not available.
- 3.13. The 2017 World Bank *Doing Business* survey estimates that importing merchandise into Brazil requires 63 hours and US\$970 for "border compliance", and 120 hours and US\$107 for "documentary compliance". On exportation, the corresponding figures are 49 hours and US\$959, and 18 hours and US\$226, respectively. The report, albeit limited to the two largest Brazilian business hubs, notes that trading across borders was made easier by electronic system improvements in the past two years.²⁴
- 3.14. According to the authorities, the average customs clearance time across all Brazilian customs posts was 40.32 hours in 2013, 39.35 hours in 2014, 35.29 hours in 2015, and 34.16 hours in 2016. Besides reflecting more comprehensive sampling, these statistics differ from the World Bank figures in the nature of clearance procedures taken into account.

²⁰ 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 (valued up to US\$10,000) 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.

²¹ Law No. 11,898 of 8 January 2009 and Decree No. 6,956 of 9 September 2009.

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

²³ 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. The list of eligible goods is available at: http://idg.receita.fazenda.gov.br/orientacao/aduaneira/manuais/rtu-regime-de-tributacao-unificada/topicos/argulyos/apexounicodecreto6956, 2009 doc

unificada/topicos/arquivos/anexounicodecreto6956_2009.doc.

24 Data in *Doing Business 2017* are current as of 1 June 2016. For Brazil's country profile, as well as notes on the methodology and its limitations, see:

http://www.doingbusiness.org/~/media/wbg/doingbusiness/documents/profiles/country/bra.pdf.

- 3.15. 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. Dispute settlement procedures may be carried out entirely by electronic means. Statistics on disputes are not available due to the lack of a centralized registry.
- 3.16. Brazil has customs cooperation agreements with Angola, Argentina, the Plurinational State of 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, South Africa, Spain, Uruguay, the United States, and the Bolivarian Republic of Venezuela. Additionally, Brazil has bilateral agreements on customs issues with France, India, Israel, the Netherlands, the Russian Federation, South Africa, the United Kingdom, and the United States.
- 3.17. The dutiable value of imported goods is the sum of the purchase cost and all expenses incurred for freight and insurance (if any) up to the point of entry into Brazil.²⁵ 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 1998.²⁶
- 3.18. The share of IDs cleared using the transaction value method was 99.87% in 2013, 99.89% in 2014, 99.66% in 2015 and 99.56% in 2016. 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.

3.1.2 Rules of origin

- 3.19. Brazil applies rules of origin for non-preferential purposes.²⁷ 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 may be carried out by SECEX at the import licensing stage, on the basis of a risk assessment. In 2015, the verification procedure was modified with a view to, *inter alia*, reducing the time-frame for conducting investigations.²⁸ 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.
- 3.20. Preferential rules of origin are applied in the context of Brazil's trade agreements (Section 2.6.2). Eligibility for preferential tariff treatment must be attested by a certificate of origin for each shipment of the merchandise in question. In addition, some of the trade agreements to which Brazil is a party (e.g. MERCOSUR-Israel) have provisions requiring a certificate of non-manipulation in case of transit or transhipment.
- 3.21. Compliance with non-preferential and preferential rules of origin is ascertained by the RFB during customs clearance and post-clearance audits.²⁹ The authorities have indicated that an updated regulation on the verification of origin by the RFB would be issued in the near future.³⁰ Having implemented the electronic submission of supporting documentation to the RFB in December 2014 (Section 3.1.1), Brazil launched a pilot project for the bilateral exchange of digitally signed certificates of origin with Argentina in October 2016. The authorities plan to implement similar projects in bilateral trade with Chile and Uruguay in 2017.

²⁵ According to the authorities, import insurance is not compulsory.

²⁶ WTO document G/VAL/N/3/BRA/1, 23 October 2002.

²⁷ WTO document G/RO/N/78, 16 April 2012.

 $^{^{28}}$ SECEX Ordinance No. 38 of 18 May 2015 revoking SECEX Ordinance No. 39 of 11 November 2011.

²⁹ SRF Normative Instruction No. 149 of 27 March 2002.

³⁰ Public consultations on the matter took place in January 2016. RFB online information. Viewed at: http://idg.receita.fazenda.gov.br/sobre/consultas-publicas-e-editoriais/consulta-publica/arquivos-e-imagens/consulta-publica-rfb-no-01-2016.pdf/view [4 April 2017].

- 3.22. Imports without proof of origin are liable to a fine of 30% of their customs value; those subject to a quantitative restriction will not be admitted into Brazil and will be liable to a fine of R\$5,000 per day, counted from the date of registration of the ID until the date of their effective return abroad. Non-compliance with preferential rules of origin would result in the collection of the relevant import duties and the suspension of preferential treatment until the exporter provides satisfactory proof of a compliant productive process.
- 3.23. A revision of MERCOSUR rules of origin was negotiated in November 2011 and entered into force on 27 June 2015.31 In general, MERCOSUR origin is conferred on products that: (i) are wholly obtained or produced in MERCOSUR; (ii) have become classifiable under a four-digit tariff heading that differs from those of all non-originating inputs³²; or (iii) have minimum MERCOSUR content of 60% of their f.o.b. value.^{33, 34} Specific rules of origin, overriding the general ones, apply to some 2,123 tariff lines at the eight-digit level. The goods concerned include foodstuffs, pharmaceuticals, textiles, steel, telecommunications, and informatics products. MERCOSUR rules of origin may be applied to all intra-MERCOSUR trade up to 31 December 2023.35 Brazil's Economic Complementarity Agreements with Argentina (ACE-14) and Uruguay (ACE-02) stipulate special rules of origin for products of the automotive industry until the effective entry into force of the MERCOSUR Automotive Policy.³⁶
- 3.24. LAIA agreements also stipulate general and specific rules of origin.³⁷ Under general LAIA rules, origin is conferred on 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.³⁸

3.1.3 Tariffs

3.1.3.1 Applied MFN tariff

- 3.25. All trading partners of Brazil receive at least most-favoured-nation (MFN) tariff treatment. Brazil applies the MERCOSUR Common External Tariff (CET) expressed in the Common MERCOSUR Nomenclature (NCM), which is currently based on the 2017 version of the Harmonized System (HS).
- 3.26. Brazil's 2017 applied MFN tariff is entirely ad valorem and has 10,226 lines at the eight-digit level (Table 3.2). The tariff comprises 19 bands, with rates ranging from zero to 55% (same as in 2012).39 Brazil does not apply any seasonal or variable import duties. The simple average applied MFN tariff declined slightly from 11.7% in 2012 to 11.6% in 2017; for dutiable lines, the decline was from 12.7% to 12.6%. Some 7.7% of tariff lines are duty free (down from 8% in 2012), the modal rate is 14%, and 4.6% of all lines have rates of over 26% (Chart 3.1). The manufacturing sector continues to benefit from the highest tariff protection, with the average applied tariff (under both HS25-97 and ISIC definitions) remaining virtually the same as in 2012.

Table 3.2 Structure of the MFN tariff schedule, 2012 and 2017

	2012	2017
Total number of tariff lines	10,031	10,226
Bound tariff lines (% of all tariff lines)	100.0	100.0
Simple average rate	11.7	11.6

³¹ Decree No. 8,454 of 20 May 2015.

³² This rule is considered fulfilled as long as the combined c.i.f. value of non-originating inputs classified in the same tariff heading as the final good does not exceed 10% of the latter's f.o.b. value.

³³ MERCOSUR's Economic Complementarity Agreements with the Andean Community (ACE-59),

Peru (ACE-58) and Bolivia (ACE-36) contain provisions on cross-cumulation.

34 Differential treatment provisions allow lower MERCOSUR content thresholds for Paraguay until 2025, and Uruguay and Argentina until 2022 (Common Market Council Decision No. 32 of 16 July 2015).

Common Market Council Decision No. 31/15 of 16 July 2015.

³⁶ Decrees No. 6,500 of 2 July 2008 and No. 6,518 of 30 July 2008.

 $^{^{37}}$ 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%A9qorigtext.nsf/vpaises/brasil.

³⁸ LAIA Resolution No. 252 of 4 August 1999. Viewed at:

http://www.aladi.org/nsfaladi/juridica.nsf/vres252web/res252.

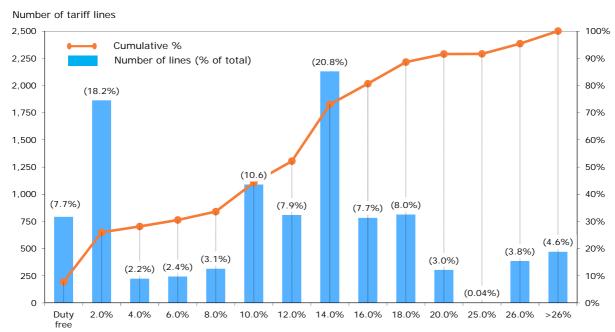
39 Unlike the 2012 tariff, the highest import duty rate is currently applied on desiccated coconuts.

	2012	2017
HS 01-24	10.3	10.3
HS 25-97	11.9	11.8
WTO agricultural products	10.2	10.2
WTO non-agricultural products	11.9	11.8
Duty-free tariff lines (% of all tariff lines)	8.0	7.7
Simple average of dutiable lines only	12.7	12.6
Tariff quotas (% of all tariff lines) ^a	0.3	0.4
Non-ad valorem tariffs (% of all tariff lines)	0.0	0.0
Domestic tariff "peaks" (% of all tariff lines) ^b	0.02	4.5
International tariff "peaks" (% of all tariff lines) ^c	27.7	27.0
Nuisance applied rates (% of all tariff lines) ^d	18.1	18.2
Coefficient of variation	0.7	0.7

- Including tariff quotas applied to a subset of a tariff line and/or for a period shorter than 12 months.
- b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate. There were only two such peaks in 2012, as temporary rate increases on some 100 lines had raised the overall average.
- c International tariff peaks are defined as those exceeding 15%.
- d Nuisance rates are those greater than zero, but less than or equal to 2%.

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

Chart 3.1 Frequency distribution of MFN tariff rates, 2017



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

- 3.27. In aggregate, the tariff continues to depict positive escalation for manufactured goods: fully processed products attract the highest average applied rate, followed by semi-processed goods and raw materials (Chart 3.2 and Table 3.3). This pattern of escalation tends to act as a disincentive to improve international competitiveness at the higher stages of value addition. The authorities note that any pattern-of-escalation assessment is fraught with methodological difficulties and therefore debatable.
- 3.28. In line with MERCOSUR rules, Brazil maintains a range of temporary, individual derogations from the CET. Three MERCOSUR mechanisms allowing for such derogations have a longstanding implementation record in Brazil: the basic list of national exemptions, the quotas for lower tariffs, and the *Ex Tarifário* mechanism. 40

 $^{^{\}rm 40}$ WTO document WT/TPR/S/212/Rev.1, 11 May 2009.

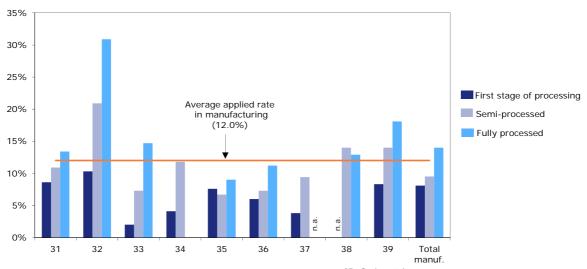


Chart 3.2 Tariff escalation, by 2-digit ISIC industry, 2017

- Food , beverages and tobaccoTextiles and leatherWood and furniture

- Paper, printing and publishingChemicalsNon-metallic mineral products
- 37 Basic metals
- Fabricated metal products and machineryOther manufacturing

n.a. Not applicable.

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

Table 3.3 Summary analysis of Brazil's MFN tariff, 2017

Description	No. of	Average	Range	Variation	Duty-free
	lines	(%)	(%)	(CV)	(%)
Total	10,226	11.6	0-55	0.7	7.7
HS 01-24	1,304	10.3	0-55	0.5	8.1
HS 25-97	8,922	11.8	0-35	0.7	7.7
By WTO category					
WTO agricultural products	1,047	10.2	0-55	0.6	8.6
Animals and products thereof	133	7.9	0-16	0.6	9.0
Dairy products	37	18.6	12-28	0.3	0.0
Fruit, vegetables, and plants	280	9.6	0-55	0.6	10.0
Coffee and tea	30	14.5	10-35	0.4	0.0
Cereals and preparations	140	11.5	0-20	0.5	12.9
Oil seeds, fats, oil and their products	125	7.9	0-20	0.5	12.0
Sugars and confectionary	23	16.7	16-20	0.1	0.0
Beverages, spirits and tobacco	73	16.6	0-27	0.3	2.7
Cotton	7	6.3	6-8	0.1	0.0
Other agricultural products, n.e.s.	199	7.9	0-14	0.5	7.5
WTO non-agricultural products	9,179	11.8	0-35	0.7	7.6
Fish and fishery products	366	10.1	0-32	0.3	4.4
Minerals and metals	1,218	9.9	0-25	0.6	7.3
Chemicals and photographic supplies	3,212	7.1	0-20	0.8	2.9
Wood, pulp, paper and furniture	406	10.5	0-18	0.5	2.5
Textiles	832	22.6	2-35	0.3	0.0
Clothing	251	35.0	35-35	0.0	0.0
Leather, rubber, footwear and travel goods	234	15.2	0-35	0.6	0.4
Non-electric machinery	1,132	11.6	0-30	0.5	18.3
Electric machinery	606	12.1	0-25	0.6	20.6
Transport equipment	216	19.0	0-35	0.6	13.0
Non-agricultural products, n.e.s.	679	13.9	0-35	0.5	15.8
Petroleum	27	1.0	0-20	4.1	92.6
By ISIC sector ^a					
Agriculture, hunting and fishing	527	7.3	0-55	0.7	15.2
Mining	127	3.1	0-10	0.6	13.4
Manufacturing	9,571	12.0	0-35	0.7	7.3
Manufacturing excluding food processing	8,748	12.0	0-35	0.7	7.6
By stage of processing					
First stage of processing	1,046	7.1	0-55	0.7	13.0
Semi-processed products	3,879	9.5	0-26	0.8	1.7
Fully processed products	5,301	14.0	0-35	0.6	11.1

Description	No. of	Average	Range	Variation	Duty-free
	lines	(%)	(%)	(CV)	(%)
By HS section					
01 Live animals and products	515	9.3	0-28	0.5	7.3
02 Vegetable products	404	8.0	0-55	0.5	17.3
03 Fats and oils	74	9.6	4-20	0.2	0.0
04 Prepared food, etc.	311	15.1	0-35	0.3	0.0
05 Minerals	207	2.5	0-20	0.8	33.3
06 Chemicals and products thereof	3,020	6.8	0-20	0.8	3.4
07 Plastics and rubber	424	11.4	0-35	0.5	0.9
08 Hides and skins	113	11.5	2-35	0.6	0.0
09 Wood and articles	157	7.9	2-14	0.5	0.0
10 Pulp, paper, etc.	222	11.3	0-16	0.5	4.5
11 Textiles and articles	1,055	25.4	2-35	0.3	0.0
12 Footwear, headgear	70	25.4	16-35	0.3	0.0
13 Articles of stone	217	10.8	0-25	0.4	0.9
14 Precious stones, etc.	64	9.6	0-18	0.6	9.4
15 Base metals and products	739	11.9	0-25	0.4	1.6
16 Machinery	1,765	11.8	0-30	0.5	16.7
17 Transport equipment	229	18.5	0-35	0.6	14.9
18 Precision equipment	450	12.3	0-20	0.5	18.6
19 Arms and ammunition	18	20.0	20-20	0.0	0.0
20 Miscellaneous manufactured articles	165	19.1	0-35	0.3	2.5
21 Works of art, etc.	7	4.0	4-4	0.0	0.0

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

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

- 3.29. To mitigate any difficulties stemming from the entry into force of the CET, MERCOSUR members may individually apply different (higher or lower) tariff rates on up to 100 lines. Modifications to the so-called basic list of national exemptions may not exceed 20% of all listed lines within a six-month period. As at end-February 2017, Brazil's derogations under that mechanism concerned 99 NCM lines. 41 The deadline for the elimination of Brazil's basic list of national exemptions has been extended until 31 December 2021. 42
- 3.30. With a view to fostering supply-side innovation and competitiveness, the Ex Tarifário mechanism allows MERCOSUR members to individually reduce import duties on pre-determined lists of capital goods (BK list) and informatics and telecommunications equipment (BIT list) without a domestically produced equivalent. Typically, rates are reduced to 2% for up to two years. Brazil has been authorized to maintain its BK and BIT lists until end-2021. 43 Besides the lack of equivalent domestic production, Brazilian decisions on the granting of import duty reductions take into account other considerations, such as adoption of new technologies, investment in infrastructure improvements, and complexity of the imported good. In February 2017, Brazil's Ex Tarifário derogations from the CET comprised 78 tariff lines relating to its BIT list and 537 tariff lines relating to its BK list.
- 3.31. As a means of addressing shortages within the common market, MERCOSUR members may individually apply tariff quotas (with an in-quota rate of 2% or, exceptionally, zero) on up to 45 tariff lines at a time for up to 24 months (renewable for up to 12 additional months). 44 These tariff quotas may also be specified in Ex Tarifário format (i.e. as a subset of the tariff line). The quantitative restriction, in-quota rate, and duration of application are determined by MERCOSUR's Commerce Commission after consultation with all member states. 45 As at end-January 2017, Brazil maintained 26 tariff quotas (up from 25 in 2011), including 3 with in-quota rates set at zero.
- 3.32. Between 1 October 2012 and 30 September 2013, Brazil also applied higher-than-CET rates on 100 tariff lines under a temporary MERCOSUR mechanism intended to address trade

⁴¹ Online information. Viewed at: <a href="http://www.mdic.gov.br/comercio-exterior/estatisticas-de-comercio-exterior-exter exterior-9/arquivos-atuais [9 April 2017].

⁴² Common Market Council Decision No. 26/15 of 16 July 2015.

⁴³ CAMEX Resolution No. 92 of 24 September 2015 implementing Common Market Council Decision

No. 25/15 of 16 July 2015.

44 Depending on the nature of the supply shortage, the simultaneous application of tariff quotas may be capped at 30 and/or 15 tariff lines.

⁴⁵ MERCOSUR Resolution GMC No. 08/08 of 20 June 2008.

imbalances due to the international economic environment. ⁴⁶ The tariff hikes ranged from 6 to 23 percentage points, causing the simple average rate across the concerned lines to increase from 13.5% to 22.2%. In 2015, the Common Market Council of MERCOSUR reinstated this mechanism until 31 December 2021 but Brazil has not used it to date. ⁴⁷

3.1.3.2 Bindings

3.33. Brazil bound its entire tariff during the Uruguay Round. Tariffs on agricultural products (WTO definition) are bound at rates ranging from zero to 55%, with the higher bindings reserved mostly for dairy products, grains, and tobacco. Bound rates for non-agricultural products range from zero to 35%. The average bound tariff rate is 30.1%, some 18.5 percentage points higher than the average applied MFN rate (Chart 3.3). Brazil has bound "other duties and charges" for only one line, covering certain navigational instruments (HS 9014.80.0400 at 15%); this duty is not applied in practice.

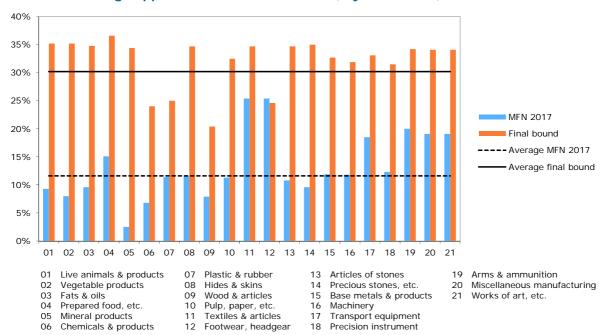


Chart 3.3 Average applied and bound tariff rates, by HS section, 2017

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

3.34. The WTO process of certifying Brazil's bound tariff schedule in order to incorporate the changes resulting from the introduction of HS versions 2007, 2012 and 2017 has not yet been completed. Applied rates on some 134 tariff lines (up from 120 in 2012) 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.

3.1.3.3 Preferences

3.35. Brazil grants tariff preferences under bilateral and regional trade agreements, which may overlap in terms of trading partners but differ in terms of product coverage and rules of origin (Chart 3.4 and Table 2.2). In 2017, Brazil applied preferential tariff rate quotas under five such agreements: Brazil-Guyana (AAP.A25TM-38), Brazil-Suriname (AAP.A25TM-41), Brazil-Mexico (ACE-53), MERCOSUR-Mexico (ACE-55) and MERCOSUR-Andean Countries (ACE-59). According to the authorities, the share of aggregate preferential imports in the total

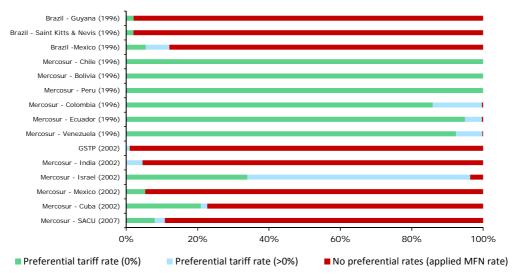
⁴⁶ CAMEX Resolution No. 70/12 of 28 September 2012 implementing Common Market Council Decision No. 39/11 of 20 December 2011.

⁴⁷ Common Market Council Decision No. 27/15 of 16 July 2015.

⁴⁸ Tariff bindings are available in the HS2002 nomenclature, whereas the 2017 applied tariff is expressed in HS2017. In the absence of a common nomenclature version, these two averages are not strictly comparable.

value of Brazil's imports was some 14.5% in 2013, 13.6% in 2014, 12.9% in 2015, and 13.7% in 2016. Annual data on the associated forgone tariff revenue were not made available.

Chart 3.4 Product coverage of selected preferential agreements, 2016



Note: Figures in brackets refer to the HS nomenclature in which the preferential schedules are provided and on which the calculations are based.

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

3.36. Most of the preferential tariff schedules applied by Brazil have been set out in the LAIA nomenclature with a view to facilitating successive negotiations on regional economic integration. Brazil has not published formal correspondence tables between its preferential schedules and its applied tariff, which is regularly migrated to the latest version of the HS nomenclature. The lack of a common nomenclature version precludes meaningful comparisons both across preferential agreements and against the currently applied MFN tariff. Consequently, traders incur onerous transaction costs as they have to research one nomenclature for tariff classification purposes and at least one additional nomenclature for preference eligibility purposes. According to the authorities, the burden on most importers would be limited by the fact that they would need to research nomenclatures for just a few products. The completion of some agreements' transition periods in the coming years is also expected to reduce such transaction costs.

3.1.4 Other charges affecting imports

- 3.37. Brazil's internal taxation regime remains overly complex, including in the treatment of imported goods and services. Domestic and cross-border transactions are subject to various federal and sub-federal levies, including: 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 cross-cumulation of these taxes for tax base purposes is not uncommon. In addition, their application typically varies depending on the product type, the competent sub-federal authority, and the importer's tax regime status.
- 3.38. Depending on their nature, certain transactions (including cross-border ones) may also be subject to other charges, such as the Additional Freight Charge for the Renovation of the Merchant Navy (AFRMM), the Financial Transactions Tax (IOF), and the Contribution for Intervention in the Economic Domain (CIDE) (Section 4). One other tax, the Additional Airport Tax (ATAERO), was eliminated as from January 2017. ⁵⁰
- 3.39. During the period under review, duties and other taxes on foreign trade transactions accounted for less than 15% of federal tax revenue, the largest contributions being attributable to

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⁴⁹ Notably, it is difficult to detect the erosion of preferences granted under certain agreements due to subsequent lowering of MFN tariffs.

⁵⁰ Law 13,319 of 25 July 2016.

COFINS and import duties (Table 3.4). Although statistics on ICMS collection are not compiled at the federal level, the authorities affirm that this tax remains the main source of revenue for most Brazilian federative states.

Table 3.4 Federal tax revenue, by main sources, 2012-16

(R\$ million and %)

	2012	2013	2014	2015	2016
Total	689,768	768,724	788,924	826,844	883,289
			(%)		
Import duties	4.51	4.84	4.67	4.72	3.56
Export duties	0.01	0.02	0.02	0.005	0.003
IPI – local sales	4.34	4.15	4.50	3.92	3.56
IPI – importation	2.31	1.98	1.93	2.03	1.52
Income taxes	38.29	37.41	38.59	38.96	41.26
IOF	4.46	3.83	3.77	4.20	3.81
Rural territorial tax	0.10	0.11	0.12	0.14	0.14
COFINS – domestic	20.20	19.79	20.50	19.85	19.49
COFINS – importation	5.10	5.00	4.16	4.54	3.65
PIS – domestic	5.62	5.50	5.73	5.57	5.41
PIS – importation	1.08	1.03	0.85	0.93	0.75
Social contribution on net profit (CSLL)	8.34	8.21	8.31	7.42	7.69
CIDE	0.40	0.005	0.002	0.40	0.65
Other	5.23	8.14	6.84	7.31	8.51

Source: WTO Secretariat calculations, based on data from the RFB.

3.40. The IPI is a federal tax levied on domestically produced and imported manufactured goods, following the value-added principle.⁵¹ For domestic transactions, the tax is typically levied on the ex-factory value of a product upon its release from the manufacturing facility.⁵² The IPI levied on imports 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 zero 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 non-ad valorem.⁵³ During 2013-16, most amendments to the IPI concerned tax rates.⁵⁴ In principle, the same rates apply on domestically produced and imported goods. However, certain IPI reductions or suspensions, such as on automotive products (Section 4.3.5), have been granted only to products originating in some of Brazil's preferential trading partners (e.g., MERCOSUR and Mexico).

3.41. The ICMS is a value-added tax levied on imports, 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 (including for own use or consumption). Being in the competence of Brazil's federative states, the ICMS is governed by 27 distinct regulatory regimes and certain overarching disciplines established at the federal level. The ICMS on interstate transactions is collected at origin and a portion of that amount is subsequently transferred to the destination state, giving rise to complex scenarios whenever the two states apply different ICMS rates.

3.42. The taxable base, the applicable ICMS rate and any interstate transfers depend on several factors, including the ship-from and ship-to tax jurisdiction, the purchaser's tax status, and the

⁵¹ 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.

⁵² Each individual facility of a company is considered a separate taxpayer.

⁵³ The latest update of the IPI tax rates table (*Tabela de incidência do IPI* (TIPI)) dates from 16 February 2016. Viewed at: http://idg.receita.fazenda.gov.br/acesso-rapido/legislacao/documentos-e-arquivos/tipi [15 December 2016].

arquivos/tipi [15 December 2016].

54 A list of legislative amendments is available at: http://www.planalto.gov.br/ccivil_03/ ato20112014/2011/decreto/d7660.htm [15 December 2016].

55 Unlike intrastate and interstate transactions, imports of electricity are also subject to ICMS

⁵⁵ Unlike intrastate and interstate transactions, imports of electricity are also subject to ICMS (Section 4.4.4).

⁵⁶ 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.

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 rates and/or (permanent or temporary) exemptions may apply for all states or within a single state. ICMS rate and/or tax base reductions may be granted within a state (Section 3.3.1.2).

- 3.43. In general, the ICMS is levied on the value of the transaction (including the cost of insurance and freight), net of unconditional discounts. The taxable base of imports comprises the c.i.f. value, the import duties, the IPI, the ICMS itself and any other taxes and/or customs-related charges.⁵⁷ 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).⁵⁸ As from January 2013, a uniform ICMS rate of 4% applies to transfers of credits between states arising from the ICMS on goods imported via a state different from the state of final destination.⁵⁹ Intrastate transactions and direct imports to the destination state are subject to ICMS rates of 19% (Rio de Janeiro), 18% (São Paulo, Paraná, and Minas Gerais), or 17% (all remaining states).
- 3.44. The PIS and COFINS contributions are levied on a value-added (non-cascading) basis, at a combined rate of 9.25% (1.65% for PIS and 7.6% for COFINS) of gross revenue, for companies paying corporate income tax under the actual profit method. In general, the same combined rate applies to goods and services, whether domestically supplied or imported. Merchandise imports are taxed on their c.i.f. value; for imported services, the base is the amount (before income tax) paid or remitted abroad augmented by a multiplier term comprising the rates of ISS, PIS and COFINS. Higher rates apply to imports of soft drinks and beer, machinery, motor vehicles and their parts, rubber tyres and air chambers, pharmaceuticals, and cosmetic products. In addition, non-ad valorem rates are levied on the importation of soft drink and beer containers, and fuels. Provisions for zero-rating or exemption are in place for a wide range of goods.
- 3.45. The ISS is a municipal tax levied on a cumulative (cascading) basis 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 law⁶²; a minimum tax rate of 2% is stipulated in the Constitution.⁶³ 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.
- 3.46. The federal government grants duty and tax concessions under various initiatives aimed at promoting investment and innovation or achieving social objectives. A range of tax breaks, including on imported goods and services, are made available to companies established in export processing zones (Section 3.2.4.2) and the Manaus Free Trade Zone (Section 3.3.1.2). Sub-federal authorities also grant rebates on taxes that fall within their remit (Section 3.3.1). According to RFB estimates and projections, import duty concessions resulted in forgone revenue in the range of R\$3.4–R\$4.9 billion over the 2013-17 period. Revenue losses on import-related IPI concessions were estimated at nearly the same magnitude (Table 3.5).

⁵⁷ Details regarding the ICMS tax base for imports are available at: http://www4.receita.fazenda.gov.br/simulador/glossario.html#ncm [18 December 2016].

⁵⁸ Subsequent compensation reflects ICMS rate differences between the ship-from and ship-to tax jurisdiction.

⁵⁹ Federal Senate Resolution No. 13 of 25 April 2012.

⁶⁰ Companies under the presumed profit (cumulative) tax system, as well as certain revenues deriving from telecommunications, transport and software development services, are subject to a combined rate of 3.65% (0.65% for PIS and 3% for COFINS), without any tax credits for the PIS and COFINS paid on inputs (services and material costs). Companies with revenues subject to the presumed profit tax system and other revenues subject to the actual profit (non-cumulative) tax system must keep separate records of their contributions under each system.

⁶¹ Prior to October 2013, the tax base of merchandise imports was the c.i.f. value augmented by the ICMS, the PIS and COFINS. The calculation methodology currently in force for the PIS and COFINS on imports is set out in RFB Normative Instruction No. 1,401 of 9 October 2013.

⁶² Complementary Law No. 116 of 31 July 2003.

⁶³ Constitutional Amendment No. 37 of 13 June 2002.

Table 3.5 Forgone federal tax revenue, 2013-17

(R\$ billion)

Tax heading	2013	2014 ^a	2015 ^a	2016 ^a	2017 ^a
Import duties	3.48	3.68	4.29	4.94	3.51
IPI -importation	3.17	3.60	4.12	4.62	3.40
IPI – local sales	20.90	22.39	24.39	22.63	25.06
COFINS	54.77	58.51	70.54	64.56	64.02
PIS	10.87	11.64	14.10	12.89	12.72
Income taxes	72.66	80.18	87.72	89.51	97.71
IOF	2.12	1.98	2.50	5.14	2.87
CSLL	9.04	9.30	10.49	11.17	11.79
AFRMM	1.48	1.37	1.73	1.15	1.22
Other	44.82	57.13	62.55	54.39	62.54

a Projections.

Source: RFB, budget estimates (*Demonstrativo dos Gastos Tributários, Estimativas Bases Efetivas*, 2013) and annual budget projections (*Demonstrativo dos Gastos Tributários, PLOA*).

3.1.5 Import prohibitions, restrictions, and licensing

3.47. In general, Brazil maintains import prohibitions on health and moral grounds, and to comply with international conventions to which it is a party. During the period under review, the Brazilian list of import prohibitions was expanded with the inclusion of cigarette replicas intended for the under-aged (Table 3.6).

Table 3.6 Import prohibitions, 2017

Product	Description	Legal basis
Cigarette replicas intended for the under- aged	The importation, production, commercialization, distribution and propaganda of any products (and packaging) intended for the under-aged that replicate the shape of cigarettes (or the like) are prohibited	Law No. 12,921 of 26 December 2013
Endangered animals and plants	Animals and plants listed as endangered by CITES	Decree No. 3,607 of 21 September 2001
Hazardous waste	Import ban; other movements must follow Basel Convention procedures	National Environment Council (Concelho Nacional do Meio Ambiente – CONAMA) Resolution No. 452 of 2 July 2012
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 weight, are prohibited	Ministry of Agriculture, Livestock and Food Supply (MAPA) Normative Instruction No. 17 of 18 June 2004
Illicit drugs	Substances and plants that may cause physical or psychological dependence	Secretariat for Health Surveilance (Secretaria de Vigilância em Saúde - SVS)/Ministry of Health (Ministério da Saúde - MS) Ordinance No. 344 of 12 May 1998
Programmed electronic machines for gambling	Prohibited on moral grounds	Law No. 37 of 18 November 1966
Substances that deplete the ozone layer	Prohibited substances in accordance with the Montreal Protocol	CONAMA Resolution No. 267 of 11 December 2000
Toys that replicate firearms	Imports and domestic production are prohibited	Article 26 of Law No. 10,826 of 22 December 2003
Used and retreaded tyres	Used/retreaded tyres under HS heading 4012, even if the intended use is as raw material; reimports 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
Weapons and ammunition	Private imports of goods intended for exclusive use by military or police forces	Decree No. 2,998 of 23 March 1999
Wines	Prohibited if transported in containers of more than 5 litres	Article 26 of Law No. 7,678 of 8 November 1988

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.

- 3.48. Brazil submitted its most recent notifications 64 to the Committee on Import Licensing in 2016; several follow-up questions have been raised by the EU. 65
- 3.49. Brazil maintains automatic and non-automatic import licensing requirements for numerous products, regardless of their origin. Higher licences must be obtained prior to customs clearance; whenever non-automatic licensing requirements apply, importers are generally advised to obtain the licence before the goods are shipped. Requests for both types of licences are submitted online through SISCOMEX and forwarded to one of the 16 competent government entities for processing. According to the authorities, there are no overlaps in the licensing entities' competences but the granting of some import licences may require intervention (approval) by more than one entity. In addition, the main import licensing entity, SECEX's Department of Foreign Trade Operations (DECEX), has delegated its competences over certain products and operations to Banco do Brasil S.A.
- 3.50. In principle, all granted import licences are registered directly in SISCOMEX. All import licences are non-transferrable and valid for 90 days. Refusal to grant a licence may be appealed before the relevant licensing agency. Some entities may levy a fee for the import licence; according to the authorities, the fees reflect the cost of services rendered.
- 3.51. At end-2016, imports classifiable under some 137 tariff lines were subject to automatic licensing, whereas non-automatic licensing requirements could apply to at least 5,460 tariff lines (more than half of Brazil's entire tariff).⁶⁹ During 2013-16, the main additions to the list of imports subject to non-automatic licensing included endangered species (some 200 tariff lines) and several manufactured goods (i.e. automotive parts). According to the authorities, the implementation of the Single Window Programme (Section 3.1.1) would bring about more efficient solutions for the enforcement of public policies, thereby significantly reducing the number of import licensing requirements.
- 3.52. In general, automatic licensing is used for statistics collection, and monitoring of specific products and customs regimes, including the inward processing regimes. 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 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, whereby imports must undergo a "similarity examination" to ascertain that no equivalent domestically produced goods exist. 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.

⁶⁶ A compilation of import licensing regulations is available in Chapter II of SECEX Ordinance No. 23 (14 July 2011) and its subsequent amendments. Up-to-date information on import licensing requirements is available through a simulator module of SISCOMEX, viewed at: https://siscomex.desenvolvimento.gov.br/tratamento/private/pages/consulta_tratamento.jsf [29 December 2016]

 $^{^{64}}$ WTO documents G/LIC/N/1/BRA/7/Corr.1, 6 September 2016; G/LIC/N/2/BRA/7, 31 August 2016; and G/LIC/N/3/BRA/11, 31 August 2016.

⁶⁵ WTO document G/LIC/Q/BRA/20, 22 November 2016.

⁶⁷ Requests for automatic licensing must be processed within 10 business days, whereas those for non-automatic licensing must be processed within 60 calendar days of registration in SISCOMEX (SECEX Ordinance No. 23 of 14 July 2011, Arts. 22 and 23).

⁶⁸ A list of the tariff lines and import operations for which the analysis of import licensing requests is carried out by *Banco do Brasil S.A.* can be viewed at: http://www.bb.com.br/docs/pub/dicex/dwn/Llalcadas.pdf [29 December 2016].

⁶⁹ MDIC online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/importacao/tratamento-administrativo-de-importacao [29 December 2016].

⁷⁰ 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.

3.1.6 Anti-dumping, countervailing, and safeguard measures

3.53. Brazil's institutional framework on trade remedies remained unchanged during the period under review.⁷¹ The MDIC's SECEX, through its Department of Trade Remedies (DECOM), remains in charge of carrying out anti-dumping (AD), countervailing (CV) and safeguard investigations (i.e. fact finding and analysis).⁷² Decision-making regarding the application and modification of contingency measures, as well as the exporting economy's market status, remains the remit of the Council of Ministers of the Chamber of Foreign Trade (CAMEX), which takes into account DECOM recommendations. CAMEX may levy provisional duties on imports from the date of its preliminary determination. The Technical Group for Public Interest Assessment (GTIP), established by CAMEX in 2012, remains in charge of examining requests to suspend or modify provisional or definitive measures for reasons of public interest.⁷³ In 2015, the time-frame for GTIP examinations was increased from four to six months (renewable once for an equal period of time).⁷⁴

3.54. The main regulatory framework amendments undertaken since Brazil's last Review concerned the use of electronic means and the investigation and application of AD measures. These legislative amendments have been notified to the WTO and discussed in the Committees on Anti-Dumping Practices and/or on Subsidies and Countervailing Measures.⁷⁵

3.55. In force from October 2013, Decree No. 8,058 introduced new administrative procedures for the investigation and application of AD measures. In addition, SECEX issued several implementing ordinances on: the submission of documents to DECOM; price undertaking offers; applications for AD investigations; applications for anti-circumvention reviews; applications for sunset reviews; and assessment of scope. Besides the clarification of certain definitions and the revision (mostly downward) of various deadlines, the ensuing procedural innovations included:

- mandatory preliminary determinations;
- mandatory recommendation of the lesser duty for companies that fully cooperate in original investigations;
- a methodology for export price determination when the exporter and the importer are related parties;
- refinements to the definition of domestic industry (e.g., possible exclusion of parties associated with foreign producers, and geographic sub-division within Brazil's territory);
- a domestic industry representativeness threshold of 25% (less if industry fragmented) for the admissibility of AD investigation applications (previously 50%);
- clarifications on the calculation of individual dumping margins for new producers/exporters;
- · retroactive application of AD duties; and
- formalization of on-site investigation procedures.

⁷¹ WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

⁷² While DECOM may not initiate a review without a request from a Brazilian industry, it may decide to include additional exporting countries in duly initiated proceedings whenever there is sufficient information justifying such a decision.

⁷³ Since its creation, the GTIP has initiated 15 examinations of AD measures, of which 3 resulted in suspension, 1 in a partial suspension, and 1 is still ongoing.

⁷⁴ CAMEX Resolution No. 27 of 29 April 2015.

⁷⁵ Written questions and answers regarding the notified laws and regulations are contained in WTO documents G/ADP/Q1/BRA/21 to 33 and G/SCM/Q1/BRA/21 to 33.

⁷⁶ WTO document G/ADP/N/1/BRA/3/Corr.1, 27 September 2013.

⁷⁷ SECEX Ordinances No. 34 (10 September 2013), No. 36 (19 September 2013), No. 41 (11 October 2013), No. 42 (17 October 2013), No. 44 (29 October 2013), and No. 42 (14 September 2016), replacing No. 37 (18 September 2013).

3.56. Under Brazil's legislation, AD and CV investigations may be initiated simultaneously for the same product. However, an AD measure and a CV measure cannot be imposed simultaneously on a given product for the purpose of neutralizing the same situation of dumping or export subsidy.⁷⁸

3.57. Trade remedies investigation procedures were further amended by Law No. 12,995 of 18 June 2014, which established the admissibility of electronic means and of documents elaborated in the official WTO languages. Pursuant to the Law, all procedural acts must be digitally signed with a certificate compliant with the ICP-Brazil. Details of the electronic administrative procedures were set out in Ordinance No. 58 of 29 July 2015. Administrative procedures relating to AD investigations whose applications were filed as from 31 July 2015 are carried out through an electronic system (DDS) maintained by SECEX's DECOM. The system has not yet been expanded to CV and safeguard investigations.

3.58. Brazil has regularly submitted semi-annual reports on AD and CV actions to the relevant WTO Committees. Notwithstanding the downward trend in investigations initiated during the period under review, the incidence of Brazilian trade remedies, predominantly AD measures, nearly doubled (Table 3.7). At end-December 2016, there were 161 definitive AD measures (including six price undertakings) in force in Brazil, up from 87 measures (including five price undertakings) at end-December 2012. During that period, Brazil initiated four CV investigations, one of which (PET film from India) resulted in the imposition of final duties. No safeguard investigations were initiated and no safeguard measures were applied in Brazil between January 2013 and January 2017. At end-2016, 44 Brazilian trade remedy measures were in force for more than five years. According to the authorities, the share of Brazil's total merchandise imports affected by its trade remedy measures was 0.76% in 2013, 0.79% in 2014, 0.93% in 2015, and 1.06% in 2016.

Table 3.7 Trade remedy actions, 2013-16

	2013	2014	2015	2016
Industry petitions (complaints)	72	53	47	
Original investigations initiated	56	36	23	12
Anti-dumping	54	35	23	11
Countervailing	2	1	0	1
Reviews initiated	11	9	15	12
Anti-dumping	11	6	11	11
Anti-circumvention	0	3	4	1
Provisional anti-dumping measures imposed	6	20	4	4
Definitive measures imposed	43	42	36	29
Anti-dumping	43	39	35	27
Anti-dumping extensions (anti-circumvention)	0	3	1	1
Countervailing	0	0	0	1
Measures suspended for public interest reasons	6	1	3	0
Measures reflecting public interest reasons ^a	0	1	3	1
Measures in force (at 31 December)	110	134	163	173
Anti-dumping (definitive)	106	126	155	161
Anti-dumping (provisional)	1	2	1	3
Anti-dumping extensions (anti-circumvention)	3	6	7	8
Countervailing	0	0	0	1

.. Not available.

a Measures diverging from DECOM recommendations for reasons of public interest.

Source: Data provided by the Brazilian authorities.

3.59. Judicial reviews of CAMEX decisions follow Brazil's general procedures for appeals of governmental acts. Statistics on appeals are not available, due to the lack of a centralized court registry. Brazilian trade remedy measures have not been the subject of any dispute settlement cases at the WTO during the period under review.

⁷⁸ Decree No. 8,058 (Art. 1) of 26 July 2013.

 $^{^{79}}$ WTO documents G/ADP/N/1/BRA/3/Suppl.4, G/SCM/N/1/BRA/2/Suppl.11 and G/SG/N/1/BRA/3/Suppl.2, 18 September 2014.

⁸⁰ WTO document G/ADP/N/1/BRA/3/Suppl.7, 4 January 2016.

⁸¹ WTO documents G/ADP/N/294/BRA, 24 February 2017; and G/ADP/N/237/BRA, 16 April 2013.

⁸² WTO document G/SCM/N/305/BRA, 31 August 2016.

3.1.7 Other measures

3.60. Brazil observes the trade sanctions imposed by the United Nations or 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.

3.2 Measures Directly Affecting Exports

3.2.1 Customs procedures and requirements

- 3.61. The registration and customs clearance procedures for commercial exports are similar to those for imports, requiring notably declaration through SISCOMEX and the related registrations on first-time use (Section 3.1.1). Prior to submission of the export declaration, merchandise exports must also be recorded in the export registry (RE), where financial and fiscal aspects of the commercial transaction are entered. Registration in the RE is requested through SISCOMEX and, in the absence of inaccuracies, is confirmed within a maximum of 30 days. Exports financed with public funds must be recorded in a credit register (RC) before being registered in the RE.⁸³ According to the authorities, the RE would be phased out with the implementation of new export procedures in the context of Brazil's Single Window Programme.
- 3.62. In general, export declarations must be processed in SISCOMEX before the merchandise is loaded for exportation.⁸⁴ The supporting documentation includes: bill of lading; packing list; commercial invoice; and, in some cases, letter of credit, export licence, certificate of conformity, and/or certificate of origin. As in the case of imports, exports worth up to US\$50,000 and certain items without commercial value may be declared with a simplified export declaration, and dispensed from RE formalities.⁸⁵ Likewise, Brazil's AEO programme offers trusted exporters various trade facilitation advantages (Section 3.1.1).
- 3.63. SECEX has delegated the responsibility for certifying Brazilian exports' compliance with most preferential rules of origin to 57 private institutions. ⁸⁶ All such institutions must have facilities for the online exchange of digitally signed certificates of origin, in line with the parameters established by LAIA's Digital Certification of Origin Project (COD). ⁸⁷ Certificates of origin are valid for 180 days, and must be issued within 60 days of issuance of the commercial invoice if the export destination is a LAIA or a MERCOSUR partner. The request for a certificate of origin must be accompanied by the commercial invoice and a declaration by the producer.
- 3.64. SECEX's DECEX manages certificates of origin for in-quota exports of sugar to the EU. Banco do Brasil S.A. is the sole issuer of certificates of origin for the GSP⁸⁸ and for in-quota poultry exports to the EU. To qualify for preferential treatment, exports of tobacco to the EU must be accompanied by a certificate of authenticity, issued by Banco do Brasil S.A. or the industrial federation of the States of Paraná, Santa Catarina, or Rio Grande do Sul. ⁸⁹ In addition to the certification of origin, a licensing mechanism is in place for Brazilian exports subject to tariff quotas in destination markets (Section 3.2.3).
- 3.65. Brazilian exporters of goods and services may keep abroad the totality of their export proceeds, but must report their origin and use to the RFB; such proceeds may not be loaned. Repatriation of export proceeds is done through a foreign exchange contract with a financial institution authorized by the Central Bank. 91

⁸³ SECEX Ordinance No. 44 of 6 December 2012.

⁸⁴ The exceptions include: supplies of fuel and food to airlines and ships in international traffic; and domestic sales of precious stones and jewellery to non-residents.

⁸⁵ SECEX Ordinances No. 23 of 14 July 2011 and No. 42 of 7 December 2011.

⁸⁶ SECEX Ordinance No. 37 of 1 October 2014.

⁸⁷ SECEX Ordinance No. 23 of 14 July 2011.

⁸⁸ SECEX Ordinance No. 43 of 22 October 2012.

⁸⁹ SECEX Circular No. 9 of 11 February 2009.

 $^{^{90}}$ Central Bank of Brazil, Normative Instruction No. 726 of 28 February 2007 and Circular No. 3,548 of 12 March 2008.

⁹¹ Central Bank of Brazil, Circular No. 3,527 of 4 March 2011.

3.2.2 Taxes, charges, and levies

- 3.66. Under the Brazilian Constitution, exports of goods and services (provided abroad) are zero-rated for IPI, ICMS, PIS and COFINS tax purposes, and are thus eligible for credits from the incidence of any of these taxes on the respective inputs.
- 3.67. Brazil's legislation provides for the application of an export tax with a headline rate of 30%, which may be decreased or increased (up to 150%) by CAMEX for foreign exchange or trade policy purposes. ⁹² In practice, the export tax is applied at non-zero rates on just a few products; the liable export flows and applied rates remain unchanged since Brazil's previous Review (Table 3.8). Export taxes represent a negligible and declining share of federal tax revenues (Table 3.4).

Table 3.8 Export taxes, 2013-17

HS Heading	Products	Destination	Rate (%)	Purpose (Legislation)	Situation as at March 2017
2402.20.00	Cigarettes containing tobacco	South and Central America and the Caribbean	150	Control the regularity of trade flows (Decree No. 2,876 (14 December 1998))	In place
4101, 4102, 4103, 4104.11, 4104.19	Raw hides and skins (bovine, equine, sheep or lamb)	Any country	9	Ensuring supply to the domestic market (CAMEX Resolution No. 42 (19 December 2006))	In place
Chapter 93	Arms and ammunition, parts and accessories thereof ^a	South and Central America and the Caribbean ^b	150	Control the regularity of trade flows (CAMEX Resolutions No. 17 (06 June 2001) and No. 88 (14 December 2010))	In place

- a Except when destined for authorized consumers and for the military and police forces; fire-arms under HS 9302.00.00 (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.

3.68. 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. 93 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. Brazil does not maintain minimum export prices, except as a basis for calculating the export tax.

3.2.3 Export prohibitions, restrictions, and licensing

- 3.69. Brazil maintains export prohibitions for environmental protection reasons, and in compliance with international agreements and United Nations resolutions. ⁹⁴ The list of export prohibitions includes raw leather of amphibians and reptiles, as well as certain organic chemicals (if exported to non-signatories of the Montreal Protocol). Exports of wood in the rough (HS 4403) are suspended, unless approved by the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA).
- 3.70. Export authorization or licensing requirements remain in place for a relatively large number of products, mainly for safety, health, security, environmental, or native fauna protection reasons. Prior authorization is required for each export shipment, but the authorities note that forthcoming changes in the context of Brazil's Single Window Programme (Section 3.1.1) would relax this requirement, once SISCOMEX is redesigned for differential treatment of export licences and authorizations.
- 3.71. Besides DECEX, 11 government entities have export authorization competences, and some products require authorization by more than one entity. According to available information, at end-2016 exports classifiable under some 1,548 eight-digit tariff lines, representing around 15%

⁹² Law No. 9,716 of 26 November 1998 and Decree No. 6,759 of 5 February 2009.

⁹³ Decree-Law No. 1,578 of 11 October 1977 and Provisional Measure No. 2,158-35 of 24 August 2001.

 $^{^{\}rm 94}$ SECEX Ordinances No. 23 of 14 July 2011 and No. 29 of 21 August 2013.

of Brazil's tariff, were subject to prior authorization. 95 At end-2010, the corresponding figure was 1,055 lines, representing approximately 10% of all tariff lines. The main product categories requiring prior export authorization include chemicals, pharmaceuticals, wood products, and live animals.

- 3.72. The Inter-Ministerial Commission for Export Control of Sensitive Goods (CIBES) remains responsible for regulating and controlling the exportation of sensitive goods and services.⁹⁶ Sensitive items, subject to export licensing and authorization by CIBES, include: chemical, biological and dual-use goods that could be utilized for war purposes; goods for use in nuclear activities and equipment; goods for use in missile-related activities and equipment; and services directly linked to the production or use of a sensitive good. The lists of controlled products and services are prepared, updated, and approved by CIBES. 97 Export authorization by a second agency may be required if the product also falls under its competences.
- 3.73. DECEX remains in charge of licensing of Brazilian exports that are subject to tariff quotas in certain destination markets. Quotas for exports to the EU are administered on a first-come-first-served basis (sugar), on a past-performance basis (bovine meat), or on a combination of both methods (poultry products). Licences for bovine and poultry exports are conditional on the producer's accreditation by the Ministry of Agriculture, Livestock and Food Supply (MAPA) and acceptance as a safe exporter by the competent EU authorities. DECEX also administers, on first-come-first-served basis, exports of milk to Colombia under a MERCOSUR tariff quota, which is set to expire in 2018.

3.2.4 Export support and promotion

3.2.4.1 Export support schemes

- 3.74. Brazil maintains a number of programmes intended to increase exports and to boost the competitiveness of export-oriented companies. In 2015, the Government launched a National Export Plan (2015-18) envisaging a series of actions along five pillars: market access; commercial promotion; trade facilitation; export finance and guarantees; and tax regimes and facilities for export support. 98 According to the authorities, the Plan is being reviewed by the current administration.
- 3.75. Predominantly export-oriented enterprises (deriving more than 50% of their gross sales income from abroad) remain eligible for suspension of the PIS, COFINS, and IPI taxes on the purchase of inputs, whether local or imported. 99 As at March 2017, there were 505 enterprises with predominantly export-oriented status. 100
- 3.76. A similar eligibility criterion is applied under the Special Regime for the Purchase of Capital Goods for Exporting Enterprises (RECAP), which suspends the PIS and COFINS on purchases of new (unused) capital goods (machines, equipment, and instruments) for incorporation in the beneficiary company's fixed assets. 101 Enterprises that, in the calendar year preceding application to RECAP, made at least 50% of their total gross sales abroad may benefit from the scheme, provided they commit to complying with the minimum export sales threshold for the following two calendar years. Start-up companies without the predominantly export-oriented status are eligible on condition that they reach and maintain that status over three years. Brazilian shipyards are also eligible for RECAP benefits, irrespective of their export turnover, and do not need to undertake export commitments. 102

⁹⁵ An indicative list of controlled products and the entities in charge of issuing export authorizations can be viewed at: http://www.mdic.gov.br/comercio-exterior/exportacao/tratamento-administrativo-de-exportacao [03 January 2017].

⁹⁶ Law No. 9,112 of 10 October 1995.

⁹⁷ Ministry of Science and Technology online information. Viewed at: http://www.mct.gov.br/index.php/content/view/330710.html [January2017].

Online information. Viewed at: https://tax.thomsonreuters.com/blog/onesource/national-export-planbrazil/#_ftn2 [13 April 2017].

⁹⁹ Laws No. 10,637 (30 December 2002), No. 10,865 (30 April 2004), No. 11,196 (21 November 2005) and No. 12,715 (17 September 2012).

100 According to the authorities, tax suspension schemes do not entail any forgone fiscal revenue.

¹⁰¹ Law No. 11,196 of 21 November 2005, as amended by Law No. 12,715 of 17 September 2012.

 $^{^{\}rm 102}$ SRF Normative Instruction No. 605 of 4 January 2006.

- 3.77. As at March 2017, 359 companies were qualified to participate in RECAP. RECAP was among Brazil's duty and tax concessions programmes, which were the object of two dispute settlement proceedings during the period under review (Section 4.4.3).
- 3.78. In 2014, Brazil reinstated the Special Regime for the Reimbursement of Taxes for Exporters (Reintegra) and made it permanent. The scheme enables exporters of certain Brazilian-manufactured goods to claim up to 3% of their gross export receipts as offset for non-value added (cascading) taxes along the production chain, such as the ISS, IOF, and CIDE. In general, the Brazilian-manufactured exports eligible for Reintegra are drawn from the IPI incidence list (*Tabela de incidência do IPI*, Section 3.1.4) and their imported content may not exceed 40% of their export price. According to the authorities, reimbursements made under Reintegra totalled R\$12,365 million between January 2013 and June 2016. The number of Reintegra beneficiaries increased from 286 in the first quarter of 2012 to 1,409 in the fourth quarter of 2015.
- 3.79. Brazil's drawback regime remained unchanged during the period under review. ¹⁰⁶ It provides for the suspension or exemption of import tariffs and federal indirect taxes (IPI, PIS, COFINS, ICMS, and AFRMM) on local or imported inputs and parts used to produce exportable goods. The drawback regime's suspension modality allows *ex ante* deferral of duties and taxes on inputs, whereas the exemption modality provides for the rebuilding of stocks *ex post*, after the final good has been exported. During 2013-16, annual exports under drawback represented some 21% to 25% of total exports, whereas the corresponding figures for imports ranged between 3% and 5% (Table 3.9).

Table 3.9 Drawback regime implementation, 2013-16

	2013	2014	2015	2016
Exports under drawback (US\$ million)	51,136.6	53,310.9	47,159.4	42,209.4
Share of total exports (%)	21.1	23.8	24.7	22.8
Imports under drawback (US\$ million)	6,511.2	7,815.1	7,955.0	7,176.0
Share of total imports (%)	2.7	3.4	4.6	5.2
Fiscal footprint of imports under drawback (R\$ million) ^a	4,669.1	4,947.7	7,378.8	

.. Not available.

a Comprises import duties and IPI, PIS, and COFINS taxes under both the suspension and the exemption modalities. Does not include AFRMM tax.

Source: MDIC online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/drawback/dados-consolidados-de-drawback and

http://www.mdic.gov.br/images/REPOSITORIO/secex/decex/Dados_drawback/Renncia-fiscal-drawback---tributos-federais.pdf.

3.80. The Special System of Industrial Depots subject to Standardized Control (RECOF) allows the suspension (for one year, extendable once) of import duties and indirect taxes (IPI, PIS, COFINS) on imported or local inputs employed in the industrial transformation of products destined for export or the domestic market. Domestic sales of any (local or imported) inputs or the final good are subject to all applicable duties and taxes. During the period under review, Brazil relaxed several eligibility criteria (paid-in capital, prior accreditation to the "blue line" express clearance facility, and annual export volume) and removed the sector-specific and product-specific limitations on the scheme's scope. 107 As from 2016, beneficiaries are no longer required to acquire purpose-built control systems because the RFB switched to compliance monitoring through the Public System of Digital Bookkeeping (SPED). Under the upgraded RECOF-SPED, beneficiaries must: (i) regularly submit their digital fiscal records (EFD); (ii) export final goods worth at least 80% of the annual value of imports and not less than US\$5 million; and (iii) carry out the

¹⁰³ Law No. 13,043 of 13 November 2014 and Decree No. 8,415 of 27 February 2015.

The offset may take the form of either a credit against federal tax liabilities or a cash payment.

¹⁰⁵ A 65% imported content threshold applies to: pharmaceuticals; electric appliances and materials; aircraft and parts; optical, precision measuring, medical or surgical instruments and apparatus; and clocks and watches (Decree No. 8,415 of 27 February 2015).

¹⁰⁶ WTO Document WT/TPR/S/283/Rev.1, 26 July 2013.

 $^{^{107}}$ RFB Normative Instructions No. 1,559 (14 April 2015) and No. 1,612 (26 January 2016), and COANA Ordinance No. 47 of 30 June 2016.

industrial transformation of at least 80% of the imported goods. ¹⁰⁸ As at January 2017, there were 25 companies qualified under RECOF.

3.81. Brazil continues to apply the Special Regime for the Information Technology Exportation Platform (REPES), targeting companies dedicated exclusively to the development of software and the provision of IT services. REPES suspends the IPI on imported goods without a domestic equivalent (except second-hand ones) for their incorporation as fixed assets, as well as the PIS and COFINS on purchases of IT services and new goods. Beneficiaries must export software and IT services worth at least 80% of their annual gross income. 109

3.2.4.2 Export-processing zones

3.82. The legal and institutional framework for export-processing zones (EPZs) remains unchanged since Brazil's last Review. The National Council of Export Processing Zones (CZPE) remains in charge of implementing Brazil's EPZ policy, including authorizing the creation of EPZs and the establishment of companies therein. The operationalization of an EPZ also requires the Brazilian customs authority's permission and final approval from the President of the Republic. Approved EPZs that fail to start operations within 48 months of their agreed installation timetable may lose their right to establish. As of January 2017, Brazil had 25 approved EPZ projects, of which 1 was operational and 18 (located in 17 Brazilian states) were in the process of establishment.

3.83. The fiscal and administrative benefits available to authorized EPZ companies, as well as their 20-year legal guarantee clause, also remain unchanged. The value of the exports of companies based in EPZs must be at least 80% of their gross income from sales of goods and services. Products sold on the Brazilian market, as well as goods and services used as inputs in the production of those domestic sales, are subject to all duties and taxes levied on domestic acquisition or importation. The duty and tax amount due must be paid with interest at the SELIC rate (Section 1.2.2).

3.2.4.3 Export promotion

3.84. The Brazilian Trade and Investment Promotion Agency (Apex-Brasil) remains in charge of coordinating and implementing policies for the promotion of Brazilian goods and services overseas, for the internationalization of Brazilian companies, and for attracting FDI. Although it supports companies of all sizes, Apex-Brasil maintains a particular focus on activities that help enhance exports of small and medium-size enterprises, foster competitiveness and create jobs. Other strategic priorities include: increasing the participation of Brazilian companies in international value chains; fostering innovation, design and technology transfer; and encouraging the use of "sociobiodiverse" resources. Apex-Brasil provides services, such as market intelligence, business capacity-building, trade and image promotion, and development of internationalization strategies. Its trade promotion activities include the participation in trade missions and international trade fairs, as well as visits of foreign buyers to Brazil.

3.85. Apex-Brasil is responsible for the execution of export promotion policies, in close coordination with the Trade and Investment Promotion Department of the Ministry of Foreign Affairs (MRE), and in cooperation with public authorities and private-sector associations

¹⁰⁸ The exports threshold is reduced to 50% for companies in their first year of admission to RECOF-SPED. The industrial transformation of imports threshold is reduced to 70% for companies supplying the domestic market with parts and pieces for the maintenance of their manufactured products.

Law No. 11,196 of 21 November 2005 and SRF Normative Instruction No. 630 of 15 March 2006.

¹¹⁰ WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

¹¹¹ Authorizations are valid for 20 years, renewable for the same number of years in the case of investments requiring long amortization periods.

¹¹² Law No. 12,507 of 11 October 2011 and Law No. 12,767 of 27 December 2012.

¹¹³ Authorized EPZ companies may purchase local or imported goods and services with the suspension of import duties, the IPI, COFINS, PIS, and AFRMM. They are exempt from licensing and authorization requirements (at the federal level) for imports and exports, except for those related to sanitary controls, national security, and environmental protection. Additional fiscal benefits, including lower corporate income tax and accelerated depreciation, are available to enterprises located in the SUDENE and SUDAM areas.

¹¹⁴ Law No. 11,732 of 30 June 2008.

¹¹⁵ Decree No. 4,584 of 5 February 2003 and Law No. 10,668 of 14 May 2003.

representing 89 strategic economic sectors (including 20 services sectors). Export promotion support generally takes the form of technical and financial cooperation agreements between Apex-Brasil and private-sector associations, which include co-financing for up to 70% of a project's total value. As of December 2016, Apex-Brasil supported 12,971 Brazilian companies, which accounted for 22.9% of total exports. According to the authorities, during 2013-16, Apex-Brasil allocated US\$412.8 million to trade and investment promotion activities.

3.86. In addition to Apex-Brasil, trade information and support services to exporters are made available by several public and private institutions, including the MDIC, the MRE and *Banco do Brasil S.A.* These entities maintain several online platforms aimed at facilitating the internationalization of Brazilian companies. ¹¹⁶ *Banco do Brasil S.A.* and *Caixa Econômica Federal* also offer Brazilian enterprises with gross annual sales of up to R\$10 million a credit line (*Proger Exportação Promoção Comercial*) for export promotion activities, such as participation in trade fairs in Brazil and abroad, shipment of samples, and investments in digital marketing, including through the online marketplace B2Brazil. ¹¹⁷

3.87. Outward payments for the promotion of Brazilian products and services abroad are eligible for a reduction of the applicable income tax (IR) to 0% (from the standard 25%). ¹¹⁸ To benefit from the reduction, the legal person making the outward payment must register the promotion transaction in the Registration System for Promotion Information (SISPROM) prior to remitting the amount due. SISPROM registration is declined if the payment beneficiary is based in a jurisdiction that taxes income at less than 20%. ¹¹⁹ During 2013-16, there were 1,102 registered beneficiaries and 10,506 promotion transactions. Forgone revenue from the IR reduction was estimated at some R\$23.9 million in 2013 and projected at R\$23.3 million in 2014, R\$31.7 million in 2015, and R\$38.6 million in 2016.

3.2.5 Export finance, insurance, and guarantees

3.88. The Export Financing and Guarantee Committee (COFIG) of CAMEX remains in charge of: establishing the parameters and conditions for granting federal financial assistance to Brazilian exports; overseeing the operations of the Export Financing Programme (PROEX) and the Export Guarantee Fund (FGE); and guiding the Federal Government's participation in the Export Financing Fund (FFEX). The Brazilian Development Bank (BNDES) continues operating several federally funded export credit schemes under the BNDES-EXIM programme. Federal funding in support of Brazilian exports is generally provided regardless of the exporter's ownership. No information was available on sub-federal export support.

3.89. Funded with outlays from the federal budget and administered by *Banco do Brasil S.A.*, PROEX is aimed at providing credit to Brazilian exporters of eligible goods and services at conditions similar to those prevailing in international markets. ¹²¹ In principle, it addresses financing gaps where the private sector may not be able to fully respond to the needs of Brazilian businesses. The programme has two main modalities: direct financing (PROEX-Financing) and interest rate equalization (PROEX-Equalization).

3.90. PROEX-Financing provides direct credit to the exporter or overseas buyer of eligible Brazilian goods and services. It is predominantly, but not exclusively, targeted at micro, small, and medium-sized enterprises (MSMEs) with an annual turnover of up to R\$600 million. Financing is available for up to 100% of the value of exports for credit periods of between two months and 2 years, and up to 85% for longer periods (up to 10 years). There is no minimum value for

¹¹⁹ MDIC Ordinance No. 221 of 8 July 2013.

¹¹⁶ Details on entities and tools assisting exporters can be viewed at: http://www.investexportbrasil.gov.br/ and http://www.aprendendoaexportar.gov.br/sitio/paginas/index.html [9 January 2017].

Banco do Brasil online information. Viewed at: http://www.bb.com.br/pbb/pagina-inicial/empresas/produtos-e-servicos/comercio-exterior/marketing-digital#/ [09 January 2017].

¹¹⁸ Decree No. 6,761 of 5 February 2009.

 ¹²⁰ Online information. Viewed at: http://www.sain.fazenda.gov.br/assuntos/credito-e-garantia-as-exportacoes [09 January 2017].
 121 For exports destined to Brazil's MERCOSUR partners, PROEX support is limited to capital goods only.

PROEX eligibility conditions for exported goods and services are set out in CAMEX Resolution No. 126 of 26 December 2013.

individual export operations to be financed. 122 Since 2014, up to 25% of the annual budget of PROEX-Financing may be used for concessional credits in support of Brazilian exports under Brazil's technical cooperation projects, including the More Food Programme. 123 Concessional loans are approved on an individual basis by COFIG, in line with general guidelines elaborated by CAMEX. The concessionality level is calculated according to the IMF/World Bank grant element methodology, and may be up to 35%.

3.91. PROEX-Equalization aims to level the international playing field by partially offsetting the cost of a credit obtained from any financial institution (in Brazil or abroad) to finance Brazilian exports. Eligible credits are those obtained by the exporter, as well as those obtained by the foreign customer for the payment of Brazilian exports. The credit terms (interest rates, financing percentage and collateral) are negotiated between the financing institution and the exporter. 124 Equalization may be granted on credits financing up to 100% of the value of the exports for periods ranging from 60 days to 15 years. 125

3.92. During 2013-16, PROEX-Financing was granted mainly for exports to Cuba, China, the EU and Mozambique, whereas exports benefitting from PROEX-Equalization were mostly shipped to the UAE, Angola and Peru. Disbursements under both modalities peaked in 2014 and decreased somewhat thereafter (Table 3.10).

Table 3.10 PROEX implementation, 2013-16

Year	Budget (R\$)	Total financing	No. of	Export business	Main beneficiary industries				
		granted (US\$)	beneficiaries	volume (US\$)					
	PROEX-Financing PROEX-Financing								
2013	1,500,000,000	447,270,273	204	514,248,666	Agribusiness (58%); machinery and equipment (12%); textiles, leather and footwear (22%)				
2014	2,900,000,000	456,185,906	183	514,350,020	Agribusiness (56%); machinery and equipment (15%); textiles, leather and footwear (14%)				
2015	2,000,000,000	329,675,220	147	360,813,640	Food (30%); mineral extraction (18%); machinery (16%); textiles and footwear (17%); vehicles (16%)				
2016	2,200,000,000	397,926,694	183	426,753,789	Machinery (27%); textiles and footwear (19%); food (18%); mineral extraction (14%); vehicles (11%); others (11%)				
PROEX	-Equalization								
2013	1,600,000,000	298,683,326	40	5,772,132,070	Machinery and equipment (69%); services (30%); aircraft (1%)				
2014	1,167,229,600	313,113,352	31	6,312,876,422	Machinery and equipment (58%); Services (30%); aircraft (13%)				
2015	1,500,000,000	211,149,851	24	5,135,160,225	Machinery and equipment (45%); aircraft (29%); services (17%); vehicles (19%)				
2016	2,000,000,000	176,692,533	22	5,796,055,214	Machinery and equipment (44%); aircraft (28%); services (14%); vehicles (14%)				

Source: Information provided by the Brazilian authorities.

¹²² Credit operations for the aeronautics sector and those exceeding US\$20 million are subject to COFIG

¹²³ National Monetary Council (Conselho Monetário Nacional -CMN) Resolution No. 4,335 of

²⁶ May 2014.

124 Equalization is paid by way of National Treasury Notes (NTN-I) to the institution granting the export

credit. 125 Equalization operations for the aeronautics sector and for infrastructure works require COFIG approval.

- 3.93. In principle, *Banco do Brasil S.A.* is also the administrator of the FFEX, created in 2011 with a view to supporting exports by companies with an annual turnover of up to R\$90 million. According to the authorities, the Federal Government has not made its planned initial contribution (R\$1 billion) to the FFEX and the fund has not become operational.
- 3.94. Through its BNDES-EXIM programme, BNDES provides credits in support of Brazilian exporters. Financing is made available for the production of exportable goods and services (pre-shipment) and for their commercialization overseas (post-shipment). Special financing conditions apply to MSMEs under some BNDES-EXIM sub-programmes (Table A3.1). Credit operations are conducted through accredited financial institutions, which include most banks operating in Brazil and several local banks in Latin America and Africa. Resources for BNDES operations, including BNDES-EXIM, come mostly from public funds (Section 3.3.1.3).
- 3.95. While access to export financing is framed by a general list of eligible goods and services¹²⁹, certain BNDES-EXIM sub-programmes may target specific products or industries. In addition, for most sub-programmes, automatic qualification for financing is conditional on meeting a certain index of nationalization (typically 50%-60% in value or weight terms), Basic Productive Process (PPB) thresholds (Section 3.3.1.1), or other criteria established by BNDES (Table A3.1). According to the Brazilian authorities, goods and services that do not meet these conditions may also benefit from the sub-programmes after receiving a favourable assessment (non-automatic qualification).
- 3.96. During the period under review, most BNDES-EXIM sub-programmes were frequently updated, generally with a view to improving the financing terms offered to MSMEs. One new EXIM sub-programme (EXIM Pre-shipment "Innovator") was added, and two (EXIM Pro-Aviation exports and EXIM Pre-shipment "automobiles") expired; support for exports by Brazil's aviation industry was reoriented to the post-shipment stage. Two non-EXIM financing modalities (PSI Export Pre-shipment, and Revitalize Exports Export Pre-shipment) also expired.
- 3.97. BNDES export financing decreased sharply during 2013-15 before recovering somewhat in 2016 (Table 3.11). The total number of BNDES-EXIM beneficiaries also dropped from 252 in 2013 to 83 in 2015, but increased to 133 in 2016. During 2013-16, the main beneficiary industries were transport equipment, machinery and equipment, and construction services. The main export markets for projects benefitting from post-shipment financing were the United States, the Bolivarian Republic of Venezuela, Angola and Cuba.

Table 3.11 BNDES total disbursements for exports of goods and services, 2013-16

(US\$ million)

Year	Total disbursements	For exports of goods	% of total exports of goods	For exports of services	% of total exports of services
2013	7,136.51	5,797.05	2.4	1,339.46	3.6
2014	4,376.92	3,394.39	1.5	982.53	2.5
2015	2,093.75	1,565.49	0.7	528.26	1.6
2016	4,393.93	4,350.62	2.3	43.31	0.1

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

3.98. Banco do Brasil S.A. and Caixa Econômica Federal administer PROGER Export, an export financing facility funded with resources from a workers fund (Fundo de Amparo ao Trabalhador,

¹²⁶ Law No. 12,545 of 14 December 2011.

¹²⁷ Post-shipment financing may take the form of, *inter alia*, exporter credit, buyer's credit and credit lines to an accredited overseas financial institution.

¹²⁸ The total financial cost for the borrower is the relevant interest rate plus the spreads of BNDES and the financial institution that administers the credit.

¹²⁹ BNDES Circular No. 006/2016 of 14 April 2016. An English version can be viewed at: http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_en/Galerias/Download/financeable_products.pdf [13 January 2017].

¹³⁰ Eligibility conditions for BNDES-Exim programmes can be viewed at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/Produtos/BNDES_Exim/normas_exim.html [23 March 2017].

- FAT). ¹³¹ Eligible goods and services exports are those qualifying for BNDES support ¹³²; export marketing activities are also supported (Section 3.2.4). Beneficiaries are exporting enterprises with a gross annual turnover of up to R\$10 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\$600,000 per exporter, and for a maximum of 12 months. ¹³³ No information was available for the period under review on beneficiary participation, interest rates and disbursements made under the PROGER Export facility.
- 3.99. The FAT Export Fund financed pre-shipment production (working capital and necessary inputs) of exportable goods until September 2014, when it was discontinued. Financing could be granted for up to 100% of a project's value, with a cap to be defined on a case-by-case basis by the BNDES, and maturity periods of up to 30 months. All export-oriented companies, regardless of their size, were eligible for financing, provided they were incorporated and headquartered in Brazil. Product-specific eligibility conditions were identical to those of the BNDES pre-shipment programme. According to the authorities, the FAT Export Fund's total endowment (R\$2.6 billion) had not been increased since 2005. No information was available for the period under review on beneficiary participation, interest rates and disbursements made.
- 3.100. As from 2014, the Brazilian Guarantees Agency (ABGF), a public enterprise reporting to the Ministry of Planning, Development and Management, provides support in the administration of the federal export credit insurance (SCE) scheme backed by the FGE.¹³⁴ The ABGF is responsible for the structuring, management and monitoring of SCE operations.¹³⁵ The granting of SCE coverage is underwritten by the Secretariat for International Affairs (SAIN) of the Ministry of Finance.¹³⁶ The FGE is financed by resources from the federal budget and by proceeds and financial gains from the fund's own activities and financial operations. According to the authorities, there are no other export insurance or guarantee schemes funded by federal resources in Brazil.
- 3.101. The SCE covers export credit operations against various risks that may affect the production or overseas commercialization of Brazilian goods and services. Federally backed SCE coverage 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 and operations of the aeronautics industry. A coverage threshold of 100% also applies to commercial risks in export operations of MSMEs¹³⁷, and to contractual obligations risks for the defence sector and for agricultural products benefiting from preferential tariff quotas in foreign markets. Coverage against commercial risks is generally provided for export credit transactions with maturity periods exceeding two years, although MSMEs can obtain coverage for shorter maturity periods. The scheme may be used by exporters, financial institutions and export credit agencies that finance, refinance or quarantee Brazilian exports.
- 3.102. Premiums are calculated on a case-by-case basis, taking into account the principal financed under the operation, the destination country, the nature of the risk (commercial, political or extraordinary), the maturity of the operation, and the debtor's financial standing. There are no minimum local content requirements and no eligibility restrictions as to the type of exported goods and services; destination country eligibility may be affected by internal risk exposure limits.
- 3.103. Having contracted in 2014-15, the total amount of premiums underwritten rebounded strongly in 2016 (Table 3.12). The FGE's total risk exposure declined over the same period and was dominated by export transactions to the Bolivarian Republic of Venezuela, Argentina, the

¹³¹ The legal basis of the PROGER scheme is provided by Deliberative Council of the FAT (*Conselho Deliberativo do Fundo de Amparo ao Trabalhador* – CODEFAT) Resolutions No. 348 of 5 August 2003, No. 347 of 5 August 2003, and No. 330 of 10 July 2003.

¹³² BNDES Circular No. 006/2016 of 14 April 2016.

¹³³ In July 2013, the gross annual turnover and individual financing thresholds were R\$5 million and R\$250.000, respectively.

¹³⁴ Law No. 12,712 of 13 August 2012 and Decree No. 7,976 of 1 April 2013.

¹³⁵ Up until September 2014, the Brazilian Export Credit Insurance Company S.A. (SBCE) had been hired by the Ministry of Finance to perform these duties. After that date, the SBCE has been providing export credit insurance as a private company.

¹³⁶ MF Ordinance No. 490 of 17 September 2013.

 $^{^{137}}$ For the purposes of the SCE scheme, MSMEs are defined as companies with sales of up to R\$90 million and exports of up to US\$3 million in the previous calendar year.

United States, Angola, the Dominican Republic, Cuba and Ghana. The main beneficiaries of the SCE scheme were from the air and automotive transport, defence and energy sectors.

Table 3.12 SCE/FGE activity, 2013-16

Year	Policies issued	Exporters	Total premiums (R\$)	FGE risk exposure, end of the year (US\$)
2013	33	34	391,394,055.01	29,754,101,433.20
2014	18	23	326,718,247.12	31,061,065,488.11
2015	20	33	244,384,766.64	28,441,795,855.82
2016	11	59	451,031,657.27	24,986,660,369.81

Information provided by the Brazilian authorities. Source:

3.3 Measures Affecting Production and Trade

3.3.1 Incentives

3.3.1.1 Overview

- 3.104. In Brazil, incentives and government assistance are available in various configurations, with programmes administered at both the federal and sub-federal levels. The scope of incentive programmes may be regional, sectoral or outcome-specific (e.g. fostering research). Most initiatives seek to promote entrepreneurship, technological and infrastructure upgrades, innovation, exports (Section 3.2.4), energy efficiency, and regional development. Specific federal programmes are in place for the automotive, information technology, aeronautics, and petroleum industries (Section 4). The range of support measures includes: targeted long-term loans¹³⁸; tax incentives; non-repayable financial contributions; equity financing; accelerated depreciation; guarantees; grants; advisory services; and credit insurance.
- 3.105. The Brazilian Agency for Industrial Development maintains an online database with non-exhaustive information on federal and sub-federal support initiatives. 139 A compilation of incentives to productive investment granted by the Federal Government is made available by the National Investment Information Network (RENAI). 140 The RFB also publishes annual overviews of newly established tax concessions. 141 An overview of federal incentive schemes is presented in Table A3.2.
- 3.106. Various federal programmes aim to encourage investment in Brazil's less developed regions. Enterprises in the automotive industry located in the north, north-east and mid-west regions were eligible for federal fiscal incentives, consisting of a multiplier on presumed IPI credits, until December 2015. The IPI credit multiplier was 1.8 in 2013, 1.7 in 2014, and 1.5 in 2015. 142 The benefit was conditional on investing at least 10% of the value of the tax in R&D and technological innovation, including in automotive engineering, in these regions.
- 3.107. Most state and municipal governments offer incentives to businesses independently of the federal programmes in place. At the time of Brazil's previous Review, approximately 50 state-level incentive programmes were being challenged at the Federal Supreme Court, mostly on grounds involving ICMS tax treatment issues. 143 More recent statistics on legal challenges involving such measures were not available.
- 3.108. According to the National Treasury, federal government expenditure on incentive and support programmes (excluding forgone revenue) amounted to R\$163.2 million (0.003% of GDP)

¹³⁸ 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, as there are no private providers of long-term financing in Brazil.

¹³⁹ Brazilian Agency for Industrial Development, *Guide to Industrial Development Support Instruments*. Viewed at: http://quia.abdi.com.br/default.aspx

RENAI online information. Viewed at: http://investimentos.mdic.gov.br/conteudo/index/item/31 [12 January 2017].

RFB online information. Viewed at: http://idg.receita.fazenda.gov.br/dados/receitadata/renuncia- <u>fiscal/desoneracoes-instituidas/desoneracoes-instituidas-capa</u> [12 January 2017].

142 Law No. 9,440 of 14 March 1997, amended by Law No. 12,218 of 30 March 2010.

¹⁴³ WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

in 2016, against R\$51.6 million (0.001% of GDP) in 2013.144 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. However, a recent study of the fiscal cost of Brazil's industrial policy suggests that Brazilian industry has become increasingly dependent on incentives, rather than improving its international competitiveness. It also points out that some of the tax breaks have been put in place to compensate for deficiencies in Brazil's complex tax system, such as the cascading effect of taxes levied on a cumulative (non-value added) basis. 145

- 3.109. Incentives granted in the context of certain federal programmes promoting the production of information technology, telecommunications and automation goods¹⁴⁶ are linked to 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. 147 Companies seeking to benefit from these incentives must submit a project proposal demonstrating, *inter alia*, that their production will comply with the PPB criteria established for the particular product(s). 148 As from 2013, applicants may obtain provisional approval, which allows them to benefit from the incentives while the regular approval procedure is still ongoing. 149 In addition, 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 3.4.6).
- 3.110. PPB criteria are established (and modified) by inter-ministerial decrees signed by the ministers in charge of the MDIC and of Science, Technology and Innovation (MCTI). Proposals to that effect are elaborated, 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 manufacturers; technological development and local engineering skills employed; jobs created; investment in R&D; and the incentives' possible negative externalities within Brazil (e.g. relocation of production or altered investment decisions of competitors). 150 The time-frame for assessment of PPB requests is 120 days.
- 3.111. Some 135 inter-ministerial ordinances establishing new PPBs were adopted between January 2013 and January 2017. As at January 2017, incentives contingent on PPB criteria applied to some 459 companies established in the ZFM, and to 600 companies approved under the capacity-building and competitiveness-enhancement in IT programme.
- 3.112. During the period under review, Brazil was the respondent in two dispute settlement proceedings initiated separately by Japan and the EU against some of its tax incentive schemes (Section 2.5.1).
- 3.113. Brazil's most recent notification to the WTO Committee on Subsidies and Countervailing Measures dates from 2014 and covers fiscal years 2011 and 2012. The notified 11 federal subsidy programmes are the same as at the time of Brazil's last Review, although no disbursements took place under 2 of these programmes (Table 3.13). 152 Following the notification, Brazil provided answers to requests for clarification by the United States, New Zealand, Canada and Australia. 153

¹⁴⁴ National Treasury online information. Viewed at: https://www.tesouro.fazenda.gov.br/resultado-dotesouro-nacional [17 January 2017].

145 Marcelo Curado and Thiago Curado, *Uma estimativa dos custos fiscais da política industrial recente*

^{(2004-2016),} IPEA Discussion Paper No. 2248, November 2016.

¹⁴⁶ During 2013-16, PPB-linked programmes included: capacity-building and competitiveness enhancement in IT (Lei da informática), Law No. 8,248 of 23 October 1991; computers for educational use (REICOMP) and the national broadband programme (REPNBL-Redes), Law No. 12,715 of 17 September 2012); and digital inclusion, Law No. 11,196 of 21 November 2005. The REICOMP programme expired in 2015.

¹⁴⁷ 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.

148 An electronic system for the submission and processing of project proposals was established in 2014

⁽MCTI/MDIC Ordinance No. 202 of 13 February 2014).

⁹ Decree No. 8,072 of 14 August 2013.

¹⁵⁰ Inter-ministerial Ordinance No. 170 of 4 August 2010.

¹⁵¹ MCTI online information. Viewed at:

http://www.mct.gov.br/index.php/content/view/723.html?execview [13 January 2017].

152 WTO document WT/TPR/S/283/Rev.1 of 26 July 2013.

¹⁵³ WTO documents G/SCM/Q2/BRA/43 to 46 (24 October 2014) and G/SCM/Q2/BRA/48 (11 April 2016).

Table 3.13 Subsidy programmes notified to the WTO, 2011 and 2012

Туре	Programmes	Forms of support	Amount (R\$ million)	
			2011	2012
Industrial	Support for the development of the pharmaceutical productive chain (PROFARMA – Innovation); Capacity-building and competitiveness-enhancement in IT (<i>Lei da informática</i>); Industrial technology and agricultural/cattle breeding technology development programmes (PDTI/PDTA) ^a ; Productive development policy (PDP)	Long-term financing; equity participation; tax credits; accelerated depreciation	4,006.7	4,680.2
Regional	Amazon Development Authority and North-East Region Development Authority (SUDAM/SUDENE); Investment funds for the Amazon, the north-east regions and the State of Espirito 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	27,739.6	31,482.5
Fisheries	Programme for economic subvention to the price of diesel oil used by fishing vessels; Programme for financing the enlargement and modernization of national fishing fleet (PROFROTA) ^a	Fuel price support (equalization); loan performance bonus (interest payment discount)	17.2	2.8

a No disbursements took place in 2011 and 2012.

Source: WTO document G/SCM/N/253/BRA, 5 May 2014.

3.3.1.2 Free-trade zones

3.114. Brazil's legislation provides for the establishment of free-trade zones (FTZs), for imports and exports, with a view to promoting the development and regional integration of border areas in the north region. There have been no changes to the number of existing FTZs and their operational status since Brazil's last Review. Out of the eight FTZs that have been created, the ZFM remains the only one hosting production operations; residents in three other zones are engaged in commerce operations. The SUFRAMA, an autonomous agency linked to the MDIC, remains in charge of all FTZs in Brazil. All imports to the FTZs require authorization by both SECEX and SUFRAMA.

3.115. As at March 2017, some 459 companies were residing in the ZFM, and the other FTZs had a total of 82 resident companies. Eligibility for establishment in the ZFM is conditional on observing PPB criteria (Section 3.3.3.1); a number of environmental and social requirements also apply. Companies established in the ZFM are granted tax concessions by the federal and state governments. ¹⁵⁷ Incentives under the ZFM programme will be in force until 2073. ¹⁵⁸

3.116. 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 1996¹⁵⁹, 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 inputs 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 the total production (the coefficient of reduction is increased by 5% for motor vehicles); (iv) IPI exemption for goods produced in the

¹⁵⁴ 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.

¹⁵⁵ WTO Document WT/TPR/S/283/Rev.1 of 26 July 2013.

There are also eight regional points (coordenação regional, CORE), of which seven offer incentives only for the processing of fish, natural resources or forestry and agricultural raw materials. SUFRAMA online information. Viewed at: http://site.suframa.gov.br/assuntos/modelo-zona-franca-de-manaus/area-de-beneficios [13 January 2017].
157 According to the authorities, municipal government incentives based on Municipal Law No. 427/1998

¹⁵⁷ According to the authorities, municipal government incentives based on Municipal Law No. 427/1998 expired in 2008.

¹⁵⁸ Constitutional Amendment No. 83 of 5 August 2014.

¹⁵⁹ SUFRAMA online information. Viewed at: http://www.suframa.gov.br/download/legislacao/ppb/1996/pi-300-96.pdf

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 and COFINS contributions for operations in the ZFM; and (ix) 75% reduction of income tax until 2013.

3.117. In addition, the State of Amazonas grants the following fiscal incentives: (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; and (iii) a 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). There is also the possibility of deferring the ICMS for imports of raw materials, and of reducing the ICMS rate to 4%. The state of the calculation of the ICMS rate to 4%.

3.118. ZFM beneficiaries may also take advantage of the Western Amazon Export Special Programme (PEXPAM), which allows the importation of raw materials, inputs and industrial components exclusively for export, and grants exemption from import duties, IPI, ICMS, and any other tax or financial retribution to any public body. Eligibility for the PEXPAM programme is not conditional on compliance with PPB.

3.119. There are no restrictions on shipments 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 any quantitative limits. Goods imported into Brazil from the ZFM are subject to all import duties and taxes normally assessed, with the exception of duties on inputs, which are reduced by up to 88%. The reduction does not apply to informatics products or to vehicles, to which the full duty is applied. Products manufactured in the ZFM solely with imported inputs, goods sold to other FTZs, and obsolete machinery and equipment are not subject to the payment of duties.

3.120. The ZFM is essentially an industrial hub, producing mainly electronics, vehicles, chemicals, thermoplastics, mechanical machinery, metallurgical products, consumer goods, and watches. Its trade balance with Brazil remained in surplus, and that with the rest of the world was in deficit, throughout 2012-16. ZFM residents purchased inputs mostly overseas, whereas their sales revenue was predominantly from the Brazilian market (Charts 3.5 and 3.6). During 2013-16, investments in the ZFM totalled US\$37.2 billion. The ZFM employed on average 85,587 persons in 2016, down from 121,631 in 2013. 163

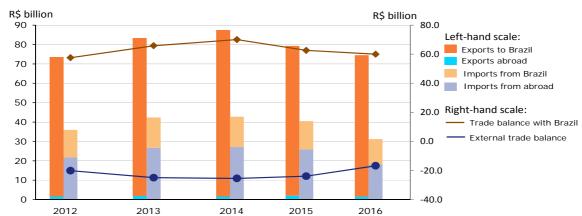


Chart 3.5 ZFM trade balance, 2012-16

Source: SUFRAMA, Indicadores de desempenho do polo industrial de Manaus (March 2017).

 $^{^{160}}$ Law No. 2,826 (29 September 2003), as amended by Laws No. 2,879 (31 March 2004), No. 2,927 (17 November 2004) and No. 3,022 (28 December 2005).

¹⁶¹ SUFRAMA online information. Viewed at: http://www.suframa.gov.br/zfm_incentivos_estado.cfm [13 January 2017].

The duty assessment methodology is defined in Decree No. 4,543 of 26 December 2002.

¹⁶³ SUFRAMA (2017), Indicadores de Desempenho do Polo Industrial de Manaus 2012-2017.

R\$ hillion 90 Sales revenue: 80 Brazil (customs territory) Regional (MERCOSUR) 70 International 60 Expenditure on inputs: Brazil (customs territory) 50 Regional (MERCOSUR) 40 International 30 20 10 0 2012 2013 2014 2015 2016

Chart 3.6 ZFM expenditure on inputs and sales revenue, 2012-16

Source: SUFRAMA, Indicadores de desempenho do polo industrial de Manaus (March 2017).

3.3.1.3 Federal financing facilities

3.121. The BNDES is the main entity providing federal financing to entrepreneurs in Brazil. ¹⁶⁴ The range of its operations includes tailored financing (often linked to an administered long-term interest rate (TJLP)), equity participation, non-reimbursable financial contributions, and guarantees. According to the authorities, the BNDES is alone in the Brazilian market for long-term, local-currency financing solutions, and its portfolio comprises mostly greenfield projects in nascent industries that have no other source of financing. Support granted by the BNDES over 2013-16 totalled R\$602.5 billion (Table 3.14), against R\$601.5 billion over 2009-12 and R\$255.2 over 2005-08.

Table 3.14 Brazilian development bank support, 2013-16

(R\$ million)

	2013	2014	2015	2016	2013-16
Agriculture	18,662.2	16,775.1	13,710.1	13,898.0	63,045.4
Industry	58,015.5	50,065.5	36,877.7	30,141.3	175,100.0
Infrastructure	62,175.0	68,951.7	54,896.9	25,907.4	211,931.0
Trade/services	51,566.3	52,044.5	30,457.4	18,309.8	152,378.0
Total	190,419.0	187,836.9	135,942.0	88,256.5	602,454.4

Source: Information provided by the Brazilian authorities.

3.122. BNDES activities are funded by returns on its operations; resources raised in foreign markets; a portion of all contributions to the FAT; and public funds provided by the Federal Government, its sole shareholder, either in the form of paid-in capital or debt instruments. At end-June 2016, government sources accounted for 87.1% of BNDES's total capital, up from 84.9% in 2013. National Treasury resources in BNDES's total capital increased from 54.7% to 56.1% (R\$524.9 billion) in that period.

3.123. The BNDES maintains a number of schemes that facilitate access to credit, either directly or through accredited financial institutions. Projects eligible for financing include: implementation, expansion, and modernization of fixed assets; new machinery and equipment produced in Brazil and accredited by the BNDES; production of various goods and services for export and their overseas commercialization (Section 3.2.5); and working capital associated with a fixed investment. Indirect schemes (through the banking sector) represented some 55.3% of total financing granted over 2013-16. The BNDES FINEM programme was the largest, accounting for 38.2% of total disbursements, followed by the FINAME with 24.5% (Table 3.15). In 2016, there were some 145,000 beneficiaries of BNDES financing, with projects in agribusiness, electricity and gas, trade and land transport accounting for the bulk of disbursements. 165

http://www.bndes.gov.br/wps/portal/site/home/transparencia/transparencia [19 April 2017].

¹⁶⁴ The *Banco da Amazônia* (BASA) and the *Banco do Nordeste do Brasil* (BNB) manage, *inter alia*, federally funded regional programmes.

¹⁶⁵ BNDES online information. Viewed at:

Table 3.15 BNDES disbursements by credit scheme, 2013-16

(R\$ million)

Credit scheme	2013	2014	2015	2016	2013-16
Direct schemes	74,370.6	84,312.0	70,561.6	40,035.5	269,279.6
BNDES FINEM	64,858.1	72,147.8	61,320.2	32,044.5	230,370.6
BNDES-EXIM	5,591.6	5,790.6	5,620.1	6,037.3	23,039.5
BNDES Não reembolsável	394.7	729.3	369.6	441.4	1,934.9
BNDES Mercado de Capitais	3,526.2	5,617.8	2,947.3	1,361.4	13,452.8
BNDES Microcrédito	-	26.5	304.3	150.9	481.8
Indirect schemes ^a	116,048.4	103,524.9	65,380.5	48,221.0	333,174.8
BNDES FINAME	58,133.7	53,855.5	24,882.8	10,592.4	147,464.4
BNDES FINEM	11,298.3	11,381.0	8,485.8	3,238.9	34,404.1
BNDES Automático	14,601.7	11,343.5	11,742.1	12,854.4	50,541.6
BNDES FINAME Agrícola	12,171.4	10,814.8	7,824.4	7,085.8	37,896.3
BNDES-EXIM	9,666.2	4,482.4	1,169.6	8,803.3	24,121.5
BNDES FINAME Leasing	154.5	100.3	23.8	9.8	288.4
Cartão BNDES	10,022.6	11,547.5	11,251.9	5,636.5	38,458.5
Total	190,419.0	187,836.9	135,942.0	88,256.5	602,454.5

a Through the banking sector.

Source: Information provided by the Brazilian authorities.

3.124. BNDES financing is mainly provided to private companies with headquarters and administration in Brazil. Individual entrepreneurs and business associations in Brazil (e.g. cargo carriers, rural producers or micro entrepreneurs) are also entitled to financing, regardless of nationality. 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. Certain financial support mechanisms may focus on companies of a specific size or foster the development of a local supply chain. For instance, products with a domestic content of at least 60% (in value terms) are automatically eligible for financing under the Automatic and FINAME schemes, while products with local content below the threshold are subject to a non-automatic analysis procedure. According to the authorities, the BNDES reviews the eligibility criteria (including any local content/local production requirements) for its schemes and adapts them to changing market conditions.

3.125. Several BNDES schemes are operated on an interest rate equalization principle, whereby resources from the National Treasury are used to cover the difference between the rate charged by the BNDES and that effectively paid by borrowers. During 2013-15, disbursements under interest rate equalization schemes totalled R\$194.8 billion, representing 37.9% of total BNDES disbursements. The interest rates effectively paid by most borrowers under these schemes were particularly attractive: 63.3% of disbursements made were at rates not exceeding 5%, which was well below the annual rate of inflation (Table 1.2). According to the authorities, the bulk of disbursements benefitting from interest rate equalization (R\$191.6 billion) were made under the Programme for the Sustainability of Investment (PSI), which expired in 2015. The interest rate of inflation (PSI), which expired in 2015.

¹⁶⁶ Ricardo de Menezes Barboza, Gilberto Borça Jr., Guilherme Tinoco de Lima Horta, João Marco Braga da Cunha, and Felipe Guatimosim Maciel, *A indústria, o PSI, o BNDES e algumas propostas* (2017), BNDES Discussion Paper 114.

¹⁶⁷ As at 31 December 2016, the stock of contracts concluded under the PSI that remained in force was R\$133 billion. BNDES online information. Viewed at:

http://www.bndes.gov.br/wps/portal/site/home/imprensa/noticias/conteudo/tlp-substituir-tjlp-em-contratos-do-bndes-firmados-a-partir-de-1-de-janeiro-de-2018/!ut/p/z1/zVRdb5swFP0te-

DRsQkfIZOmiXZo6UKUrQ1N4CUyxoAjsIntJNu n2GdpnZto6mKNB4Mvro-

⁹⁹zie4AZ3MCM4yOrsGaC48bs08zfxtN5NHOXKEbeykXhJ2fiJpMIzYMxXA8J6IUnRDB7dN5ObBTGzvw--

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u_bj_slq_PlejFspo8hQbdm3SBs4PkOX-

<u>bXBalXXVbheR4z28mmNcLrSXvvsJmk_xGw!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/</u> [30 April 2017].

3.3.1.4 Research and development (R&D) programmes

3.126. Brazil's Scientific and Technological Development Fund (*Fundo Nacional de Desenvolvimento Científico e Tecnológico*, FNDCT), created in 1969, remains a major source of financing for science, technology and innovation (S, T&I) projects. The *Financiadora de Estudos e Projetos* (FINEP), a public enterprise linked to the MCTI, continues acting as the executive secretariat of FNDCT, with responsibility for accounting and administrative operations. FINEP also serves as financial agent for specific programmes funded by, *inter alia*, the National Treasury and the FAT. ¹⁶⁸

3.127. The FNDCT comprises 14 sectoral and 2 cross-cutting sub-funds, each with specific focus and with its own resources (Table 3.16). While there cannot be any transfer of resources between sub-funds, they may jointly finance strategic projects. In administering the sectoral sub-funds, FINEP follows a regional policy: at least 30% must be invested in the north, north-east, and mid-west regions. According to the authorities, appropriations from the National Treasury constituted an insignificant share of overall FNDCT resources during 2013-16. One notable exception was the provision of National Treasury resources for the Science without Borders (*Ciência sem Fronteiras*) programme in 2015.

Table 3.16 Sectoral science, technology and innovation (S, T&I) funds, 2017

Fund/Law	Resources
Petroleum and Natural Gas Fund (CT-PETRO),	25% of the share of the value of royalties exceeding 5% of the
Law No. 9,478 of 6 August 1997, amended by	production of petroleum and natural gas. As from December 2012,
Law No. 12,734 of 30 November 2012	these resources are no longer channelled to CT-PETRO
Energy Fund (CT-ENERG),	0.4% of the net value of the bills issued by concessionaries for the
Law No. 9,991 of 24 July 2000	generation and transmission of electricity; 0.3% for distribution
Hydric Resources Fund (CT-HIDRO),	4% of the financial compensation of electricity generation companies
Law No. 9,993 of 24 July 2000	
Land Transport Fund (CT-TRANSPORTE),	10% of the receipts obtained by the National Transportation
Law No. 9,992 of 24 July 2000	Infrastructure Department stemming from contracts for the use of
·	roads by communications and telecommunications systems
Mining Fund (CT-MINERAL),	2% of the financial compensation of the mining sector
Law No. 9,993 of 24 July 2000	, , , , , , , , , , , , , , , , , , ,
Space Fund (CT-ESPACIAL),	25% of federal revenues from space operations
Law No. 9,994 of 24 July 2000	
Information Technology Fund (CT-INFO),	0.5% of informatics enterprises' bills
Law No. 10,176 of 11 January 2001	
University and Enterprise Fund (CT-VERDE	50% of the CIDE, plus 43% of the IPI on informatics products
AMARELO),	
Laws No. 10,168 of 29 December 2000) and	
No. 10,332 of 19 December 2001)	
Infrastructure Fund (CT-INFRA),	20% of other funds
Law No. 10,197 of 14 February 2001	
Water Transport and Naval Construction Fund	3% of the AFRMM tax revenue accruing to the Merchant Marine Fund
(CT-AQUAVIÁRIO),	(FMM)
Law No. 10,893 of 13 July 2004	
Amazon Fund (CT-AMAZÔNIA),	At least 0.5% of gross sales of ZFM residents that produce
Laws No. 8,387 of 30 December 1991 and	informatics-related goods and services
No. 10,176 of 11 January 2001, and	
Decree No. 4,401 of 1 October 2002	
Biotechnology Fund (CT-BIO),	7.5% of proceeds from CIDE
Law No. 10,332 of 19 December 2001	47.50
Agri-business Fund (CT-AGRO),	17.5% of proceeds from CIDE
Law No. 10,332 of 19 December 2001	7.504 6 0.05
Aeronautical Fund, (CT-AERO),	7.5% of proceeds from CIDE
Law No. 10,332 of 19 December 2001	47.50/ 6 1.6 0105
Health Fund (CT-SAÚDE),	17.5% of proceeds from CIDE
Law No. 10,332 of 19 December 2001	Assumedited automorphism (one) contributions (in place of direct investment)
CT-INOVAR-AUTO,	Accredited automakers' contributions (in place of direct investments
Laws No. 12,715 of 17 September 2012 and	in R&D) or fines (for failure to meet established objectives). Valid
No. 12,996 of 18 June 2014	until 31 December 2017

Source: Information provided by the Brazilian authorities.

¹⁶⁸ In addition, FINEP acts as one of the financial agents for the Telecommunications Fund (*Fundo para o Desenvolvimento Tecnológico das Telecomunicações*, FUNTTEL), financed by telecommunications operators' contributions and dedicated exclusively to the telecommunications sector's technological development.

¹⁶⁹ The only exception is the sub-fund for the Amazon region dedicated to financing activities in the states of Amazonas, Rondônia, Roraima, and Acre.

- 3.128. FINEP finances Brazilian research institutions and companies active at every phase and dimension of the scientific and technological development cycle (e.g. basic research, applied research and technological innovation). It also provides financial support for the organization of conferences, seminars and fairs approved by the National Council for Scientific and Technological Development (CNPq).
- 3.129. FINEP support may take the form of repayable financing, non-repayable financing to non-profit institutions, grants (*subvenção econômica*) to enterprises, and investments in projects and companies.¹⁷⁰ Repayable financing may be provided from both FNDCT and FINEP's own resources. FINEP accepts and analyses such applications continuously, whereas applications for non-repayable financing must be submitted in response to a public call for proposals. Non-repayable financing is funded from the FNDCT budget. It is made available to public universities, research centres, and non-profit institutions in programmes and areas determined by the FNDCT's steering committees.
- 3.130. FNDCT disbursements totalled R\$7.9 billion over the 2013-16 period. Significant shares of this amount were attributable to the CT-INFRA, CT-SAÚDE and CT-PETRO funds. Details on types of support provided and on the beneficiary projects/activities were not available.

3.3.2 Standards and other technical requirements

- 3.131. Brazil's legal and institutional framework related to the implementation and administration of the TBT Agreement remained broadly unchanged during 2013-2016; no notifications pursuant to Article 15.2 of the TBT Agreement were received at the WTO during this period.¹⁷¹
- 3.132. The National Council of Metrology, Standardization and Industrial Quality (CONMETRO) continues to oversee the National System of Metrology, Standardization and Industrial Quality (SINMETRO), which regroups public and private entities active in metrology, standardization, quality management, and certification at the federal and sub-federal levels. The National Institute of Metrology, Quality and Technology (INMETRO) continues serving as: CONMETRO's Executive Secretariat; the coordinator of the Brazilian Network of Legal Metrology and Quality (RBMLQ-I); the regulatory and supervising authority for legal metrology and compulsory conformity assessment in the areas of security, environmental and health protection, and prevention of deceptive trade practices¹⁷²; and the national enquiry point and notification authority under the TBT Agreement.
- 3.133. The Brazilian Association for Technical Standardization (ABNT) remains in charge of developing (voluntary) standards. Besides CONMETRO and INMETRO, some 31 federal agencies are responsible for issuing technical regulations and determining conformity assessment systems in their respective areas of competence. Any of these competent agencies may request that INMETRO coordinate conformity assessment activities for a particular technical regulation.
- 3.134. Brazil's approach to granting equivalence remains based on the acceptance of test results, without explicit recognition of foreign technical regulations. During the review period, Brazil notified to the WTO four plurilateral agreements on TBT matters concluded with other Members, including three new mutual recognition agreements (MRAs) on accreditation. Through INMETRO, Brazil is a party to some 120 TBT-related technical cooperation instruments, of which 89 (including 19 in the field of accreditation) are currently in force. INMETRO also represents Brazil at the Inter-American Accreditation Cooperation, the International Accreditation Forum, the International Laboratory Accreditation Cooperation, the International Bureau of Weights and Measures, the International Organization of Legal Metrology, and in relevant initiatives within MERCOSUR, LAIA, and the Organization of American States.
- 3.135. As a member of MERCOSUR, Brazil participates in the elaboration, adoption and revision of common technical regulations; the relevant MERCOSUR procedures remained unchanged

¹⁷⁰ Investments may be made either directly or by way of venture capital and seed money funds.

¹⁷¹ WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

 $^{^{172}}$ Provisional measure No. 541 of 2 August 2011, converted into Law No. 12,545 of 14 December 2011.

 $^{^{173}}$ WTO documents G/TBT/10.7/N/129 and 130 (30 June 2016), and G/TBT/10.7/N/131 and 132 (1 July 2016).

during 2013-2017.¹⁷⁴ At the national level, CONMETRO's non-binding Guide on Good Regulatory Practices continues to frame, in principle, the elaboration, dissemination, periodic review, and elimination of technical regulations and conformity assessment procedures. Technical regulations may be established through laws, decrees, ordinances, normative instructions or resolutions, and should be published in the Official Journal. A period of six months is typically allowed between the publication of a 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 into 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 or MERCOSUR regional standards; when this is not the case, they are based on performance criteria. The recommended period for review and revision of technical regulations is five years.

- 3.136. Generally, the 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.
- 3.137. As at 31 December 2016, INMETRO applied the following 148 compulsory conformity assessment procedures: certification (114 products and 10 services); conformity declaration by the supplier (16 products and 10 services); and inspection (6 products and 4 services). Additional compulsory conformity assessment procedures are administered by other competent entities, such as the Brazilian Health Regulatory Agency (ANVISA), the National Telecommunications Agency ANATEL, and MAPA. SISCOMEX (Section 3.1.1.), accessible only to registered users, contains the most up-to-date information on conformity assessment measures affecting imports. 176
- 3.138. The marketing of products and services, which are both under INMETRO's authority (directly or through delegation) and subject to compulsory conformity assessment, is conditional on inscription in its Register of items. ¹⁷⁷ In addition, importers of products regulated by INMETRO must apply for an import licence through SISCOMEX and request its analysis for approval at INMETRO. 178 Other regulatory agencies, such as ANVISA, MAPA and ANATEL, may also require inscription in their respective registers.
- 3.139. INMETRO maintains a computerized system (Orquestra) for the management of its Register of items and its non-automatic import licensing activities. 179 As at March 2016, INMETRO's Register contained 32,736 items, up from 13,002 in 2013. The total number of requests for analysis of an import licence rose from 197,326 in 2013 to 754,270 in 2016.
- 3.140. INMETRO's General Coordination of Accreditation (CGCRE) is Brazil's national accreditation body in the field of conformity assessment. 180 It accredits entities engaging in certification, inspection, calibration, and testing. The accreditation process is managed online through Orquestra and comprises the submission of a formal request, a review of supporting documentation, and an in situ assessment. Accredited entities are evaluated periodically. According to the authorities,

¹⁷⁴ WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

¹⁷⁵ CONMETRO (2007), *The Brazilian Guide on Good Regulatory Practices*. Viewed at:

http://www.inmetro.gov.br/qualidade/guiaRegulamentacao.asp [06 November 2016].

176 An indicative list of compulsory conformity assessment procedures can be viewed at:

http://www.inmetro.gov.br/qualidade/rtepac/compulsorios.asp

177 This requirement does not apply to products and services under the regulatory competence of other federal agencies. Items subject to pattern approval by INMETRO are exempted.

INMETRO Ordinance No. 18 of 14 January 2016.

The following fees apply: R\$60.01 for analysis of licensing requests; and R\$60.01 and R\$1,516.46 for the inscription/renewal of products and services, respectively, in INMETRO's Register of items. ¹⁸⁰ Decree No. 7938 of 19 February 2013.

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.

- 3.141. As at January 2017, 382 calibration laboratories and 1,046 testing laboratories were accredited in Brazil. There were also 879 entities with active accreditations to perform conformity assessments (certification, inspection, performance verification). Among the Brazilian-accredited entities, 10 laboratories and 4 certification bodies were located overseas.
- 3.142. The ABNT coordinates the consensus-based development of Brazilian standards, and represents Brazil in the ISO/IEC and in regional normalization forums. It signed the WTO/TBT Code of Good Practice in 1995 and follows its Annex 3. 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 150 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 published 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.
- 3.143. As at March 2017, there were 7,815 standards in force in Brazil. Between January 2013 and January 2017, Brazil adopted 2,557 new standards, some 33% of which were adoptions of international (ISO/IEC) standards. Similar statistics on technical regulations were not made available. Between January 2013 and April 2017, Brazil made 193 regular notifications to the WTO Committee on Technical Barriers to Trade, for the most part under Article 2.9 of the TBT Agreement. In only 12 of the notified cases (6.2% of the total), the timeliness of the submission allowed for a comment period of 60 days or more, whereas in 21.7% of all cases the comment period was less than 45 days.
- 3.144. Between January 2013 and January 2017, Brazil was asked to respond to four newly raised specific trade concerns at the Committee on Technical Barriers to Trade. During that period, Brazil also joined various delegations in raising 19 specific trade concerns.

3.3.3 Sanitary and phytosanitary requirements

- 3.145. Brazil's institutional framework for sanitary and phytosanitary (SPS) protection has been altered somewhat since its last Review. In April 2015, the Ministry of Fisheries and Aquaculture (MPA) was abolished and its competences were transferred to MAPA. Consequently, the responsibility for the protection of animal and plant health was consolidated at MAPA, with most relevant SPS controls of domestic production and international trade being carried out by its Secretariat of Animal and Plant Health and Inspection (SDA). ANVISA, an autonomous body, retains regulation and surveillance responsibilities for the protection of human health, including the setting of maximum residue levels of pesticides. ANVISA and MAPA share regulatory and surveillance competences over certain vegetable products. Pre-marketing regulation and surveillance of *in natura* food are the remit of MAPA.
- 3.146. The National Technical Commission on Biosafety (CTNBio), a multidisciplinary advisory body to the Federal Government, remains Brazil's authority for all activities involving genetically modified organisms (GMOs). Besides assisting in GMO policy formulation and elaborating relevant technical advice, CTNBio acts as the national certifying body for quality systems in biosafety and is the sole issuer of research authorizations and of commercial approvals for GMOs. Entities wishing to engage in any activity involving GMOs must obtain a certificate of quality in biosafety and a prior authorization from CTNBio.

¹⁸¹ WTO document G/TBT/CS/2/Rev.14, 20 February 2008.

¹⁸² WTO documents G/TBT/M/63, 19 September 2014; G/TBT/M/64,10 February 2015; G/TBT/M/66, 17 September 2015; and G/TBT/M/67, 3 February 2016.

¹⁸³ Law 13,266 of 5 April 2016.

¹⁸⁴ Besides coordinating the National Sanitary Surveillance System and sanitary controls at Brazil's borders, ANVISA regulates health services, public health laboratories, and health-related products (including their advertising). It also monitors the prices of pharmaceuticals. ANVISA is connected to the Ministry of Health through a management contract, which is renewed periodically.

- 3.147. Following the MPA's abolition, Brazil's enquiry points comprise MAPA's Secretariat for International Relations of Agribusiness and ANVISA's Office of International Affairs. The Ministry of Foreign Affairs remains the national notification authority for SPS matters. Brazil submitted 515 notifications, including 1 emergency and 472 regular ones, to the WTO between January 2013 and April 2017. Approximately one fifth of the measures announced in regular notifications were based on international standards. As at the time of its previous Review, the majority of Brazil's notifications allowed for comment periods of less than 60 days and few envisaged a six-month period between publication and entry into force. According to the authorities, comments from interested parties have generally been taken into consideration even after the stipulated deadlines.
- 3.148. Between January 2013 and January 2017, Brazil raised six new specific trade concerns related to various restrictions on its exports of beef and poultry at the Committee on Sanitary and Phytosanitary Measures. 185 Brazil was also asked to respond to one specific trade concern by China regarding its implementation of a standardized international certificate for fish and fishery products exported to Brazil. 186
- 3.149. In May 2015, the SDA elaborated its first Agricultural Defence Plan (Plano de Defesa Agropecuária) for the period 2015-2020. 187 The Plan envisages a number of actions, structured along five axes: cutting red tape; updating the legal framework; strengthening strategic support (investigation, risk assessment and risk management); ensuring cost efficiency; and meeting various qualitative objectives. During the review period, the main SPS-related legislative developments and procedural changes concerned: labelling requirements for animal products; overseas inspection procedures for recognition of equivalence (animal products); and trade facilitation improvements in the Brazilian Agricultural Surveillance System. As from January 2016, all communications between MAPA and CTNBio are carried out through an Electronic Information System (SEI), which has accelerated approval procedures. Plans are also under way to involve the SDA and ANVISA in Brazil's AEO scheme (Section 3.1.1).
- 3.150. Competence for the adoption of SPS measures remains vested in ANVISA and MAPA. According to the authorities, both entities follow similar procedures for the adoption of SPS measures, which generally comply with guidelines issued by relevant international organizations. Under Brazil's SPS system, 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. 188 Risk assessments for plant pests comply with International Plant Protection Convention (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 World Organisation for Animal Health (OIE) standards. Sanitary requirements are adopted after public consultations, which are publicized in the Official Journal and notified to the WTO.
- 3.151. Brazil maintains a non-automatic licensing system for imports subject to SPS controls. In addition, the importation of some of these products may require prior authorization, certification (for unrestricted commercialization or quality), and/or inscription in a register. Indicative lists of the goods controlled by the SDA and ANVISA upon importation are available online. 189 Exports of most of these goods from Brazil are also subject to registration and/or authorization requirements. In principle, ANVISA and the SDA issue import and export licences and/or authorizations in their respective areas of competence directly through SISCOMEX. In order to obtain a licence through SISCOMEX, importers of animal products must also request authorization from the SDA department (the Federal Inspection Service) in the Brazilian state where they are based,

¹⁸⁵ WTO documents G/SPS/R/73, 15 January 2014; G/SPS/R/79, 4 September 2015; and G/SPS/R/82, 7 June 2016. $\,$ $\,^{186}$ WTO document G/SPS/R/75, 18 September 2014.

¹⁸⁷ MAPA online information. Viewed at: http://www.agricultura.gov.br/arq editor/PDA2015 2020.pdf

¹⁸⁸ 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).

¹⁸⁹ The products subject to SDA controls upon importation are listed by tariff line (NCM) in the Annex to Normative instruction No. 51 (7 November 2011), viewed at: http://www.agricultura.gov.br/animal/importacao [12 October 2016]. A similar (NCM) list of products controlled by ANVISA is available at: http://portal.anvisa.gov.br/registros-e-autorizacoes/produtos/importacao [12 October 2016].

indicating, *inter alia*, the shipment's point of entry and destination.¹⁹⁰ Authorizations for live animals and reproductive material are issued by SDA representations at the state level, as part of the overall import licensing and authorization formalities.¹⁹¹ 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. Some of these products can only be imported after inscription in ANVISA's sanitary register.¹⁹² Pharmaceutical raw materials can only be imported by companies holding an authorization to operate in Brazil, issued by ANVISA.

- 3.152. Imports of plants and plant products are subject to documentary and inspection requirements that vary according to the product's intended use and its classification in one of five risk categories. 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; the classification of imported plant products is done by MAPA. 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. The conformity of imports is verified at the border, either by the SDA or by accredited private companies. 195
- 3.153. The prerequisites for the importation of products of animal (including aquatic animal) origin into Brazil include: recognition of the exporting country's sanitary inspection systems as equivalent to Brazil's; accreditation of the exporting establishments; and approval of each establishment's products and labels. Each shipment to Brazil must be accompanied by a sanitary certificate issued by the exporting country's competent authorities, and carry approved labels or stamps. All imports of animal products and their sub-products are physically inspected at the port of entry, with samples taken for laboratory testing whenever necessary. 197
- 3.154. Brazil maintains an Importation Alert Regime (RAI) targeting foreign establishments whose shipments of animal products have been found to be non-compliant with Brazilian SPS requirements. Whenever an irregularity is detected and an exporter is placed under the RAI, the SDA carries out 100% physical inspections and laboratory testing of the 10 consecutive shipments (of all products) originating from that establishment. Should another irregularity be detected in the course of the 10 inspections, the establishment's licence to export to Brazil is suspended. In osufficient evidence of corrective measures taken is received 30 days after notification of the exporting country's competent authorities, the SDA may revoke the establishment's accreditation. In case of recurrent serious irregularities, or if non-compliant shipments are detected from at least three establishments within 30 days, the SDA may suspend the accreditation of all similar establishments from that country or of the country as a whole.

¹⁹¹ MAPA online information. Viewed at: http://www.agricultura.gov.br/animal/importacao [13 October 2016].

¹⁹³ Law No. 9,972 of 25 May 2000 and Decree No. 6,268 of 22 November 2007.

¹⁹⁷ In general, testing is 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.

¹⁹⁰ SDA Ordinance No. 183 of 9 October 1998.

¹⁹² 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).

¹⁹⁴ 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).

¹⁹⁵ 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, 28 November 2006 and addenda).

¹⁹⁶ The 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.

¹⁹⁸ The 10 subsequent shipments must arrive at Brazilian points of entry that have adequate facilities for thorough inspection. Information on the establishments placed under the RAI and the possible points of entry for their shipments is published on MAPA's website: http://www.agricultura.gov.br/animal/importacao/regime-de-alerta-importacao [14 October 2016].

¹⁹⁹ To have the licence reinstated, the competent certifying authorities in the exporting country must provide detailed information on the measures taken to address the problem, and another 10 consecutive shipments from that establishment must successfully undergo thorough inspection and testing.

 $^{^{\}rm 200}$ SDA Ordinance No. 183 of 9 October 1998 and SDA Internal Norm No. 01 of 02 August 2016.

- 3.155. Exporters of products of animal origin from Brazil must obtain accreditation (habilitação) for their target market, conditional on a favourable official opinion (parecer official) by the SDA as to the applicant's documentary conformity and capacity to comply with any market-specific SPS requirements. A sanitary certificate must also be obtained from the SDA for each export shipment. 201
- 3.156. 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.
- 3.157. Brazil prohibits the commercialization, including imports and exports, of hormonal substances with anabolic characteristics, unless intended for therapeutic or research use. 202 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.²⁰³

3.3.4 Competition policy and price controls

3.3.4.1 Competition policy

- 3.158. Since the overhaul of Brazil's competition regime²⁰⁴ in 2012, there have been no major changes during 2013-16. The Administrative Council for Economic Defence (CADE) remains in charge of competition policy enforcement, including ex-ante merger control, investigation of anti-competitive conduct, and administrative adjudication. Consumer protection remains the remit of the National Secretariat for Consumers (SENACON), whereas the Special Secretariat of Economic Monitoring (SEAE) is 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. 205
- 3.159. CADE may initiate investigations ex officio or on the basis of complaints from any person.²⁰⁶ 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 competition authority itself 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.
- 3.160. In 2013, CADE implemented a new settlement policy requiring the signatory of a cease-and-desist agreement to collaborate with the investigation, in addition to admitting and ending its anti-competitive conduct. The settlement policy foresees a reduction of the relevant fine according to the contribution provided during the investigation, which has resulted in increasing numbers of completed settlements and leniency agreements (Table 3.17). In 2016, CADE strengthened merger notification criteria with the establishment of notification requirements for associative contracts.²⁰⁷ During 2013-16, CADE also published guidelines on: its antitrust leniency

²⁰¹ Memorandum No. 15/2013/GAB/DIPOA of 06 February 2013. Viewed at: http://www.agricultura.gov.br/arq_editor/file/Aniamal/dipoa/DE_%20HAB_MEMON%C2%BA15%202013_BOVI NOS AVES SUINOS MANUALDEPROCEDIMENTOS.pdf [13 October 2016].

MAPA Normative Instruction No. 55 of 1 December 2011.

 $^{^{203}}$ MAPA Normative Instruction No. 17 of 18 June 2004.

²⁰⁴ WTO Document WT/TPR/S/283/Rev.1, 26 July 2013.

²⁰⁵ As part of its mandate, the SEAE also provides advisory opinions to CAMEX on AD 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.

²⁰⁶ Pursuant to Brazil's competition legislation, CADE may undertake ex officio market-wide studies, which are consultative and non-binding. There are no prescribed time-frames for the conclusion of such studies.

207 Resolution No. 17 of 18 October 2016.

programme; cease-and-desist agreements for cartel cases; completion of mergers prior to approval (qun jumping); competition compliance programmes; and horizontal mergers.²⁰⁸

Table 3.17 Competition enforcement, 2013-16

	2013	2014	2015	2016
Total complaints/requests	490	646	599	572
Merger notification filings	377	423	404	389
Reviewed	437	434	384	366
Not reviewed	2	7	20	19
Desisted	2	1	2	5
Leniency applications	1	6	10	11
Requests for advisory opinions/advance rulings	3	4	9	3
Examinations and inquiries concluded	643	713	670	603
Mergers	437	434	384	366
Approved without restrictions	387	413	376	360
Approved with restrictions	47	20	7	6
Disapproved	3	1	1	0
Abuse of dominance	22	40	23	11
Restrictive practices	16	17	21	20
Advisory opinions (in all areas)				3
Total administrative fines (R\$ million)	492.0	3,321.7	286.9	196.6
Number of civil court sentences	35	72	73	44
Findings upheld (%) ^a	91	92	83	84
Appeals (against 1 st instance decisions) ^b	65	16	25	57
Decisions reversed/amended on appeal	28	11	18	15

.. Not available.

a Indicates the share of civil court findings that upheld CADE's decisions in the total number of sentences for that year.

b Number of second instance rulings ("acórdãos") rendered in the period.

Source: CADE.

3.161. 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. The provision of public aid or any preferential tax treatment by the federal and sub-federal governments is also outside its scope. CADE and Brazil's 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. During 2013-16, CADE concluded technical cooperation agreements with the National Cinema Agency (ANCINE), ANVISA, and the National Agency of Petroleum, Natural Gas and Biofuels (ANP). CADE has not established a standing mechanism for the monitoring of "pay-for-delay" patent settlement agreements.

3.162. 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.²⁰⁹ The authorities affirm that, in its assessments, CADE applies a consumer welfare standard, with top priority given to gains to consumers. 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.²¹⁰ During 2013-16, CADE issued eight administrative proceedings involving remedies that explicitly mentioned the compulsory licensing of intellectual property rights.

3.163. Fines are the main sanctions imposable by CADE and civil courts for infractions of competition law. Under CADE's leniency programme, the first whistle-blower may receive full or partial administrative immunity (depending on the authorities' prior knowledge of the anti-competitive conduct) as well as freedom from prosecution. Later applicants receive a "marker"

²⁰⁸ CADE online information. Viewed at: http://www.cade.gov.br/acesso-a-informacao/publicacoes-institucionais/guias_do_Cade/capa-interna [17 January 2017].

²⁰⁹ 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. CADE may, however, apply different market control thresholds for specific sectors.

²¹⁰ Previously, Brazil's competition legislation stipulated only the possibility of compulsory licensing of patents (as opposed to intellectual property rights) held by the infractor.

position while discussions with the first applicant are ongoing, and can obtain monetary benefits (reduced fines). The leniency programme's scope includes violations of the antitrust legislation and other statutes, such as fraud, bid-rigging, and conspiracy.

- 3.164. Since 2013, CADE has investigated various cases of unilateral conduct in the healthcare, pharmaceutical, financial services and gas markets. It has also investigated bid-rigging in public procurement related to infrastructure works, health products and services, and sub-contractor services. In addition, it has been investigating cartels in the automotive industry (notably, the auto parts segment), the electronics industry, and in the distribution and resale of petroleum derivatives.
- 3.165. In the execution of competition advocacy functions, the SEAE has been actively engaged in ensuring coordination on relevant topics among regulatory agencies. The SEAE also participates in technical discussions, in various formats, that support the work of CAMEX, including on tariff changes at MERCOSUR level. During 2013-16, the SEAE issued some 300-400 opinions per year in public hearings on regulatory amendments. Its interventions concerned the following main sectors: transportation (all modes), financial services, ports, energy, telecommunications, health and sanitary surveillance, urban infrastructure, and natural resources.
- 3.166. Brazil has 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. CADE has non-binding technical cooperation agreements with competition authorities from Argentina, Canada, Chile, China, Colombia, Ecuador, the EU, France, Japan, Peru, Portugal, the Russian Federation, the Republic of Korea and the United States. In general, these cooperation instruments contain provisions on exchange of information (subject to the laws protecting confidential information in each jurisdiction), avoidance of conflicts, and confidentiality. ²¹¹ Brazil is also an active participant in international forums on competition policy, including the International Competition Network and the BRICS International Competition Conference, and in relevant work at the OECD and UNCTAD.

3.3.4.2 Price controls

3.167. The consumer price index (IPCA) used in Brazil's inflation targeting regime contains several goods and services whose prices are deemed insensitive to supply and demand fluctuations, because they have been determined in a long-established contract or set by a public sector entity (Table 3.18). According to the IMF, in 2016 regulated prices had a significant weight in the IPCA (some 25% of the basket), and therefore strong direct and second-round (via impact on production) effects on inflation. ²¹²

Table 3.18 Regulated prices, 2017

	Competent entity
Regulated at the federal level	
Petroleum products. Gasoline, diesel, bottled cooking	PETROBRAS
gas	
Residential electricity	National Agency for Electrical Energy (ANEEL)
Fixed line telephone services (public concession and	ANATEL
universal service)	
Healthcare plans	National Regulatory Agency for Private Health
·	Insurance and Plans (ANS)
Pharmaceutical products	Drug Market Regulation Chamber (inter-ministerial
	body)
Gambling (lottery tickets)	Caixa Econômica Federal (federal state-owned bank)
Interstate bus service	National Transportation Agency (ANTT)
Postal services (letters)	Empresa Brasileira de Correios e Telégrafos/MCTI
Regulated at the sub-federal level	· ·
Ship fares (public transport)	Government of the State of Pará

²¹¹ In addition, criminal aspects of international competition enforcement would be framed by a number of bilateral Mutual Legal Assistance Treaties signed by Brazil. The list of such agreements can be viewed at: http://www.justica.gov.br/sua-protecao/cooperacao-internacional/cooperacao-juridica-internacional-em-materia-penal/acordos-internacionais/acordos-bilaterais-1 [16 April 2017].

²¹² IMF (2016), *Brazil: 2016 Article IV Consultation—Press Release; Staff Report; and Statement by the Executive Director for Brazil.* IMF Country Report No. 16/348.

	Competent entity
Compressed natural gas (vehicle fuel)	State governments
Subway	State governments
Public transport: city bus fares, intercity bus fares,	Municipalities
city train fares, ferry-boat fares	
Water and 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

Note: The Central Bank of Brazil compiles this information for illustrative proposes only. It does not have

any formal control over the respective policies.

Source: Central Bank of Brazil.

3.168. 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 (Section 4.3.3). 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 by way of 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.

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

3.3.5 State trading, state-owned enterprises, and privatization

3.170. In 2016, Brazil notified the WTO's Council for Trade in Goods that it does not maintain any state trading enterprises (STEs) "that fall within the working definition of such enterprises." According to the authorities, *Indústrias Nucleares do Brasil* (INB), which holds the exclusive right to import and export nuclear material, does not qualify as an STE because all of its production is sold to a subsidiary of ELETROBRAS. 214

3.171. The Federal Government still controls a relatively large number of companies with commercial activities in a wide range of industries, including hydrocarbons, electricity, port services, financial services, transportation, telecommunications, and health services (Table 3.19). Some federal state-owned enterprises (SOEs) continue to hold dominant positions in their respective markets (e.g. PETROBRAS in hydrocarbons trading and ELETROBRAS in electricity generation and transmission), and to have *de jure* exclusive rights over certain activities. In addition, there are many "public companies" owned or controlled by state and municipal governments; no information is available on their exact number.

Table 3.19 Key features of federal state-owned enterprises (SOEs), 2017

STE	State participation	Key features
PETROBRAS (Petroleo Brasileiro)	63.53% of voting shares	Continues to hold a dominant position (not an exclusive right) in hydrocarbon trading. Remains a <i>de facto</i> price setter for petroleum derivatives sold in Brazil.
BR Distribuidora (PETROBRAS Distribuidora)	100% owned by PETROBRAS	Responsible for production and commercialization of petroleum derivatives, including export and import activities. Operates the largest network of fuel stations in Brazil.
COBRA (Computadores e Sistemas Brasileiros)	99.95% of shares owned by <i>Banco do Brasil S.A.</i> , majority owned by the National Treasury (50.73% of voting shares)	Deals with production and development of IT products, and provision of IT services. Imports digital equipment. Does not have any exclusive rights.

²¹³ WTO document G/STR/N/16/BRA, 9 August 2016.

 $^{^{\}rm 214}$ WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

STE	State participation	Key features
CONAB (<i>Companhia</i> <i>Nacional de</i> <i>Abastecimento</i>)	100%	Responsible for administering and carrying out certain agriculture policies, including those related to strategic storage, food supply, and minimum price guarantees. May import certain food products in exceptional circumstances, by decision of MAPA.
CMB (<i>Casa da Moeda</i> do Brasil)	100%	Has exclusive rights over the manufacture of banknotes, coins, postal and fiscal stamps, and government bonds (Law No. 5,895 of 19 June 1973). Exports banknotes and other products, and imports raw materials, equipment, and other inputs.
ELETROBRAS	75.1% of voting shares	Exports and imports electricity (not an exclusive right). Private companies authorized by ANEEL may also engage in these activities.
National Center for Advanced Research in Electronics (CEITEC)	100%	Produces and commercializes semiconductors for the domestic and international market.
Pré-Sal Petróleo S.A. (PPSA)	100%	Manages the commercialization of the State's share of output produced under the production-sharing agreements for oil and gas.

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

3.172. At end-2016, the Secretariat for Coordination and Control of State Enterprises (SEST) under the Ministry of Planning Development and Management reported the existence of 154 majority government-owned enterprises at the federal level, up from 141 in 2013. These SOEs employed 549,240 people in 2016, down from 550,029 in 2013. According to SEST, some 18 companies employing 69,764 people were dependent on Federal Treasury funding for their operations. Most of the top 10 performers among federal SOEs, in terms of both revenues and total assets, belonged to the PETROBRAS and ELETROBRAS groups of companies. ²¹⁵ In 2016, federal SOEs invested R\$54.6 billion (0.9% of GDP), down from R\$113.5 billion (2.1% of GDP) in 2013.

3.173. According to the authorities, since 2013 there has been no privatization activity, and no new SOEs have been created. In 2016, Brazil amended the legal status of enterprises with public participation at any level of government, with a view to strengthening their governance and transparency, including in procurement operations. ²¹⁶ All such enterprises are required to comply with a set of mechanisms for internal control, transparency, and long-term strategic planning.

3.3.6 Government procurement

3.174. Brazil is neither a party nor an observer to the WTO Plurilateral Agreement on Government Procurement (GPA). The Agreement on Economic and Trade Expansion between Brazil and Peru, signed in April 2016, contains a chapter on government procurement. Brazil is involved in ongoing negotiations on a MERCOSUR Public Procurement Protocol, as well as in FTA negotiations between MERCOSUR and the EU that also include a chapter on public procurement.

3.175. Brazil's decentralized system comprises independent procurement jurisdictions at all levels of government that share a common set of rules established by the Federal Government. Common elements are mainly set out in the Tendering Law of 1993, and include provisions on transparency, procurement methods, exemptions, and appeals.²¹⁷ The common rules also apply to state-controlled enterprises (public enterprises and mixed companies) and at all levels of government, except those subject to specific procurement regimes established by the authorities in the respective jurisdiction of incorporation. At the federal level, a company-specific procurement regime, established by presidential decree, remains in place for PETROBRAS.²¹⁸ In 2016, a set of uniform rules and guidelines were adopted for procurement operations by enterprises with public participation at any level of government, as part of a broader initiative to strengthen their governance.²¹⁹ PETROBRAS must adapt to the new framework by 30 June 2018.

²¹⁵ SEST (2017), *Revista das Estatais*. Viewed at: http://www.planejamento.gov.br/assuntos/empresasestatais/arquivos/revista-das-estatais [20 April 2017].

²¹⁶ Law No. 13,303 of 30 June 2016.

²¹⁷ WTO Document WT/TPR/S/283/Rev.1, 26 July 2013.

²¹⁸ Procurement by PETROBRAS must conform to the local-content requirements governing the oil and gas industry (Section 4.3).

²¹⁹ Law No. 13,303 of 30 June 2016 and Decree No. 8,945 of 27 December 2016.

- 3.176. The obligation to tender may be waived under various provisions for exemption (dispensa de licitação) or non-applicability (inexigibilidade). 220 State-controlled companies at any level of government are subject to specific waiver provisions, which were redefined in 2016.²²¹ These include an exemption from the requirement to tender for contracts concerning the company's core business activities. According to the Ministry of Planning, during 2013-16 some 14,935 federal procurement contracts worth R\$26.9 billion fell under exemption provisions; the corresponding figures for non-applicability clauses were 9,234 and R\$28.9 billion. No data or estimates are available on exempted contracts at the sub-federal levels.
- 3.177. Brazil's legislation provides for the use of six procurement methods: open tendering (concorrência); price consultation (tomada de preços); invitation (convite); competition (concurso); public auction (leilão); and reverse auction (pregão). In general, the admissible procurement methods, and any requisite approvals, depend on the value and the nature of the object being tendered.²²² Reverse auction, either electronic or onsite, is the main mode of awarding contracts for common goods and services.²²³ Over 99% of reverse auctions were carried out electronically during 2013-16.
- 3.178. Participating in electronic procurement proceedings requires a digital certificate compliant with the ICP-Brazil.²²⁴ To take part in national tendering, foreign suppliers must be legally established in Brazil. In the case of international tendering, foreign companies must have legal representation in Brazil or be associated with a Brazilian firm. International tendering is mainly used for procurement contracts funded by international institutions or cooperation agencies, and follows the rules of the financing institution.
- 3.179. Brazil's procurement policy remains focused on obtaining the most advantageous offer, ensuring equality under the law, and promoting national sustainable development. 225 In the awarding of contracts, preference may be given to goods and services: (i) produced in Brazil; (ii) produced or supplied by Brazilian companies; or (iii) produced or supplied by companies that invest in technology development in Brazil. The preferential treatment may include quotas, preference margins, and tendering procedures completely restricted to small enterprises based in Brazil. Specific provisions regulate the preferences applicable to micro and small enterprises (MSEs), and to goods and services produced domestically in accordance with Brazilian technical standards. According to the authorities, sub-federal jurisdictions cannot establish additional preferential treatment provisions.
- 3.180. The federal provisions for simplified differential treatment of MSEs apply to all levels of public administration, unless more favourable terms are stipulated in any sub-federal legislation or company/entity-specific regulations. Specifically, the contracting entity: must restrict the tendering of contracts worth up to R\$80,000 to MSEs; may require sub-contracting to MSEs in the procurement of works and services; and must establish a quota of up to 25% for MSEs in the acquisition of goods of a divisible nature. 226
- 3.181. The Inter-ministerial Commission for Public Procurement (CI-CP) remains in charge of elaborating proposals detailing the eligibility criteria and recommended preference margins for specific types of domestically produced goods and services.²²⁷ These proposals must be approved by presidential decree. In its analysis, the CI-CP must take into account various factors, including job and income generation, effect on tax revenues, and technology development and innovation performed in Brazil; preference margins may be up to 25%. 228 As a general rule, national products are those produced in accordance with a PPB (Section 3.3.1.1) or with rules of origin established by the Federal Government, which must follow MERCOSUR minimum standards. National services are those supplied inside the Brazilian territory, under conditions to be determined by the

²²⁰ Law No. 8,666 of 21 June 1993.

²²¹ Law No. 13,303 of 30 June 2016.

The admissibility criteria for each procurement method are set out in Laws No. 8,666 of

²¹ June 1993 (Arts. 22 and 23) and No. 10,520 of 17 July 2002 (Art. 1).

223 Decree No. 5,504 of 5 August 2005.

²²⁴ Decree No. 8,539 of 8 October 2015.

 $^{^{\}rm 225}$ Law No. 8,666 of 21 June 1993, amended by Law No. 12,349 of 15 December 2010.

²²⁶ Supplementary Law No. 123 of 14 December 2006, amended by Supplementary Law No. 147 of 7 August 2014.

²²⁷ Decree No. 7546 of 2 August 2011.

²²⁸ Law No. 12,349 of 15 December 2010.

Government.²²⁹ According to the authorities, the suppliers' origin is not among the criteria for preference eligibility. The preference margin is calculated on the basis of the lowest-price offer among those ineligible for preferential treatment.

3.182. Some 17 decrees establishing public procurement preference margins, ranging from 8% to 25%, for various national products were in force in Brazil during most of the period under review (Table 3.20). The product-specific preference margins applied to procurement contracts at all levels of government, and were to be reviewed at least once every five years. All but two of these decrees expired on 31 December 2016; one remained partially in force until 30 March 2017 and one was in force until 30 June 2017.²³⁰

Table 3.20 Product-specific preference margins in public tendering, 2017

Main products	Preference margin	Decree No.
Capital goods	20%, 15% + 5%	8,224 of 3 April 2014
Chapters 61 and 62 of TIPI + 12 products	20%	7,756 of 14 June 2012
Desktops, Notebooks, and printers	10% + 10%	8,184 of 17 January 2014
Executive airplanes	9% + 16%	8,185 of 17 January 2014
IT and communications equipment	15% + 10%	8,194 of 12 February 2014
Locomotives, train wagons and parts	20%	7,812 of 20 September 2012
Materials (HS 32) and equipment (HS 53)	8%, 15%, 20%, and 25%	7,767 of 27 June 2012 (amended 16 August 2012)
Medicines, pharmaceuticals, and	8%, 20%, and 25% (with	7,713 of 3 April 2012
biopharmaceuticals	technological aggregation)	
Metal coin disc	20%	7,843 of 12 November 2012 (amended 5 December 2012)
Motor grader and backhoe	15% (backhoe); 25% (grader)	7,841 of 12 November 2012
Network equipment	15% (normal); 10% (innovation stimulus)	7,903 of 4 February 2013
Paper for printing paper money	20%	7,810 of 20 September 2012
Software	0% + 18%	8,186 of 17 January 2014
Toys	10%	8,823 of 3 April 2014
Tractors, implements, and drills	15% (tractor); 20% (drill and implements)	7,840 of 12 November 2012
Trucks, ambulance wagons, and trailers	17% (trucks); 15% (ambulance wagons); 14% (trailers)	7,816 of 12 November 2012
Wheel loaders, caterpillar tractors, and related products	15%, 20%, and 25%	8,002 of 14 May 2013

Source: Ministry of Planning, Development and Management online information. Viewed at: http://www.comprasgovernamentais.gov.br/qestor-de-compras/legislacao-por-assunto#margem.

3.183. Besides applying the established preference margins, contracting entities may restrict certain procurement tenders to goods and services developed in Brazil and produced in accordance with a PPB. The eligibility restriction may be applied to contracts for the implementation, maintenance, and development of information and communications systems defined as strategic by the Government.²³¹ Currently, the measure may be used in tendering procedures under the National Broadband Programme (PNBL).²³²

3.184. 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. Subsequent amendments made it possible to apply this special regime to the procurement of infrastructure works included in the Government's Growth Acceleration Program (PAC), and to works and engineering services for the Unified Health System (SUS), as well as to cases related to public security and to activities of S, T&I entities. Statistics on the application of this regime were not available.

²²⁹ Decree No. 7,546 of 2 August 2011.

²³⁰ Decree No. 7,767 of 27 June 2012 was in force until 30 June 2017; no information about its possible renewal was available at the time of writing. The last renewal of all other decrees' validity terms was set out in Decree No. 8,626 of 30 December 2015.

²³¹ Law No. 12,349 of 15 December 2010.

²³² Decree No. 7,175 of 12 May 2010.

²³³ Law No. 12,462 of 4 August 2011.

3.185. In 2016, procurement expenditure by federal public administration bodies (excluding SOEs) totalled R\$16.2 billion, down from R\$32.6 billion in 2013. Federal procurement expenditure declined markedly from 2015 onwards (Table 3.21). Some 47.5% of procurement contracts were for the supply of goods, and 52.5% were for the provision of services. Information on procurement contracts awarded to foreign suppliers is not available due to the fact that all suppliers established in Brazil, regardless of ownership, are treated as national suppliers.

Table 3.21 Federal administration procurement, by methods, 2013-16

	2013	2014	2015	2016
Total (R\$ million)	32,649.0	56,002.7	18,059.4	16,220.7
		(% of	total)	
Reverse auction	84.2	94.9	92.2	94.9
Open tendering	14.7	4.2	6.8	4.6
Price consultation	1.0	0.6	0.8	0.5
Invitation	0.04	0.02	0.02	0.02
International tendering	0.04	0.25	0.06	0.01
Competition	0.01	0.03	0.02	0.01

Note: The figures do not include procurement by federal SOEs.

Source: Ministry of Planning, Development and Management online information. Viewed at:

http://paineldecompras.planejamento.gov.br/QvAJAXZfc/opendoc.htm?document=Painel%20de%20 Compras.qvw&host=Local&anonymous=true [17 January 2017].

3.186. Data collected by the federal authorities do not include public expenditure at the state and municipal levels, due to Brazil's decentralized procurement system. The OECD estimates overall public procurement expenditure at 8.2% of Brazil's GDP in 2014, with spending by the federal, state and local governments amounting to 1.8%, 2.8% and 3.6% of GDP, respectively. 234

3.3.7 Intellectual property rights

3.3.7.1 Overview

3.187. Brazil's legislation covers all the major aspects contained in the TRIPS Agreement. In some areas, including copyright, Brazil grants rights that exceed the minimum terms laid down in the Agreement. During the period under review, there have been several legislative changes affecting the protection of intellectual property (Table 3.22). Brazil's responses to the checklist of issues on enforcement date from 2000, and its legislation was reviewed by the TRIPS Council in 2001. 235 Brazil has not provided notification updates with respect to changes in legislation since 2001. The body of legislation that has not been notified to the TRIPS Council includes the laws on: integrated circuit topographies; collective management of copyright (amendment); access to and benefit sharing of genetic resources and associated traditional knowledge; and principles, guarantees, rights and obligations for the use of Internet in Brazil. 236

3.188. As of January 2017, Brazil was a party to 14 out of the 26 treaties administered by the World Intellectual Property Organization (WIPO), having ratified the Marrakesh VIP Treaty in December 2015. 237 According to the authorities, the process for domestic ratification of the Madrid Protocol is under way.

3.189. Brazil's institutional framework for intellectual property rights (IPRs) has not changed significantly during the period under review. Policy formulation in the area of industrial property is the responsibility of the MDIC, whereas that related to copyright is the remit of the Ministry of Culture. The National Industrial Property Institute (INPI) administers the industrial property system. The collective management of copyright is carried out by several associations: the Central Bureau for Collection and Distribution (ECAD); Associação Brasileira de Música e Artes; Associação de Músicos; Arranjadores e Regentes; Associação de Intérpretes e Músicos, Sociedade Brasileira

²³⁴ OECD (2016), Government at a Glance: Latin America and the Caribbean 2017. Viewed at: http://www.oecd-ilibrary.org/deliver/4216341e.pdf?itemId=/content/book/9789264265554en&mimeType=application/pdf.

²³⁵ WTO Documents IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

 $^{^{236}}$ Laws No. 11,484 (31 May 2007), No. 12,853 (14 August 2013), No. 13,123 (20 May 2015), and No. 12,965 (23 April 2014).

²³⁷ WIPO online information. Viewed at:

de Autores, Compositores e Escritores de Música; Sociedade Independente de Compositores e Autores Musicais; 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. ECAD is the sole entity responsible for collecting and distributing public performance royalties.

Table 3.22 National IPR legislation, 2017

Subject/Law	Coverage	Duration	Exclusions and	Remarks
Detembo			limitations	
Patents Industrial Property Law No. 9,279 (14 May 1996), amended by Law No. 10,196 (14 February 2001) Law No. 13,123 (20 May 2015)	Any invention that is new and involves an inventive step and is capable of industrial application.	20 years from date of filing. At least 10 years of effective patent protection is granted if more than 10 years have passed between the application's filing and the granting of the patent.	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; surgical techniques and methods; computer programmes <i>per se</i> . Compulsory licences may be granted in cases of anticompetitive behaviour, national emergency or in public interest.	Law No. 10,196/2001: prior approval from ANVISA for granting patents for pharmaceutical products and processes. Decree No. 4,830/2003 regulates the granting of compulsory licences. Law No. 13,123/2015 regulates access to and benefits sharing of genetic resources and associated traditional knowledge.
Industrial designs Industrial Property Law No. 9,279 (14 May 1996)	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. 60/2013 transposes the international classification system. Normative Instructions No. 44/2015 and No. 45/2015 establish the conditions for the registration of industrial designs.
Utility models	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.	Resolution No. 85/2013 regulates the processing of applications.
Trade marks Industrial Property Law No. 9,279 (14 May 1996)	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.	Resolution No. 23/2013 establishes rules for the recognition of famous marks. Resolutions No. 34/2013 and No. 35/2013 transpose the international classifications of products and services, and of figurative elements.

Subject/Law	Coverage	Duration	Exclusions and limitations	Remarks
Geographic indicat	tions			
Industrial Property Law No. 9,279 (14 May 1996)	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 Instruction No. 25/2013 establishes the conditions for registration of geographic indications.
Copyright and rela				
Law No. 9,610 (19 February 1998), amended by Law No. 12,853 (14 August 2013) Law No. 9,609 (19 February 1998) Law No. 10,695 (01 July 2003) Law No. 12,965 (23 April 2014)	Text of literary, scientific or artistic works; musical compositions, audiovisual works, drawings, paintings, photographic works, sound recordings, broadcasts; data bases. 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 is 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. Temporary reproduction is excluded from the concept of exclusive rights.	Law No. 10,695/2003 amends the Criminal Code to include stiffer sanctions for copyright violations and to improve criminal procedures. Law No. 12,853/2013 and Decree No. 8,469/2015 regulate the collective management of copyright and related rights. Normative Instruction No. 4/2015 regulates arbitration and mediation by the Ministry of Culture.
Law No. 9,609 of 19 February 1998	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 Instruction No. 11/2013 establishes the conditions for registration of computer software.
New plant varietie				
Plant Variety Protection Law No. 9,456 (25 April 1997)	New plant varieties and derived plant varieties of any genus or species.	15 years from the granting 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 a variety essentially derived from species whose descriptors have been published in the Official Gazette.
Layout designs of Law No. 11,484	Protection of layout	10 years from		Normative Instruction
(31 May 2007)	designs of integrated circuits.	application.		No. 10/2013 regulates the submission and processing of applications.
Undisclosed inforn				
Law No. 10,603 (07 December 2002) Industrial Property Law No. 9,279 (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.	Law No. 9,279/1996 protects against unfair commercial use of the information and data presented to the authorities for commercial approval.

Source: WTO Secretariat, based on information provided by the National Industrial Property Institute (INPI), World Intellectual Property Organization (WIPO), and WTO documents.

3.3.7.2 Industrial property

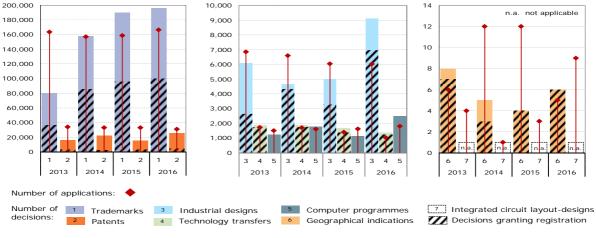
3.190. Industrial property contracts need to be registered at INPI in order to have effect for third parties, enable the remittance of royalties and licence fees, and qualify for income tax deductions. During the period under review, Brazil has taken steps to streamline the submission and examination of applications for various forms of industrial property protection, including patents and trademarks. Procedural innovations included: the implementation of a system for simplified electronic filing²³⁸ and WIPO's Industrial Property Automation System (trademark applications); fast-track examination initiatives (e.g. for "Green Patents", and applications by micro-enterprises and the disabled); publication of examination guidelines (patents and trademarks); and a productivity incentive programme for examiners.

3.191. In the area of bilateral cooperation, in January 2016 INPI and the US Patent and Trademark Office launched a pilot programme under the Patent Prosecution Highway (PPH) initiative, which enables patent applicants to request accelerated processing at the national phase, on the basis of the work carried out by the partner country's patent office. Similar work-sharing pilot programmes are being negotiated with the European Patent Office and the Japan Patent Office.

3.192. Since 2012, INPI been participating in PROSUR, a project focused on cooperation among industrial property offices in several Latin American countries.²³⁹ 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.²⁴⁰ Negotiations on the terms of a PPH among PROSUR participants are ongoing, and the launching of a pilot project is expected to take place in 2017.

3.193. Cutting down processing delays and reducing the existing backlog of applications has become a priority for INPI, which has been criticized for poor performance that may be hampering technological innovation. Although annual applications outpaced INPI decisions across most types of industrial property protection in 2013-14, there were some signs of this trend's reversal, notably for trademarks in 2015-16 (Chart 3.7). Nevertheless, in December 2016 some 243,820 patent applications awaited decision at INPI, and the average processing time was estimated at 11 years. ²⁴¹

Chart 3.7 Industrial property applications and decisions, 2013-16



Source: INPL

 238 Launched in March 2013, the electronic system accounted for 44% of filings made in 2014, 86% of those made in 2015, and 93% of those made in 2016.

²⁴⁰ The cooperation agreement establishing PROSUR was signed in Santiago, Chile, on 5 July 2012.

²³⁹ Besides INPI, PROSUR participants include the industrial property offices of: Argentina, Chile, Colombia, Costa Rica, Ecuador, Paraguay, Peru, Suriname, and Uruguay. The industrial property offices of the Dominican Republic and Nicaragua have also signalled their intention to join.

²⁴¹ The backlog assessment methodology takes into account final decisions carried out by patent examiners and the Board of Appeals within INPI.

- 3.194. Decisions by 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 granting of the patent. Judicial procedures for nullification may be initiated ex officio or by interested third parties any time. During the review period, most appeals of INPI decisions related to patents, utility models and trademarks. 242
- 3.195. 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, in the case of either importation or exportation. The holder of an IPR of any type may request a judicial order for the suspension by the customs authorities of the release of goods into free circulation.
- 3.196. In the case of patents, compulsory licences may be granted for reasons of national emergencies and public interest²⁴³, as a remedy for an abuse of rights or anti-competitive conduct, and for failure to meet the needs of the market. If a compulsory licence is granted in the public interest, it must be for non-commercial public use. A patent will be forfeited if abuse or misuse has not been remedied within two years after the granting of the first compulsory licence, unless there are justifiable reasons.
- 3.197. Compulsory use of protected information is possible in specific cases, such as public interest or anti-competitive behaviour. There are no compulsory licensing provisions for industrial designs in Brazil's legislation.

3.3.7.3 Copyright

- 3.198. The protection granted to copyrighted works is independent of registration.²⁴⁴ 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 Council of Architecture and Urbanism; or INPI (software). Being of declaratory nature, the registration does not confer a right but provides a presumption of authorship, which may be helpful in judicial procedures.
- 3.199. 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. Under Brazilian law, copyright holders may initiate procedures for the prosecution of importers of pirated goods.
- 3.200. During the review period, Brazil updated its legislation on the collective management of copyright and related rights, and created a Permanent Commission for the Improvement of Collective Management (CPAGC).²⁴⁵ Brazil also adopted a civil rights framework for the Internet, which foresees the elaboration of specific legislation regulating the liability for damages resulting from content managed by third parties.²⁴⁶

3.3.7.4 Enforcement

3.201. During the period under review, Brazil introduced penalty provisions for infractions in the collective management of copyright and related rights, and in the benefit sharing of genetic resources and associated traditional knowledge. ²⁴⁷ Other civil and criminal penalty provisions in Brazil's legislation for violations of industrial property, copyright and related rights remained

²⁴² Statistics on administrative and judicial appeals can be viewed at: www.inpi.gov.br/noticias/em- reuniao-da-mei-presidente-do-inpi-apresenta-dados-de-produtividade-e-cenariooperacional/INPI Relatorio p CNOIMEI 30set2016.pdf [20 April 2017].

243 Decrees No. 4,830 (4 September 2003) and No. 3,201 (26 November 1999) regulate the granting of

compulsory licences in cases of national emergency and public interest.

²⁴⁴ Law No. 9,610 of 19 February 1998.

²⁴⁵ Law No. 12,853 of 14 August 2013, Decree No. 8,469 of 22 June 2015 and Ordinance No. 53 of 7 July 2015.

²⁴⁶ Law No. 12,965 of 23 April 2014.

²⁴⁷ Decrees No. 8,469 of 22 June 2015 and No. 8,772 of 11 May 2016.

unchanged. Criminal penalties are stipulated for infringements related to all categories of IPRs, except protected plant varieties.²⁴⁸

3.202. The Federal Customs Service remains in charge of inspecting and seizing shipments at the national border.²⁴⁹ 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 coat of arms or national official badges of any country, the Customs Service has the authority to initiate representation for criminal purposes.²⁵⁰ The Customs Service may request that the rights holder provide a guarantee in an amount sufficient to safeguard the alleged infringer and avoid abuses. If procedures are not initiated within 10 days of the retention, the Customs Service releases the goods. Information and statistics on enforcement actions taken during the review period were not made available.

²⁴⁸ WTO Document WT/TPR/S/283/Rev.1, 26 July 2013.

²⁴⁹ Decree No. 6,759 of 5 February 2009 (Arts. 605 to 610).

²⁵⁰ Law No. 9,279 of 14 May 1996 (Art. 191).

4 TRADE POLICIES BY SECTOR

- 4.1. Since its previous TPR, Brazil maintained the broad scope of its sectoral trade policies have remained relatively unchanged. Notwithstanding regulatory and institutional changes undertaken in certain activities, *inter alia*, driven by public expenditure tightening due to the recent economic slowdown, government intervention through border and domestic support continues to distort competition and thus resource allocation in several areas. Certain activities remain characterized by market concentration, dominant state involvement or other competitiveness-constraining structural weaknesses, whereas support is marked by the multiplicity of relatively complex tax and non-tax measures, including administered interest rate and/or concessional loans, at federal and/or state level conditioned by production step-related local content requirements (e.g. manufacturing and hydrocarbons).¹
- 4.2. Brazil remains a major player in the global trade of certain agricultural commodities. During the review period, the agricultural sector's share in gross value added (5.5%, 2016) remained relatively stable, and labour productivity seemingly low, compared to the rest of the economy. The average MFN tariff for agricultural products (10.2%) remains unchanged and the 55% peak rate affects only desiccated coconuts. Although it continues to provide a low and decreasing level of support to its agricultural producers compared with other countries, Brazil maintains several domestic support measures, including administered interest rate and concessional credit lines (e.g. under the equalization principle), price support mechanisms and crop insurance premium support to which emphasis has lately been shifted. Mandatory bank reserve requirements for the financing of agricultural activities remain in place. The high level of rural debt remains a major challenge which is being addressed. A state trading company remains involved in the operation of some agricultural policy measures (e.g. storage and minimum price guarantees).
- 4.3. The manufacturing sector remains large (11.7% of gross value added, 2016) albeit slightly declining, and diversified. Activities are either thriving or facing hard times, partly because of their weak integration into the world economy (e.g. the automotive industry) as several structural issues, including the so-called "Brazil cost", continue to affect the sector's competitiveness. A 2016 More Productive Brazil initiative is aimed at implementing lean manufacturing principles to raise productivity levels. The average MFN applied tariff for manufacturing products (11.8%) remains virtually unchanged; clothing, textiles, and transport equipment continue to benefit from the activity's highest tariff protection (35%), the main tool of an apparent tariff-jumping policy to attract FDI.² In addition to several export incentives, remission of duties and taxes on exports under the Reintegra scheme, originally due to expire at end-2013, were made permanent. Domestic support in the form of tax and other non-tax incentives, including administered interest

¹ Concessional loans are defined as those extended on terms substantially more generous than market loans. The concessionality is achieved either through interest rates below those available on the market or by grace periods, or a combination of these (OECD online glossary. Viewed at: https://stats.oecd.org/glossary/detail.asp?ID=5901). Concerning the term concessional loans, which is commonly used in TPR reports, the authorities consider that no such loans are granted in Brazil. They indicated that the "all-in" interest rate charged on most loans consists of the state-owned development bank's (National Bank for Economic and Social Development - BNDES) cost of funds (i.e. a composition between the administered long-term interest rate (TJLP (Section 3.2.5)) and another market-based interest rate (e.g. the Central Bank's SELIC interest rate or charges related to a basket of currencies) plus BNDES' margin plus a risk spread and applicable fees. The TJLP, the interest rate at which BNDES pegs its loans, is determined by the National Monetary Council (CMN) (Section 4.5.3) and is released by the last working day of the guarter immediately before its effective date. The TJLP is calculated using the following parameters: (a) the expected rate of inflation calculated pro rata for twelve months following the first month of the rate, based on the annual forecast adopted by CMN; and (b) medium- to long-term risk assessment of the country. BNDES' margin is deemed to compensate its operational costs while the risk spread charged varies according to the project and client's risk. BNDES is by far the most significant provider of long-term local currency financing in Brazil, and is responsible for supporting corporate investments, as well as infrastructure projects. According to the authorities, Brazil has no equivalent private credit and capital market for long-term financing with respect to the terms and volumes to address demand for such loans. Consequently, the authorities consider that there is no comparable proxy to establish whether these loans are granted under more favourable conditions or qualify as a subsidy; they are of the view that terms such as "subsidized", "concessional", "preferential" or "favourable" are inappropriate to describe the long-term credit lines. More information and data on interest rate developments in Brazil are found in Table 1.2 and Section 4.5.3.1 of this report. Furthermore, the authorities indicated that production step requirements cannot be equated to local content requirements, as well as that reference to local content requirements is unwarranted.

² The authorities consider that there is no such policy to attract FDI as, according to UNCTAD, Brazil is among the top FDI receiving countries.

rate or concessional loans, rental subsidies and temporarily expanded government procurement preferences to local suppliers (until 2016 and 2017), remains in place. Production step-related local content requirements tied to domestic support measures continue to shield domestic producers from foreign competition. Industry-specific incentives for some sectors, including automotives (INOVAR-Auto, until 2017), information technology, aeronautics, fertilizers and pharmaceuticals, were continued. Action was taken to reduce tariffs of cell-powered and electric cars, while the duty-free treatment of motor vehicles from Argentina and Mexico was delayed until 2019.

- 4.4. Brazil, a net exporter of crude oil with one of the greenest energy matrixes in the world, remains nearly self-sufficient in primary energy production. Its Ten-Year Plan for Energy Expansion 2024, inter alia, aims at raising the share of renewable sources in the energy matrixes. The state-controlled PETROBRAS has maintained its dominant position both in the upstream and downstream hydrocarbons activities. To address fuel sales-related financial losses, in 2016 PETROBRAS, a price setter in the domestic fuels market, implemented a new pricing policy for gasoline and diesel at the refinery gate. Tax incentives for oil and gas exploration and production remain in place while local content rules and the requirement for a minimum 30% stake of PETROBRAS in pre-salt fields seem to have caused development delays. This requirement and PETROBRAS' right to be the sole operator in pre-salt oil reserves were removed in November 2016, whereas efforts to reform the local content regime in this area are under way. Biofuel production, an activity subject to cross-subsidization elements, continued to be assisted, inter alia, through: support to sugarcane production and fuel-flex cars; lending incentives to expand the industrial capacity for sugar and ethanol production; and, increased mandatory blending ratios for both gasoline and diesel. The state-owned ELETROBRAS continues to play a major role in the electricity sector. Since 2015, a tariff flag system allowing the monthly pass-through of the extra costs of generating thermal energy to consumers has been applied. Electricity tariffs, set by the regulator ANEEL, continue to ensure cross-subsidization among different consumer categories. In addition, the tax burden on end-user electricity tariffs remains significant and differs greatly across consumer groups.
- 4.5. Services, a key component of overall export competitiveness, remain the main contributor to Brazil's gross value added (73.3%, 2016) and job creation, but continue to suffer from structural weaknesses hindering the growth potential of the entire economy. During the review period, Brazil's GATS commitments were improved with the ratification of the Fifth Protocol undertakings in the area of financial services. Three of Brazil's RTAs now contain WTO-plus services commitments and since 2015 preferential market access treatment has been granted to certain services and services suppliers of least developed countries. The government-owned banks' share of total bank assets rose, and high interest spreads remain in place, inter alia, due to the lack of competitive pressure on major banks. Although non-independent the Central Bank continues to enjoy administrative autonomy; legislation allowing for more autonomy could possibly be considered in the future. A significant relaxation of reinsurance requirements on foreign insurance companies such as the obligation to make a cession to a local reinsurer and an intra-group cession cap was undertaken. Strong market competition continued to lead to further improvements in the quality and the tariffs of telecommunication services; during the review period local content requirements were used for auctioning radio spectrum frequencies. Certain audiovisual and broadcasting services remain subject to foreign investment limitations and local content requirements or preferences.
- 4.6. Initiatives to address transport and related infrastructure bottlenecks were undertaken. The domestic aviation market remains highly concentrated and domestic public air transport services (cabotage) reserved for Brazilian legal persons. The main commercial airports remain state owned and operated by a public enterprise. In maritime transport, the national flag fleet remains concentrated and dominated by vessels of the state company PETROBRAS; cabotage remains reserved for Brazilian flag vessels, except under certain conditions. The main ports continue to be either operated by state or municipal governments or are administered by a public-owned firm, although the majority of cargo movements is undertaken by private terminals; foreign vessels remain subject to a lighthouse fee. Foreign entry in wholesale trade is allowed except for solid, liquid and gaseous fuels and related products unless domestic requirements are met, whereas commercial presence in retail services and franchising remains unrestricted. A 2014 digital marketing law set the framework for the use of the Internet; virtually all international e-purchases are charged with a 60% flat equalization tax. In addition to existing tax incentives, tourism-specific concessional or administered interest rate finance programmes were introduced to

cope with the high demand from the mega events hosted during the review period. Regarding professional services, bilateral arrangements were signed in 2014 (architects and urban planners, Portugal), 2015 (engineers), and 2016 (architects and urban planners, France); a 2013 More Doctors Programme has allowed foreign doctors to work in Brazil without meeting the standard working requirements. In 2015, healthcare services were opened to foreign investment.

4.1 Agriculture, Forestry, and Fisheries

4.1.1 Main features

4.7. Agriculture accounts for a relatively stable share of gross value added and employment that stood at 5.5% in 2016 (4.9% in 2012) and 13.4% in 2014, respectively (including fisheries and forestry, Table 1.1). According to Ministry of Agriculture, Livestock and Food Supply (MAPA) data, average annual total factor productivity (TFP) growth slowed down slightly from 4.08% in the period 2000-09 to 3.99% in the period 2000-15.3 The fact that its employment share remains over three times its share in gross value added implies that labour productivity is a little more than a quarter of the level in the rest of the economy, thus reflecting in part the dualistic nature of farming in Brazil, where capital-intensive and large-scale production co-exists with numerous small and relatively unproductive farms producing for self-consumption or local markets.⁴ Brazil is endowed with the world's fourth-largest agricultural area, of which over a quarter is arable. Brazilian agriculture is crop and export oriented, accounting for 41.5% (35.6% in 2012) of total exports (see below) in 2016 (Chart 1.1). Almost half of exports are primary commodities used as inputs into further processing. The sector continues to provide substantial value added in agriculture-related activities; the entire agribusiness chain (including agricultural inputs, as well as processing and distribution activities) contributed 21.5% of GDP in 2015 (22% in 2011). Agriculture also remains an important contributor to the country's energy supply (Section 4.4.3.3) as, inter alia, sugar cane biomass provides over one third of the country's renewable energy output.

4.8. During the review period, the agribusiness sector (including forestry products) maintained its crucial role in sustaining Brazil's trade surplus (Table 4.1). The sector's trade surplus peaked in 2013 due to fast agri-exports growth driven by an extraordinary grain production rise (13% in 2013), and then fell progressively as a result of the decline of international commodity prices and the severe dry season affecting the soybean harvest (2015/16).

Table 4.1 Brazil's agribusiness trade balance, 2010-16

(US\$ million)

	2010	2011	2012	2013	2014	2015	2016
Agribusiness exports	76,442	94,968	95,814	99,968	96,748	88,224	84,935
Agribusiness imports	13,399	17,508	16,409	17,061	16,614	13,073	13,628
Agribusiness trade balance	63,043	77,460	79,405	82,907	80,134	75,151	71,307
Total trade balance	18,491.0	27,625.0	17,419.6	388.6	-6,629.2	17,669.9	45,037.0

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; and Central Bank of Brazil.

4.9. Brazil remains a major player in global agricultural trade, accounting for 5.1% (WTO definition) of total agricultural exports in 2015, a lower share than at the time of the previous Review (7.3%). It continued to be the world's third-largest exporter of agricultural products, behind the EU and the United States.⁵ In 2015, Brazil maintained its position as the world's biggest

³ Estimates by Gasques, J. G., Bacchi, M. R., Figueiredo, L., Bastos, E. T. and Valdes, C. from the Institute for Applied Economic Research (IPEA) and MAPA provided by the authorities.

⁴ According to the authorities, over the past two decades the labour productivity gap between agriculture and other sectors of the economy has declined as the sector registered the fastest labour productivity growth across the whole economy with some of it occurring among small-scale farms producing high value products. OECD (2015), *Innovation, Agricultural Productivity and Sustainability in Brazil, OECD Food and Agricultural Reviews*, revised version of January 2016. Viewed at: http://dx.doi.org/10.1787/9789264237056-en; OECD/FAO (2015), *OECD-FAO Agricultural Outlook 2015-2014*. Viewed at: http://www.fao.org/3/a-i4738e.pdf and http://www.fao.org/3/a-i4738e.pdf and http://www.fao.org/3/a-i4738e.pdf and http://dx.doi.org/10.1787/agr_outlook-2015-en.

⁵ WTO (2016), *World Trade Statistical Review 2016*, 21 July, Geneva. Viewed at: https://www.wto.org/english/res_e/statis_e/wts2016_e/wts2016_e.pdf.

supplier of sugar, orange juice, coffee, poultry meat and soybeans.⁶ Brazil's main agricultural exports decreased slightly over 2012-15. Soybean products remain the largest export, followed by meat products (especially poultry and beef), sugarcane, wood pulp and coffee (Chart 4.1). Together, these commodities accounted for 27.5% (22% in 2012) of total Brazilian exports in 2016 (Table A1.1).

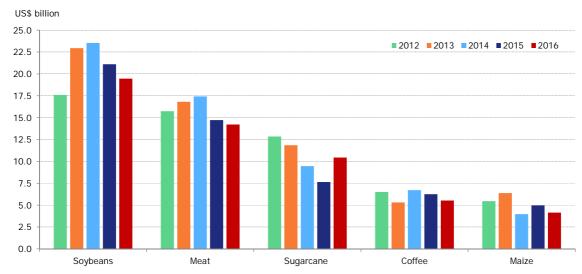


Chart 4.1 Main agricultural exports, 2012-16

Source: Information provided by the authorities.

4.10. In 2016, the main destinations for Brazilian agri-food exports were China (24.9%), the EU (18.7%), the United States (5.1%), Japan (3.1%), and Iran (3%). The importance of China as a trading partner for Brazilian agribusiness increased during the review period. In 2012, China purchased 19.3% of Brazilian agri-food exports, which represented some US\$16.1 billion; this amount rose to U\$17.8 billion in 2016.

4.11. Imports of agri-food products decreased slightly between 2012 and 2016, from US\$11.6. billion to US\$11.2 billion. Wheat remains the single most important import commodity. Other major imports include: maize, malt, dairy products, palm oil, potatoes and garlic.8 Brazil also continues to depend on substantial imports of agricultural inputs, in particular fertilizers.

4.1.2 Policy and institutional framework

4.12. During the review period, Brazil's basic agricultural policy and institutional framework remained unchanged. Its main policy objectives consist of expanding grain storage capacity, soil correction and recovery, and agricultural mechanization by fostering investments in these areas. In addition to its three main components, i.e. market price policy, rural credit, and crop insurance Subsidies (Section 4.2.4), which, inter alia, support commercial agriculture and small-scale family agriculture, other important policy measures, including agricultural land zoning and the promotion of biofuels and organic production, contribute to the shaping of agricultural policy. 9 Whereas the Agricultural and Livestock Plan for 2015/16 continued to provide for high levels of funding for credit subsidies, the 2016/17 Plan has promoted the development of crop insurance by using funds previously dedicated to price quarantees (Section 4.2.4.1.4). Initiatives to restore domestic and international confidence in the safety of food (in particular animal) products included improvements in the inspection system (Section 3.3.3).

⁶ OECD/FAO (2015), OECD-FAO Agricultural Outlook 2015, OECD Publishing. Viewed at: http://www.fao.org/3/a-i4738e.pdf.

MAPA online data. Viewed at: http://indicadores.agricultura.gov.br/agrostat/index.htm.

⁸ MAPA online information. Viewed at: http://www.agricultura.gov.br/internacional/indicadores-e-

estatisticas/balanca-comercial.

⁹ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

4.13. The Agricultural and Livestock Plan continues to be administered by the Ministry of Agriculture, Livestock and Food Supply (MAPA), whereas since 2016 the Family Agriculture Plan has been operated by the Special Secretariat for Family Farming and Agrarian Development of the Office of the Chief of Staff (SEAD) (previously the Ministry of Agrarian Development (MDA)). The Secretariat of Agribusiness International Relations in the MAPA (SRI/MAPA) remains responsible for foreign trade issues and WTO notifications. A new Ministry of Social and Agrarian Development (MDSA) supports the most vulnerable family farmers and promotes food and nutrition security through important programmes, such as the Food Purchase Programme (PAA) and the Productive Asset Oriented Cash Transfers Scheme, aimed especially at families in extreme poverty living in rural areas. MDSA and SEAD work together in the implementation of some programmes, such as the PAA, which is financed with resources from both agencies. The SEAD 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 company linked to the MAPA, is responsible for administering a number of agricultural policy measures, including those related to strategic storage and minimum price guarantees (Section 3.3.5).

4.1.3 Border measures

- 4.14. Since 2012, the average MFN tariff for agricultural products has remained virtually unchanged. In 2017, it stands at 10.2% (WTO definition) (10.3% HS definition), the same as in 2012 (Tables 3.1 and A3.1). The 55% peak rate of the entire Customs Tariff affects solely desiccated coconuts. Tariffs higher than the average MFN applied tariff for agricultural products continue to apply to: dairy products (18.6%), beverages, spirits, and tobacco (16.6%), sugar and confectionary (16.7%), coffee and tea (14.5%), and cereals and preparations (11.5%), while imports of cotton (6.3%), oil seeds, fats and oils and their products (7.9%), and animals and animal products (7.9%), are subject to tariffs lower than the average (Table 3.3).
- 4.15. According to Brazil's recent notifications, the tariff rate quota for apples and pears, under its multilateral agricultural market-access commitments, was not implemented in 2011, 2012, 2013 or 2014, given that the applied MFN tariff (10%) was below the in-quota rate (13.5%) for both products (Section 3.1.3.1).¹¹ Although in April 1996 Brazil notified its intention to eliminate the tariff rate quota for wheat to the WTO, no action has been taken so far and there are no plans for action in this area; upon request of the United States and Canada, Brazil held two consultations on this issue under GATT Article XXVIII in 2016, and further consultations were to be held in 2017.
- 4.16. Imports of agricultural products may also benefit from tariff rate quotas applied individually by Brazil, in accordance with MERCOSUR's rules on temporary measures regarding supply shortages (Section 3.1.3.1). In addition to chemicals and other industrial inputs, as of 19 January 2017, in-quota tariffs at a reduced rate of 2% were in place for edible fruit and nuts not shelled (7,500 tonnes, 6/10/15-5/4/17), hop cones (1,800 tonnes, 23/1/17-22/1/18), and palm kernel (224,785 tonnes, 6/5/16-5/5/17). At the time of the previous review, imports of cotton and jute were subject to a reduced in-quota tariff rate of zero and palm kernel to an in-quota tariff rate of 2%. Mexican exports of garlic to Brazil also benefited from a zero in-quota tariff in 2011 under Economic Complementation Agreement No. 53 between the two countries.
- 4.17. Since 1996, Brazil's soybeans and maize exports have been exempt from the interstate tax on the circulation of goods and services (ICMS) (Section 3.1.4).¹³ However, in February 2016, the State of Goias, the fifth-largest grain producing state in Brazil, removed this exemption by authorizing the imposition of the ICMS on soybeans and maize leaving the state. All exports from Brazil are exempt from the ICMS.

¹⁰ Under the last ministerial reform, the former Ministry of Agrarian Development (MDA) was transferred to the Office of the Chief of Staff (Casa Civil) and became the Special Secretariat for Family Farming and Agrarian Development of the Office of the Chief of Staff (SEAD). All the programmes previously managed by MDA are now managed by SEAD.

¹¹ WTO notifications G/AG/N/BRA/35, 26 January 2015, and G/AG/N/BRA/38, 8 January 2016.

¹² CAMEX Resolution No. 01, 19 January 2017.

¹³ The ICMS affects products that are produced in one state, but utilized in another state. Each state in Brazil is allowed to determine the amount of ICMS tax, which generally is in the range of about 9% to 12% (Section 3.1.4). OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr_pol-2016-en.

- 4.18. As from March 2015, bilateral discussions have been held to expand exports of, *inter alia*, beef, poultry, dairy, fruit, and wheat to the Russian Federation, Myanmar, Japan, South Africa and Argentina which are either eliminating previous non-tariff restrictions on these products or recommencing their importation. For example, Brazil updated a sanitary and phytosanitary (SPS) agreement with the Russian Federation to export wheat in July 2015. In 2016, Brazil and the United States concluded negotiations for the reciprocal opening of their markets for fresh and frozen bovine meat. By January 2017, Brazil and South Africa were at an advanced stage of negotiations for an agreement for promoting the sales of unprocessed pig meat. At the same time new rules to facilitate exports of orange juice to China were being negotiated. Furthermore, at the beginning of 2016, the negotiation of a new international sanitary certificate for poultry meat with the Republic of Korea was concluded. During the same period, Brazil and Argentina discussed a strategy to open livestock product markets and speed up negotiations for agreements with the European Union, China and the Russian Federation.
- 4.19. According to Brazil's recent WTO notifications and information, similar to past practice, no export subsidies were granted for agricultural produce in the period 2013-2016. ¹⁵ On the other hand, Brazil's food aid abroad increased considerably from 47,284 tonnes in the period 2008-10 to 230,816 tonnes in the period 2012-14, of which 83.3% was rice. ¹⁶ In 2015, Brazil's food aid decreased to 16,480 tonnes, of which 65.6% was rice, and in 2016 it dropped drastically to 1,982 tonnes all of which was rice. Following an investigation on irregular practices involving certification of meat and meat products at 21 processing facilities handling beef, poultry and pork products, on 22 March 2017 Brazil reaffirmed the adequate maintenance of the official sanitary programmes and specific controls on domestic products of animal origin, and stated that it expected Members not to resort to measures that would constitute arbitrary restrictions on international trade or run counter to the disciplines of the SPS Agreement and other WTO rules. ¹⁷

4.1.4 Domestic support

- 4.20. During the review period, Brazil continued to provide a broad range of assistance to its agricultural sector, *inter alia*, in the form of administered interest rate or concessional credit lines, price support mechanisms, and insurance premium subsidies (Section 4.2.4.4). No new support programmes, other than the 2013 investment programmes the Warehouse Construction and Expansion Programme (PCA) and the Programme to Encourage Innovation in Agricultural Production (INOVAGRO), were introduced during the review period.¹⁸
- 4.21. Domestic support to agricultural producers remains at a low level compared with OECD countries. According to the OECD, Brazil's total support estimate (TSE) to agriculture averaged 0.35% of GDP in 2012-15 (0.55% in 2008-10), well below the OECD average of 0.7% (Table 4.2). Support to farmers as measured by the producer support equivalent (PSE) was 3.2% of gross farm receipts in the period, below the OECD average of 17.6%. Support peaked in 2014 and fell in 2015 as both market price support (MPS) and payments based on input use (credit and insurance subsidies) declined. The MPS reduction was due to the minimum guaranteed prices increasing at a slower pace than inflation, and the depreciation of the R\$ relative to the US\$. According to the OECD, while weak infrastructure is still a significant bottleneck for agricultural development, financing of general services (GSSE) to agriculture constituted less than 20% of total support to

¹⁴ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr_pol-2016-en.

¹⁵ WTO notifications G/AG/N/BRA/36, 27 January 2015, and G/AG/N/BRA/39, 12 January 2016.

¹⁶ WTO documents G/AG/N/BRA/33, 3 February 2014; G/AG/N/BRA/36, 27 January 2015; G/AG/N/BRA/39, 12 January 2016; and, G/AG/N/BRA/42, 28 October 2016.

¹⁷ WTO document G/SPS/GEN/1545, 22 March 2017.

¹⁸ Central Bank Resolution BACEN No. 4227 of 18 June 2013.

¹⁹ The OECD has been publishing reviews of agricultural policies in OECD countries and some other economies, including Brazil, for several years. In these publications, the value of transfers to agricultural producers is measured using the producer support estimate (PSE) and associated indicators. The methodology for calculating these indicators is different from that used to calculate the aggregate measure of support (AMS), and the two sets of data are neither compatible nor comparable.

²⁰ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

the agricultural sector in 2013-15 and over time this share tended to decline considerably. However, 93% of PSE is given through support based on commodity output or on input use, particularly through credit subsidies, debt rescheduling, and rural insurance; MPS was relatively low in 2015 (Table 4.3, Section 4.2.4.1.2). According to the OECD, an important part of support to producers continues to be provided through measures that distort farm prices and current costs (e.g. MPS, concessional credit, and crop insurance subsidies) although the aggregate level of that type of support is moderate and varies across commodities.

Table 4.2 Agricultural support, by commodity, 2012-15

	2012	2013	2014	2015
Total support estimate (TSE), US\$ million	8,542.0	7,609.6	8,705.0	5,181.2
Percentage of TSE to GDP (%)	0.4	0.3	0.4	0.3
Total PSE (US\$ million)	6,873.0	6,193.2	7,280.4	4,092.1
Support based on commodity output – payments based on	336.3	468.3	725.6	327.9
output				
Support based on commodity output – MPS	2,838.3	1,246.4	844.9	330.1
Direct payment	3,698.4	4,478.6	5,709.9	3,434.1
Percentage PSE to gross farm receipts (%)	3.5	3.0	3.7	2.6
General services support estimate (GSSE), US\$ million	1,575.9	1,416.3	1,424.6	1,089.1
Consumer support estimate (CSE), US\$ million	-2,924.4	-1,913.1	-1,077.9	-422.7
Total producer SCT (US\$ million)	1,007.6	1,085.7	721.5	588.8
Share of producer SCT in total PSE (%)	14.7	17.5	9.9	14.4
Percentage SCT (%)				
Refined sugar			0.3	0.8
Milk	0.005	0.001	0.001	

.. Not available.

Source: OECD Agriculture Statistics. Viewed at: http://stats.oecd.org/index.aspx?r=431860#.

Table 4.3 Direct payment and general services support, 2012-15

(US\$ million, unless otherwise indicated)

	2012	2013	2014	2015
Direct payment	3,698.4	4,478.6	5,709.9	3,434,1
Share of direct payment to PSE (%)	53.8	72.3	78.4	83.9
Based on input use	3,377.3	4,024.3	5,320.6	3,136.5
Based on current area planted/animal numbers/receipt/income,	321.1	454.3	389.3	297.6
production required				
General services support estimate (GSSE)	1,575.9	1,416.3	1,424.6	1,089.1
Agricultural knowledge and innovation system	262.5	214.9	178.2	136.2
Inspection and control	109.8	124.6	73.0	55.8
Development and maintenance of infrastructure	748.0	736.5	772.8	590.8
Marketing and promotion	238.0	23.3	29.1	22.2
Cost of public stockholding	217.6	317.0	371.6	284.0
Share of GSSE to TSE (%)	18.4	18.6	16.4	21.0

.. Not available.

Source: OECD Agriculture Statistics. Viewed at: http://stats.oecd.org/index.aspx?r=431860#.

4.22. According to Brazil's WTO notifications on domestic support measures during the review period, the current total aggregate measure of support (AMS) stood at US\$213.7 million in 2010/11 (wheat, sisal) and US\$7.7 million 2011/12 (sisal) (above its *de minimis* level but much below its final bound level of U\$912.1 million), and then fell to zero (i.e. below its *de minimis* level) in 2011/12 and remained at this level in 2013/14 and 2014/15.²² As of 2013/14, coffee, edible beans, maize and wheat remained the only items subject to MPS either through public option contracts or minimum support prices; in addition, product-specific support was granted for cocoa, grapes, and sugarcane. Total domestic agricultural support notified by Brazil (including green box, special and differential treatment, and *de minimis* support not subject to reduction

²¹ The main part of the Brazilian GSSE is represented by agrarian reform spending, which includes government purchase of lands for resettlement and investment in infrastructure and basic communal services for those settled areas. OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr_pol-2016-en.

²² WTO documents: G/AG/N/BRA/32, 3 February 2014; G/AG/N/BRA/37 29 January 2015; G/AG/N/BRA/40, 12 January 2016; and, G/AG/N/BRA/41, 27 October 2016.

commitments) dropped from US\$9.9 billion in 2010/11 (US\$3.6 billion excluding green box and S&D assistance) to US\$8.8 billion in 2013/14 (US\$2.7 billion excluding green box and S&D assistance) and US\$4.8 billion in 2014/15 (US\$1.9 billion excluding green box and S&D assistance) (Table A4.1). In 2014/15, *de minimis* support included: MPS (edible beans and maize); other product-specific assistance (e.g. Agricultural Products' Sale Option Private Premium (PEPRO)) (cotton, oranges, and maize) and product-specific credit (coffee, cocoa, and sugarcane); and non-product-specific support of US\$1.7 billion (mainly production and marketing credit, debt rescheduling programmes, and insurance programmes). In 2013/14, green box support had increased to more than one and a half times the size of Brazil's total product- and non-product-specific AMS, compared to 1.25 times in 2010/11, and in 2014/15 fell to about 86% of this amount (Table A4.1).

4.1.4.1 Agricultural/rural credit²³

4.23. Agricultural or rural credit at administered and preferential interest rates remains the major policy instrument for the sector; it is provided to both commercial and small-scale family farms (Table 4.4).²⁴ This measure is aimed at offsetting the country's high market interest rates (see below) and to promote access to credit for farmers who would not obtain it otherwise in the domestic financial system. At the same time, as it is used for financing a major share of food production for domestic consumption, it is considered an important food security tool. Since 1965, the National Rural Credit System (SNCR), which is under the control of the Central Bank of Brazil, has directed credit to farmers at administered and preferential interest rates. For commercial agriculture, the SNCR system provides credit for marketing, working capital, and investment. 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 (see below). These regulations must be followed by all institutions participating in the SNCR, which includes public banks, cooperatives, and private commercial banks. As of January 2017, 589 (468 in 2012) financial institutions participated in the SNCR, of which 49 (28 in 2012) were private banks. In 2016, public banks provided 58% (57.5% in 2012) of total rural credit, followed by private banks 30% (32.5% in 2012), and cooperatives 12% (10% in 2012).

Table 4.4 Federal Government agricultural support programmes, 2013-16 (prevailing norms for crop-year 2016/17)

Products/projects	Beneficiaries	Credit limit	Annual interest	Duration	Disbursement
Madium Coala Agricult	unal Draducas Cu	nnort Drogramma (DDC	rate		(R\$ million)
Investment in goods and services aimed at increasing productivity and income. Financeable items: financing and investment. In case of financing, it is also allowed to include funds to small expenses considered as investments (repair and conservation of production assets, installation, acquisition of service animals, deforestation)	Gross annual income up to R\$1.76 million, at least 80% from agricultural activities	pport Programme (PRO Financing: R\$1.5 million; investment: R\$430,000	Financing (working capital and investment): 8.5%; commercialization: 9.5%	Financing: up to 2 years; investment: up to 8 years (3-year grace period)	2013: 13,496.3 2014: 19,044.2 2015: 16,843.6 2016: 19,293.9
Agricultural Cooperation Acquisition of capital shares (paid-in shares – parts and working capital)	ves Capitalization Cooperatives	Programme (PROCAP- Pay-in: R\$55 million; working capital: R\$65 million	Agro) Pay-in: 8.5% (paid in shares); working capital TJLP	6 years (2-year grace period); working capital: 2 years	2013: 2,170.1 2014: 1,755.5 2015: 2,083.4 2016: 1,977.9
				(6-month grace period)	

²³ More information on this measure is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

²⁴ WTO document WT/TPR/S/283/Rev.1, 26 July 2013; OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

Products/projects	Beneficiaries	Credit limit	Annual interest rate	Duration	Disbursement (R\$ million)
Low Carbon Agricultur Projects to reduce greenhouse gas emissions (e.g. recovery of pastures, recovery of degraded areas, organic crops, directing planting, integration of crops, cattle production, forest, forest plantation, environmental recuperation, waste treatment, Dendé plantation, and biological nitrogen fixation)	e Programme (Al Farmers and cooperatives	R\$2.2 million; up to R\$5 million for planted forests	8.5%; producer placed within PRONAMP framework: 8%	Up to 15 years	2013: 608.0 2014: 333.3 2015: 413.8 2016: 681.0
	dernization of Ag Farmers and cooperatives	riculture and the Conse Farmers: R\$880,00 (individual farmer) and 2.64 million (collectively taken); R\$220,000 no PNCEBT ^a limited to R\$5,000 per animal	ervation of Natural Re	esources (MOD Up to 10 years (3-year grace period)	ERAGRO) 2013: 259.3 2014: 357.3 2015: 626.2 2015: 472.6
Incentives Programme Irrigation and storage projects	e for Irrigation an Farmers and cooperatives	d Storage (MODERINFF Farmers: R\$2.2 million; cooperative: R\$6.6 million	RA) 8.5%	Up to 12 years (3-year grace period)	2013: 259.3 2014: 357.3 2015: 626.2 2016: 472.6
Projects to improve production systems and marketing (installation of industries regardless of sector – improvement or processing). It may be financed: studies, projects and technology, civil engineering, installations, national equipment, preoperational expenses, landed costs, working capital related to the investment project, pay in of shares related to the project	Cooperatives	or the Enhancement of Up to R\$110 million (up to 90% of the project value); R\$150 million for projects in other federal states or to the central cooperative; R\$200 million to the central cooperative to finance industrialization projects to produce products ready for consumption	9.5%; TJLP+4.5% for acquisition assets		OOP) 2013: 905.7 2014: 814.3 2015: 1,816.1 2016: 797.1
Tractor Fleet Moderniz Agricultural mechanization (purchase of tractors, implements, harvesters, sprayers, self-propelled, and equipment for preparation, drying, and processing of coffee)	ation Incentives Farmers and cooperatives	Programme (MODERFR Up to 90%; up to 100% for medium-scale producers	OTA) 8.5%; gross income up to R\$90 million or 10.5% (others)	Up to 8 years (new) or 4 years (used)	2013: 36.7 2014: 181.8 2015: 4,435.4 2016: 7,103.2

Products/projects	Beneficiaries	Credit limit	Annual interest rate	Duration	Disbursement (R\$ million)		
Warehouse Construction Expansion and construction of new warehouses	Farmers and cooperatives	Up to 100%	8.5%	Up to 15 years (3-year grace period)	2013: 450.0 2014: 3,373.2 2015: 1,764.5 2016: 810.5		
Programme for the Sustainability of Investment (PSI) [Eliminated in 2015]							
Purchase of capital goods, e.g. vehicles, machinery, equipment, and warehouses	Farmers and cooperatives	Up to 70%	7%; 9.5 %	Up to 8 years (24-month grace period)	2013: 9,737.0 2014: 9,666.9 2015: 1,803.1 2016: 29.4		
		Agricultural Production					
Technical innovation (e.g. incorporation of new technologies to rural areas, automation and adaptation of poultry industry, pig breeding, dairy cattle farming, protected cultivation, computerization, training, precision farming)	Farmers and cooperatives	R\$1.1 million (individual farmer); R\$3.3 million (collectively taken)	8.5%	Up to 10 years (3-year grace period)	2013: 13.3 2014: 1,054.2 2015: 1,349.7 2016: 738.1		
Programme to Strengt		griculture (PRONAF)					
Provides credit to small-scale producers with annual income of R\$ 20.000 per family; to families within the land reform framework; to small-scale fishermen; to aquaculture farmers; to forestry; to indigenous; to small-scale extractivists; to quilombola communities. Federal Fund for the D Provides credit to marketing, researching, stocking,	small-scale producers efence of the Cof Producers, cooperatives, roster and	Up to R\$360.000 to pig breeding, poultry farming and fruit farming fee Economy (FUNCAFÉ For farmers: R\$1.2 million (working capital) or	2.5% for operations up to R\$10.000; 4.5% for operations from R\$10.000 to R\$30.000 and 5.5% for operations above R\$30.000	Up to 3 years to palm and saffron; up to 2 years to biannual crops. Up to 1 year to other crops	2013: 19,990.3 2014: 24,705.2 2015: 21,769.0 2016: 22,596.0 2013: 2,087.9 2014: 2,721.3 2015: 2,549.8		
plantation and other expenses to coffee farmers and traders	instant coffee producers, coffee benefactor and exporters	R\$2.4 million (commercialization); for industries: R\$40 million (commercialization)			2016: 2,963.8		
		the Implementation o					
Increase cane production by financing the renewal and the implementation of new cane fields	Farmers and cooperatives	Up to R\$300,000,000	TJLP rate plus 2.1% remuneration rate for BNDES plus a rate negotiated between the beneficiary and the accredited financial institution	Up to 72 months (18-month grace period)	2013: 301.7 2014: 547.3 2015: 104.3 2016: 50.5		
Others Without programme (Sem Programa) ^b					2013: 85,253.8 2014: 96,395.3 2015: 96,156.8 2016: 103,268.2		
Total					2016: 103,268.2 2013: 137,719.9 2014: 164,342.3 2015: 153,940.9 2016: 162,449.2		

.. Not available.

National Programme to Control and Eradicate Brucellosis and Tuberculosis.

b Viewed at: http://www.bcb.gov.br/pt-br/#!/c/MICRRURAL.

Source: MAPA (2015), *Plano Agrícola e Pecuário 2015-2016* Brasilia; online data by Banco Central Do Brasil, Departamento de Regulação, Supervisão e Controle das Operações do Crédito Rural e do Proagro (2016). Viewed at: http://www.bcb.gov.br/pt-br/#!/c/MICRRURAL/; Banco Central Do Brasil (2016), *Manual do Crédito Rural*. Viewed at: http://www.bcb.gov.br/mcr; and BNDES online information. Viewed at: http://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/prorenova-rural.

4.24. Since Brazil's last TPR, the various sources of funding of administered interest rate and concessional credit remain virtually unchanged (Table 4.5). They consist of mandatory/compulsory resources, rural savings, Agribusiness Credit Bills (LCAs), constitutional funds, credit lines managed by the National Bank for Economic and Social Development (BNDES), free resources, the Brazilian Coffee Fund (FUNCAFE), the Worker's Support Fund (FAT), as well as other funds and sources. Between 2010 and 2015, the share of credit financed with mandatory resources continued to decline, while sources such as rural savings, free resources, and BNDES programmes rose in importance (Table 4.5). In 2016, the LCAs became the third most important source of credit, after rural savings and mandatory resources whose importance alternated.

Table 4.5 Sources of agricultural/rural credit, 2010-16

(%)

	Mandatory resources	Rural Savings	LCA	Constitutional Funds	BNDES	Free resources	FUNCAFE	FAT	Other resources
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	1.7
2012	34.0	31.8		8.5	9.9	4.4	1.6	1.3	8.5
2013	39.6	30.3		7.4	11.3	5.2	1.5	0.2	4.4
2014	38.3	34.7		6.5	10.5	7.3	1.6	0.2	1.0
2015	38.7	30.2	3.4	7.0	10.8	6.1	1.6	0.3	2.1
2016	29.7	32.3	11.2	7.1	10.5	4.5	1.8	0.1	2.8

Source: MAPA, based on Central Bank of Brazil online information. Viewed at: http://www.bcb.gov.br/?RELRURAL and http://www.bcb.gov.br/pt-br/#!/c/micrrural/.

- 4.25. Funding from mandatory/compulsory resources, where public and private banks participating in the SNCR are obliged to either hold their sight deposits as obligatory reserves at the Central Bank at zero interest rates or to allocate the same proportion in loans to agricultural activities at below market interest rates remains in place. As of June 2012, 34% of these sight deposits, a ratio set at the discretion of the CMN, should be used for agricultural credit at a preferential interest rate, at no cost for the National Treasury.
- 4.26. Rural savings (*Poupança Rural*) schemes maintained by public banks (*Banco do Brasil, Banco da Amazônia, Banco do Nordeste*) and cooperative banks are obliged to hold 74% (as from June 2015, previously 67% (June 2013-May 2015) and 68% (June 2011-May 2013)) of their sight saving deposits for agricultural credit at market or preferential interest rates for as long as the National Treasury decides to equalize the difference between these rates (see below).
- 4.27. Agribusiness Credit Bonds (*Letras de Crédito do Agronegócio*, LCAs), which are fixed income securities backed by credit transactions linked to agribusiness, remained in place. They differ from traditional fixed income instruments because they are exempt from Income Tax (IR) for individuals. Since June 2015, part of the funds raised by this financial instrument must be allocated to agricultural credit at no cost for the National Treasury. Between June 2015 and May 2016, the mandatory ratio stood at 50% of LCAs backed by certain types of credit transactions; as of June 2016, it was reduced to 35% of which 40% at a fixed rate of up to 12.75% per year and 60% at market rates.
- 4.28. The Constitutional Funds are aimed at reducing regional inequalities through the financing of production activities including agriculture. They consist of three regional funds: the FNO (North Region), the FNE (North-East), and the FCO (Centre-West) that similarly to rural savings schemes are administered by *Banco da Amazônia*, *Banco do Nordeste*, and *Banco do Brasil*, respectively; they are capitalized with federal resources deriving from the Tax on Industrial Products (IPI) and the Income Tax (IR).
- 4.29. Some investment credit allocations under the SNCR, such as Programme ABC, Moderagro, Moderinfra, Moderfrota, PSI, PRODECOOP, PRONAMP, PROCAP-Agro, INOVAGRO and PCA, are funded by BNDES and managed by MAPA (Table 4.4). As of 2014, BNDES also funded investment under the Programme of Support to the Sugar and Ethanol Sector (PASS), an ethanol stock programme also managed by MAPA, and PAISS Agricola, a programme for the development of agricultural research.²⁵

²⁵ USTR (2016), *2016 National Trade Estimate Report on Foreign Trade Barriers*. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

- 4.30. Rural credit lines operated by banks with capital deriving from mandatory and free resources remain subject to the rules contained in the Rural Credit Manual (last updated in September 2016).²⁶ Since 2013, the main changes to the Manual have involved, inter alia, a revision of the financing terms, mainly on interest rates and limits of financing, as well as the creation of new investment programmes (INOVAGRO and PCA). 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; the equalization principle applies only to resources from federal official banks (Banco do Brasil, Banco do Nordeste, Banco da Amazônia and BNDES) and cooperative banks. The available amount of credit resources subject to equalization for agriculture is set for the annual crop period, from July to June; the annual credit equalization expenditures by the National Treasury were R\$1,360.9 million (2013), R\$791.8 million (2014), R\$8,395.5 million (2015), and R\$4,254.2 million (up to April 2016). To access credit resources for working capital of up to R\$300,000, beneficiaries must join PROAGRO but can choose rural insurance, to avoid debt renegotiation and prevent losses to public and private banks. 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.
- 4.31. Agricultural credit resources available to commercial farmers under the Agricultural and Livestock Plans increased until 2016. Between 2014/15 and 2015/16, they rose by 20% to R\$188 billion (US\$56 billion), and in 2016/17 they decreased by 2% to R\$183.8 billion; of these resources only 20% (2015/16) and 18.1% (2016/17) were used for investment loans, and the remaining were directed to working capital and marketing loans. MAPA's agricultural plan does not specify the actual amount of administered interest rate, or concessional and commercial loans, except for the crop year 2015/16; according to the authorities, the allocation (availability) of credit resources for investment by commercial farmers decreased by 13.3% in 2015/16 and 11% in 2016/17 to reflect developments in demand, but strongly increased for working capital and marketing loans, following the increase in compulsory resources from LCAs. Concessional rural credit disbursement for commercial farmers stood at R\$119.7 billion (2014/15), R\$120.5 billion (2015/16) and R\$63.6 billion (2016/17 up to December 2016). Total rural credit disbursements rose from R\$139.7 billion in 2013 to R\$164.6 billion in 2014, and consequently dropped to R\$154.2 billion in 2015 and rose to R\$ 162.5 billion in 2016 (up to December).
- 4.32. The high level of rural debt remains a major challenge which is being addressed. During the review period, the renegotiation of rural financing was governed by about 20 regulations, including Central Bank Resolutions in accordance with ordinary laws and National Monetary Council decisions. To address the far-reaching economic and social effects of the worst drought of the last 100 years in the Northeast region, in 2016 a law dealing with the renegotiation of farmers' debt was passed.²⁹ The National Treasury expenditures on interest equalization related to the renegotiation of rural debt (Law No. 9,866 of 1999) were R\$ 300.3 million (2013), R\$71.4 million (2014), R\$61.9 million (2015), and R\$33.0 million (2016).
- 4.33. According to the OECD, whereas the agricultural credit system is intended to address failures in financial markets, it also creates risks (default) for government and producers, particularly since the macroeconomic situation has deteriorated (Section 1.2.1).³⁰ The higher availability of funds for loans is potentially creating excess supply. Most of this credit is concentrated on subsidizing short-term borrowing such as working capital and commercialization loans that further distort markets. A reform of the concessional credit system could consider a gradual downsizing of concessional loans for working capital to commercial producers, simplifying regulations and procedures, and re-focusing to support on-farm investments that explicitly

²⁶ BCB online information, "Rural Credit Manual". Viewed at: http://www3.bcb.gov.br/mcr/completo.

²⁷ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr pol-2016-en; MAPA online information, "Plano Agricultura e Pecuário 2016/2017". Viewed at: http://www.agricultura.gov.br/pap.

²⁸ Banco Central do Brasil online data. Viewed at: http://www.bcb.gov.br/pt-br/#!/c/MICRRURAL/.

²⁹ Law No. 13.340, 28 September 2016.

³⁰ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr_pol-2016-en.

incorporate technological innovations and advanced farm management and environmental practices.

4.1.4.1.1 Minimum price guarantees

4.34. During the review period, Brazil maintained unchanged its 1966 policy of guaranteed minimum prices (PGPM), an important pillar of its agricultural policy. The basic element of this policy remains the regionally-set minimum guaranteed prices which cover a broad range of crops from rice, wheat, maize, cotton, and soybeans, to regional crops like cassava, beans, açaí, guaraná, and sisal, as well as a few livestock products like cow and goat milk and honey (Table 4.6).31 On the basis of these minimum guaranteed prices, the government implements several price support mechanisms (Table 4.6), including direct government purchases (AGF); premiums to commercial buyers who pay minimum prices to supply producers (PEP, VEP); and public and private options contracts backed by private risk premium options (COV, PROP, PEPRO). In addition to these programmes, producers receive various reduced-interest marketing loans which enable them to withhold the sale of a product in anticipation of a higher market price (FPPG, FEPM and FEE below). The state-owned CONAB (Section 4.2.2) operates both the AGF set by the MAPA Secretary of Agricultural Policy (SPA) for commercial and small-scale farms, and the equivalent programme set by the SEAD for small-scale agriculture (PAA, Section 4.2.4.3) as well as the minimum prices programme for family farms (PGPAF programme). The PAA, financed by MDSA and SEAD and managed by MDSA and CONAB, makes direct acquisitions from family farms at market prices. The products acquired from family farmers either go into stocks or are distributed as part of a food programme or donated to vulnerable people. Guaranteed prices for small-scale farmers are based on the average regional production cost of family farms.

Table 4.6 Price support programmes, 2014/2015 and 2015/16

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. Portaria No. 854 of 20 August 2014 fixes minimum prices for a number of products for the 2014/15 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).	Products benefited by PGPM in the 2014/15 were cotton, corn, orange and edible beans. The only product benefited by PGPM in 2016 was wheat.
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 2014/15 crop year, the AGF was used to purchase only edible beans (75,942 tonnes) and corn (20,158 tonnes). In 2016, the AGF was not used to purchase any products.
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.	The programme did not support any products in 2014/15 crop year. The programme supported only wheat in 2016 (47,791 tonnes, R\$8.8 million).

³¹ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en; USTR (2016), *2016 National Trade Estimate Report on Foreign Trade Barriers*. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate">https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

Price support programme/description	Use/cost
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	In 2014/15, the VEP was used only for corn: 17,075 tonnes of corn were sold through auctions for a value of R\$5.6 million. In 2016, the VEP was not used.
to dispose of government stocks.	
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.	The programme did not support any products in 2014/15 crop year. The programme did not support any product in 2016.
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 programme did not support any products in 2014/15 crop year. The programme did not support any product in 2016.
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 the 2014/15 crop year, the programme supported only cotton (R\$2.4 million and 905,278 tonnes), corn (R\$256 million and 5,803 million tonnes) and oranges (R\$47.1 million and 850,383 tonnes). In 2016, the programme supported only wheat (404,886 tonnes, R\$108 million)

Source: MAPA, based on CONAB data.

4.35. In 2012, the Federal Government Loan (EGF) programme was replaced by two different programmes: Funding for the Producer Price Guarantee (FPPG) for the agro-industry; and Financiamento Especial para Estocagem de Produtos Agropecuários Integrantes da PGPM (Special Financing for Stockholding of Agricultural Products Pertaining to PGPM) for PGPM agricultural products storage for farmers. At the same time, the Special Marketing Credit Line (LEC) was replaced by Financiamento Especial para Estocagem de Produtos Agropecuários não Integrantes da PGPM (Special Financing for Stockholding of Agricultural Products Not Pertaining to PGPM) to cover storage of non-PGPM agricultural products for farmers. These tools allow 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 rates for FEPM loans stood at 10.5% for the harvest year 2016/17 as compared to 5.5% in 2013/14, 6.5% in 2014/15, and 8.75% in 2015/16, with reimbursement deadlines of up to 240 days, depending on the product. 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. The FEE does not use the minimum price as a parameter for calculating the amount to be financed.

4.36. With 9% and 8.7% inflation in 2015 and 2016 respectively (Table 1.2), regional minimum guaranteed prices were kept constant between 2014/15 and 2015/16 for basic and domestic wheat, cotton, Arabica coffee, maize, sorghum, jute, rubber and cocoa. They were increased by about 7% for cassava, 5% for soybeans, 11% for grapes, 7% for peanuts, 7-8% for most rice categories, 4.5% for bread and high quality wheat, 4.5% for winter crops (oat, canola, barley, sunflower, and triticale), 7-8% for milk; and they were decreased by 16% to 18% for different categories of beans. In 2016/17 minimum guaranteed prices were raised as follows: 9% for rice; 18% for cotton; 8.5% for edible beans; 3% for corn; 8.7% for soybeans; 7.5% for sorghum; 7.5% for milk; 7.3% for orange; and, 10.5% for winter cereals (wheat, oats, canola, barley, sunflower

³² OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

and triticale). According to the OECD, despite the variety of regional price support programmes, prices received by domestic agricultural producers are more or less aligned with international levels.³³ As a result of the increase in minimum guaranteed prices at a slower pace than inflation and the depreciation of the real relative to the Unites States dollar, price support was further lowered in real terms; on the other hand, differences in support level by commodity continue to create distortions within the sector.

4.37. Budgeted resources for implementing the PGPM rose from R\$4.5 billion in 2013 to R\$5.1 billion in 2015 and declined to R\$4.4 billion in 2016, most of which was linked to public stocks operations, as compared to an annual average of R\$1.6 billion for the period 2008-11.34 Between end-May 2015 and end May-2016, total public stocks declined by 42% to about 1.1 million tonnes due to major drops in the supply of most commodities, mainly maize, beans, rice, coffee and sugar, to, inter alia, fight food and nutrition insecurity (e.g. beans donation) as well as to higher than the official minimum enabling operations of AGF; as of end-May 2016 they mainly consisted of maize, rice, coffee, manioc flour, wheat, and cores beans.³⁵ Revenues from the sale of public stocks are channelled to the Treasury or to bodies responsible for storage. Annual costs under the PGPM exceed revenue collected with the sale of stocks; nevertheless, between 2013 and 2016 the total balance from trading operations under PGPM (AGF and COV) was profitable (Table 4.7). In 2015, according to CONAB data, which usually cover operations under both the PGPM and PAA programmes, a subsidy of approximately R\$160.4 million was disbursed to balance the overall result of the public stocks trading operations; the PGPM stocks are usually sold whereas those held under PAA are mostly donated to vulnerable people.³⁶ As of 2015, the Brazilian network consisted of 1,128 (1,535 in 2011) warehouses of which 98 were owned by CONAB, with a storage capacity of 152,355,268 tonnes of which 2,319,320 were owned by CONAB.

Table 4.7 PGPM operations, 2013-16

(R\$ million)

(R\$ MIIIION)							
		2013	2014	2015	2016		
Disbursement (purchase)						
	Total	79	84	0	0		
AGF	Edible beans	0	72	0	0		
AGF	Maize	79	4	0	0		
	Wheat	0	8	0	0		
	Total	1,395	0	0	0		
COV	Coffee	1,029	0	0	0		
	Maize	366	0	0	0		
PEP	Total	0	0	0	9		
PCP	Wheat	0	0	0	9		
	Total	484	631	15	69		
	Cotton	0	244	0	0		
	Maize	455	256	0	0		
PEPRO	Grapes	11	0	0	0		
	Natural rubber	0	3	15	0		
	Orange	18	47	0	0		
	Wheat	0	81	0	69		
Total		1,958	715	15	78		

³³ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

In 2015, rubber farmers were the only recipients of deficiency payments under the PEPRO programme for an amount of R\$15 million (US\$4.5 million); in 2014, a total amount of R\$360 million (US\$108 million) was granted to wheat, maize, cotton producers, and smaller amounts to rubber and orange producers. OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr pol-2016-en; Ministério da Agricultura, Pecuária e Abastecimento (2015), *Plano Agrícola e Pecuário 2015/2016*; and WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

³⁵ Table 22 in CONAB (2016), *Relatório Sintético das Atividades da Conab - Maio de 2016.* Viewed at: http://www.conab.gov.br/OlalaCMS/uploads/arquivos/16_08_08_09_37_12_relatorio_sintetico_05-2016.pdf; and OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

³⁶ CONAB (2016), *Relatório da Administração - Exercício Social de 2015.* Viewed at: http://www.conab.gov.br/OlalaCMS/uploads/arquivos/16_05_02_15_06_36_balancocompleto.pdf.

		2013	2014	2015	2016
Revenue (selling)					
	Total	359	169	62	109
	Coffee	0	0	1	1
	Edible beans	3	0	21	10
AGF	Maize	0	1	0	59
	Rice	12	163	39	39
	Sisal	3	5	0	0
	Wheat	341	0	0	0
	Total	167	231	68	609
	Coffee	0	0	24	394
COV	Maize	0	5	0	182
	Rice	141	226	44	32
	Wheat	27	0	0	0
Total		526	400	130	718
Buying/selling stocks op	erations				
AGF	Disbursement	79	84	0	0
COV	Disbursement	1,395	0	0	0
Total	Disbursement	1,474	84	0	0
AGF	Revenue	359	169	62	109
COV	Revenue	167	231	68	609
Total	Revenue	526	400	130	718
	Balance	-948	316	130	718

Source: CONAB, prepared by MAPA.

4.1.4.1.2 Measures to promote family farming

4.38. Support for family farming remains an important component of agricultural policy, which in this area is administered by the SEAD and the MDSA (Section 4.2.2); it is key in fighting poverty and plays a strategic role in controlling prices and the food supply.³⁷ Programmes to promote family farming and improve farmer incomes remain unchanged during the review period (Table 4.8).³⁸ They include: preferential credit lines (PRONAF), rural extension (ATER), preferential rules in public procurement (PAA, PNAE), rural insurance (PROAGRO MAIS), price guarantees and debt rescheduling (Table 4.6, Sections 4.2.4.1 and 4.2.4.2). Access of family farmers to the biodiesel market continues to be promoted under the Social Fuel Seal initiative (Section 4.4.3.3.2). Between 2012/13 and 2016/17, total budgetary outlays for family farming under these programmes rose from R\$22.3 billion to R\$35.3 billion of which PRONAF spending accounted for 80.7% and 84.9% respectively (Table 4.8).

Table 4.8 Budget allocated to family farming programmes and measures, harvest year 2012/13

Programme	Description	Budget
Programme to Strengthen Household Agriculture (PRONAF)	Preferential credit to small-scale producers with a gross annual income of up to R\$360,000 per family.	R\$30 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 populations. It may also finance the storage of food products by family farming organizations, so as to allow later commercialization under more favourable conditions.	R\$2.7 billion

³⁷ The share of family units to the total number of agricultural establishments stands at 84.4%. Family farming is an important part of food production. In 2006, its share in total output stood at: 87% for cassava; 70% for beans; 46% for corn; 38% for coffee; 34% for rice; 58% for milk; 59% for swine; and, 50% of poultry. No recent data were available with the authorities. No recent data were available with the authorities. FAO online information. Viewed at: http://www.fao.org/family-farming/countries/bra/en/; Schneider S. (2016), Family farming in Latin America and the Caribbean: looking for new paths of rural development and food security, University of Rio Grande do Sul (UFRGS), published as FAO working paper No. 137, March. Viewed at: http://www.fao.org/3/a-i5534e.pdf.

³⁸ More information on the latest plans in this area is contained in: MDA (2015), *Plano Safra da Agricultura Familiar 2015 – 2016.* Viewed at:

http://www.mda.gov.br/sitemda/sites/sitemda/files/ceazinepdf/plano%20safra%20cartilha%202015%202016.pdf; and, MDA (2016), Plano Safra da Agricultura Familiar 2016–2017. Viewed at: http://www.mda.gov.br/sitemda/sites/sitemda/files/ceazinepdf/cartilha_plano_safra_2016_2017_1.pdf.

Programme	Description	Budget
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\$1.2 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\$500 million
Family Farming Insurance Programme (PROAGRO MAIS)	Guarantees for small farmers taking out credit for production activities under the PRONAF. The insurance covers 80% of the expected revenues. Indemnities are up to a maximum of R\$20,000 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 and north of Minas Gerais. Insurance payments are fixed at R\$850 and transferred in five instalments. The number of insured farmers are up to a maximum of 1.35 million. The programme is finance by a fund composed of contributions from municipalities, states and the federal union.	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\$85 per capita). Those resources, which are non-refundable, are limited to R\$2,400 per family and must be used in rural production activities. The resources are divided into three parcels conditioned to the implementation of production projects guided by the technical assistance.	R\$81 million
Total budget		R\$35.3 billion

Source

MDS online information. Viewed at: http://www.caixa.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), http://www.agricultura.gov.br/arquivos/File/deral/psafra_ag_familiar_2010_11.pdf.

4.39. According to the OECD, existing mechanisms for social protection could protect farmer income more effectively and direct investment in infrastructure and public investments could trigger agricultural growth, for both commercial farms and smallholders, more efficiently.³⁹

4.1.4.1.3 Other measures

Agricultural/rural insurance

4.40. Agricultural insurance support continued to be provided to producers through four main programmes, either in the form of insurance premium subsidies covering the difference between a fixed premium and market rates through a discount in the fee to farmers (fixed percentage), or by compensating farmers for production losses due to natural disasters. Two of the programmes target the commercial farmers (the rural insurance premium programme (PSR) and the general agriculture insurance programme (PROAGRO)) and the other two target small-scale family farms (the family agriculture insurance programme (PROAGRO MAIS) and the crop guarantee programme (*Garantía Safra*, GS)) (Section 4.2.4.3).⁴⁰ The operation of these risk management

³⁹ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

²⁰¹⁶ agr_pol-2016-en.

40 The PSR, which covers all agricultural and livestock activities, as well as forestry and aquaculture, has granted insurance premium subsidies of up to R\$192,000 (in 2015) and R\$144,000 (as of 2016) per beneficiary to commercial producers who establish contracts with insurance companies listed by the government. The PROAGRO and its PROAGRO MAIS, which targets mid-sized and family farmers, offer eligible farmers partial compensation of the bank debt on working capital loans used in production of the damaged

programmes is currently shared among federal institutions, including some Ministries and the Central Bank. During the review period, a number of initiatives to improve the effectiveness of the rural insurance premium programme (PSR) included: the development of a model contract to facilitate collective negotiation for producers; greater dissemination of the programme availability; disclosure of statistical information on the programme; risk analysis; greater involvement of the private sector through advisory committees; and, the creation of a productivity register for a better estimation of risk (March 2016). Resources allocated to all agricultural insurance programmes amounted to R\$700 million (US\$210 million) in the 2015/16 agricultural plan; subsidy rates ranged from 35% to 100% of the premium, depending on the sector and the risk coverage.41 Resources allocated to the rural insurance premium programme (PSR) were cut to R\$282 million (US\$84.6 million) in 2015/16 due to budgetary constraints. The 2016/17 agricultural plan was to strengthen collective negotiation for rural insurance contracts by covering about 5.5 million hectares, compared to 2.8 million hectares in 2015/16, allowing more than 50,000 producers to benefit from the subsidy programme. In 2016/17, resources allocated to rural insurance (PSR) subsidies were increased by 42% to R\$400 million (US\$120 million). The subsidy rates ranged from 35% to 55% of the premium, depending on the crop and the risk coverage. The main crops insured were soybeans, wheat, maize, grapes and apples; according to the authorities the penetration rate of the insurance programme, in terms of the gross value of production, is still relatively low for these crops.

Advance sale facilities

4.41. Two facilities allowing farmers to cash in their products prior to sale remain in place and are operated by the state-owned Banco do Brasil and/or other private or state-owned financial institutions. The Rural Product Certificate (CPR) continues to allow 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 liquidation in cash and is often used as collateral for acquiring credit. Farmers may obtain guarantees for the CPR. Farmers and cooperatives which sell their products in the futures market may access credit lines by discounting a rural promissory note (NPR) or a rural duplicate (DR), which allow them to receive proceeds from the sale before the harvest. Up to 7% of mandatory resources to finance rural credit may be used by banks to discount NPRs and DRs (Section 4.2.4.1).

Zoning, land and other requirements

4.42. Agricultural zoning requirements continue to link agricultural support to environmental sustainability. They condition producers' eligibility for concessional credit and subsidized insurance programmes. Compliance with zoning applies to all concessional credit and all insurance premium subsidies for any product covered by the zoning (Section 4.2.4.1). In addition, several specific programmes for both the commercial and family farm segments promote sustainable agricultural practices; they include credit for plantings on unproductive and degraded soils, credit for forest planting, and credit to modernize production systems and preserve natural resources (Section 4.2.4.1).

crop and provides indemnity on loss of own resources invested in production; most of its resources are directed to the southern region and to grain crops, mainly soybeans. To benefit from the PROAGRO facilities, producers must pay a premium fee, set at 2% for the family farmers with PRONAF, and 3% for other producers. Producers benefiting from the PROAGRO may not receive subvention through the PSR scheme. Total indemnities paid through PROAGRO to producers (including family farmers) rose from R\$10.7 billion in 2012/13 to R\$11.1 billion in 2013/14 and R\$12.3 billion in 2014/15; most of the indemnities are paid via PROAGRO MAIS with an average share of 67% for the period 2012/13-2014/15. BCB online information. Viewed at: http://www.bcb.gov.br/htms/proagro/PROAGRO-relatorioCircunstanciado2012a2015.pdf; and OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-library.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr pol-2016-en.

⁴¹ OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

2016 agr_pol-2016-en.

42 OECD (2016), Agricultural Policy Monitoring and Evaluation 2016, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

4.43. Foreign investment in agricultural land remains restricted and administered by the National Land Reform and Settlement Institute (INCRA) (Section 2.7).⁴³ The area of agricultural land bought or leased by foreigners cannot account for more than 25% of the overall land area in a given municipal district; in addition, no more than 10% of agricultural land in any given municipal district may be owned or leased by foreign nationals from the same country.

Other

4.44. New directions for the restructuring of the Brazilian System of Inspection of Animal Origin Products (SISBI-POA), which is part of the Unified Agricultural Health Care System (SUASA), at state, district and municipal levels, were announced in October 2015 for consultation and suggestions (Section 3.3.3).⁴⁴ The authorities indicated that this System is applied to animal origin products traded at local markets and does not affect international trade. A plan to develop transport infrastructure in the Amazon region, including roads and motorways, ports, railways and rivers, in order to reduce export costs by up to 37%, was presented in February 2016. In accordance with the plan, new port terminals would be auctioned and would increase the export capacity by 22 million tonnes (Section 4.5.5.2.2).

4.2 Energy

4.2.1 Main features

4.45. Brazil, a net exporter of crude oil, remains self-sufficient in primary energy (except for natural gas, coal, oil derivatives and hydropower). From January to November 2016 it produced a monthly average of 3.13 million barrels of oil equivalent per day (MMboe/d), up 3.46% compared to the same period in 2015, during which 3.03 MMboe/d were produced. In 2015, the energy matrix produced 286,471 tonnes of oil equivalent (toe) (253,174 toe in 2010), which exceeded by 9.9% (about 5% in 2010) its final consumption. The Brazilian energy matrix remains one of the greenest in the world; in 2015, 41.2% (39.4% in 2014) of energy came from renewable sources compared to an average of less than 15% for the rest of the world. In 2015, it consisted of oil and oil derivatives (37.3%), sugarcane (16.9%), natural gas (13.7%), hydropower (11.3%), wood and vegetable coal (8.2%), coal (5.9%), other renewables (4.7%), uranium (1.3%), and other non-renewables (0.6%). Manufacturing and transport are the major energy consumers and represented 32.5% and 32.2% of final consumption respectively.

4.2.2 Policy and institutions

4.46. Brazil's Ten-Year Plan for Energy Expansion 2024 (*Plano Decenal de Expansão de Energia 2024*) is focused on striking a balance between the economic growth projections and the necessary expansion of energy supply, as well as ensuring energy supply at the appropriate cost and on a technical and environmentally sustainable basis.⁴⁷ It also, *inter alia*, aims at raising the share of renewable sources in the energy and electricity generation matrixes to 45.2% and 86% by 2024 respectively. To attain these objectives, a total investment of R\$1.4 trillion is planned, of which 70.6% in oil and natural gas, 26.7% in electricity, and 2.6% in liquid biofuels. Furthermore,

⁴³ USTR (2016), *2016 National Trade Estimate Report on Foreign Trade Barriers*. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

estimate.

44 OECD (2016), Agricultural Policy Monitoring and Evaluation 2016, 16 June, Paris. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016_agr_pol-2016-en.

⁴⁵ The IMF Article IV Consultation reports (2014 & 2016) state that Brazil is expected to become a net oil exporter in the medium term – apparently using a broader definition of "oil balance". A barrel of oil equivalent (BOE) is a term used to summarize the amount of energy that is equivalent to the amount of energy found in a barrel of crude oil. IMF (2016), *Brazil - Staff Report for the 2016 Article IV Consultation*, Country Report No. 16/348, 14 October. Viewed at: http://www.imf.org/external/pubs/ft/scr/2016/cr16348.pdf); Online ANP (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis) November 2016 data. Viewed at: http://www.anp.gov.br/wwwANP/images/publicacoes/boletins-anp/boletim_de_novembro-2016.pdf.

⁴⁶ Ministério de Minas e Energia/Empresa de Pesquisa Energética (2016), *Balanço Energético Nacional 2016 - Relatório Síntese - ano base 2015*, June. Viewed at: https://ben.epe.gov.br/downloads/S%c3%adntese%20do%20Relat%c3%b3rio%20Final_2016_Web.pdf.

⁴⁷ Ministério de Minas e Energia/Empresa de Pesquisa Energética (2016), *Plano Decenal de Expansão de Energia 2024*, 26 January. Viewed at:

 $\underline{\text{http://epe.gov.br/Estudos/Documents/PDE\%202024\%20RELATORIO\%20FINAL.pdf.a0co0ci.partial.}$

in November 2016, an Investment Partnership Programme set the priority areas for action in energy and mining. These priorities involved bidding rounds of blocks of oil and natural gas, electricity distribution concessions, hydropower plants concessions, and operation/management concessions for mining projects with assets owned by the Mineral Resources Research Company (CPRM). The National Bank for Economic and Social Development (BNDES) would be in charge of the divestment in the electricity distribution service. These bidding rounds provide opportunities for both public and private (domestic and foreign) companies.

4.47. Under the Constitution, Brazil's hydropower sources and mineral resources (including oil and gas), whether in the subsoil, the continental shelf, or in the exclusive economic zone, are the exclusive property of the State.⁴⁹ The sector remains dominated by state companies (Sections 4.4.3 and 4.4.4). The Ministry of Mines and Energy (MME) implements the general policy for the sector and chairs the National Energy Policy Council (CNPE), which proposes policies and regulations pertaining to hydrocarbons, biofuels, and electricity to the President. 50 Policy for the ethanol and sugar industry is also determined by the Inter-Ministerial Council for Sugar and Alcohol (CIMA). Two autonomous regulatory agencies are 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. Gas transmission pipelines and storage facilities projects must also be, in general, proposed by MME and undergo an auction conducted by ANP. The Energy Research Company (EPE) supports planning, inter alia, in areas such as electricity, oil, and natural gas and its derivatives, coal, renewable energy sources and energy efficiency.

4.2.3 Hydrocarbons and biofuels

4.2.3.1 Oil

4.2.3.1.1 Main features

4.48. Brazil's oil sector accounted for approximately 15% of GDP in 2016 and 14.8% of raw materials exports in 2016. Following a drop in 2012 and 2013, as from 2014, output of oil picked up as pre-salt production (see below) became effective; total output was 889.7 million barrels in 2015 (31.5% from the "pre-salt" layer, 93.4% from offshore oil rigs), a 17.9% increase from 2012.⁵¹ Brazil remains a net exporter of crude oil with a net export income (f.o.b.) of US\$16.4 billion in 2014 and US\$11.8 billion in 2015. However, as much of the locally produced heavy crude oil cannot be refined domestically, its refined products are imported. Consequently, since 2011, Brazil also remains a net petroleum importer, driven by demand for refined oil products much of which originate in the United States.⁵² In 2016, for the first time Brazil's crude oil exports reached US\$410 million (0.22% of total exports (US\$185.2 billion)). As at end-2015, proven reserves of crude oil amounted to about 13 billion barrels, a 19.7% drop from their 2014 peak level, due partly to the sharp decline in oil prices, which negatively affected the economic viability of part of commercial reserves; in 2014, Brazil ranked 15th among the world's top proven reserves holders.⁵³

⁴⁸ Decree No. 8.893, 1 November 2016.

⁴⁹ Article 20 of the Constitution.

More information on the sector's institutional framework is available in WTO document
 WT/TPR/S/283/Rev.1, 26 July 2013.
 Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016),

Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario Estatistico ANP 2016.pdf.
EIU (2016), Industry Report – Energy – Brazil, 30 August.

⁵³ Proven reserves (based on the analysis of geological and engineering data) are estimated to be commercially recoverable with a high degree of certainty from discovered and evaluated reservoirs, and whose estimate takes into consideration the prevailing economic conditions, the usually feasible operational methods, and regulations under Brazil's oil and tax legislation. Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), *Anuário estatístico brasileiro do petróleo, gás natural e*

4.49. During the review period, the state-controlled PETROBRAS maintained its dominant position in the production, refining, distribution, and retail market of petroleum and petroleum products in Brazil (Section 4.4.3.1.3). Since 2011, the Government has retained 64% of its voting shares and 13.5% (2015) of its capital stock was held by foreign investors.⁵⁴ PETROBRAS is not obliged to meet domestic demand of crude oil before exporting the remainder. During the review period, the company continued to account for over 90% of total oil production. Whereas 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. Following years of serving as a money-making or social-policy tool, since 2016, Petrobras has been slashing spending and selling assets, while also overcoming a crippling corruption scandal.⁵⁵ The company, in debt by some US\$125 billion, expects output to fall to about 2.1 million barrels per day (bpd) in 2017, though it hopes to reach 2.7 million bpd by 2020. Recent domestic developments, in a context of low oil prices, contributed to PETROBRAS' shift from profit to large financial losses in 2014-15 (R\$56.4 billion), a high debt burden (US\$123 billion at current exchange rates in September 2016), and a cut in its five-year investment plan.⁵⁶ Action, including slashing oil production targets and stepping up divestment, is being taken to restore confidence in and finance of the company. Its 2017-2021 Business and Management plan calls for investments of US\$74.1 billion, 82% of which is earmarked for exploration and production (E&P) (Section 4.4.3.1.2); the remaining investments are basically aimed at maintaining operations and at projects related to oil refining and natural gas output offloading.⁵⁷

4.2.3.1.2 Upstream – Exploration and production (E&P) arrangements

4.50. Brazil's two parallel regimes (transfer of rights and production-sharing) for selected exploration blocks remained unchanged during the review period (Table 4.9). ⁵⁸ The ANP may grant authorizations and/or concessions for specific activities to private companies and consortia incorporated under Brazilian law, with headquarters and management in Brazil. Besides creating the appropriate entities in Brazil, foreign companies must comply, *inter alia*, with technical-capacity and financial-standing requirements. Since 2010, a fully state-owned enterprise Pré-sal Petróleo S.A. (PPSA) has represented the Government's interests in the consortia performing exploration and production (E&P) operations and managed the commercialization of the State's share of output produced under the production-sharing agreements.

Table 4.9 Regulatory framework for oil and gas exploration and production, 2017

	Transfer of rights regime	Production-sharing 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; and Law No. 13,356 of November 2016
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
Exclusive rights transferability	Not transferable	Transferable upon MME 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	Operatorship by Petrobras is no longer required as well as minimum 30% interest for new pre-salt acreage

biocombustíveis. Viewed at:

http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf.

⁵⁴ The Federal Government directly owns 54% of PETROBRAS' common shares, while the Brazilian National Development Bank and Brazil's Sovereign Wealth Fund (Fundo Soberano) each control 5%; the privately held shares are traded on BM&F Bovespa, where they are part of the Ibovespa index. The Federal Government's participation in its voting capital must be at least 50% plus one share (Article 62 of Law No. 9.478, 6 August 1997).

⁵⁵ Breaking Views online information, "Under the hammer", 4 January 2017. Viewed at: http://www.breakingviews.com/considered-view/brazil-mexico-to-ramp-up-pro-market-oil-makeovers/.

⁵⁶ EIU (2016), Industry Report – Energy – Brazil, 30 August.

⁵⁷ PETROBRAS online information. Viewed at: http://www.petrobras.com.br/en/about-us/strategy/business-and-management-plan/.

⁵⁸ 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. More information on the institutional and procedural aspects of the current regime is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

	Transfer of rights regime	Production-sharing regime
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
Private sector participation in E&P contracts	Not possible	Winning bidders in E&P auctions can have up to 100% participation in the consortium's share
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
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 (15% of gross revenues)

a The geographical coordinates of the "pre-salt polygon" are defined in the Annex to Law No. 12,351. Source: Information provided by the authorities.

- 4.51. The production-sharing regime is aimed at lowering the exploration risk, maximizing the government take from oil production, and achieving a more equal distribution of its proceeds among Brazilians; revenue from production-sharing contracts is to finance education, poverty reduction, and environmental initiatives.⁵⁹ To preserve national interests or achieve other energy policy goals, the production-sharing regime includes the possibility of direct contracts (i.e. without bidding procedures) with PETROBRAS; nevertheless, there have been no such cases so far. The selection of winning bids is based on the portion of crude oil 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 latter. Stiff local content rules and the requirement that PETROBRAS must have a minimum 30% stake in pre-salt fields seem to have caused development delays; in 2016, efforts to make these rules more flexible and reform the local content requirements were under way in the Congress. 60 In November 2016, a law scrapping a requirement that PETROBRAS must be the sole operator and hold a minimum 30% stake in the country's massive offshore pre-salt oil reserves was passed. 61 As a result, in 2017, Brazil is to auction four pre-salt blocks, the first such effort since 2013, hoping to attract significant foreign investment.
- 4.52. Local-content commitments have been among the selection criteria in all concession rounds carried out since the 7th Bidding Round in 2005. On 14 December 2016, the Government cancelled local content requirements for fields subject to the 4th Bidding Round of Areas with Marginal Accumulations scheduled for 2017.⁶² A new Local Content Policy is under discussion (see below). Concessionaries that fail to meet their local-content commitments are subject to fines, which vary according to the shortfall.⁶³ Between 2011 and 2016, the ANP levied 110 fines totalling R\$570 million, of which 62% (R\$353.4 million) were applied only to PETROBRAS.
- 4.53. By the end of 2016, 757 fields were under E&P contracts, of which: 322 were blocks in the exploration phase; 48 fields in the production development phase; 344 fields in the production phase; and 43 fields in the process of being returned to the ANP. PETROBRAS had participation in 106 blocks at the exploration phase, of which 54 were exclusive concessions to this company, and another 52 in partnership with other firms; Petra Energy had the exclusive operation of 31 blocks; Rosneft (Russian Federation) operated 16 blocks; and other operators 169 blocks.⁶⁴ With respect

⁵⁹ Law No. 12.351 of 23 December 2010.

⁶⁰ EIU (2016), Industry Report – Energy – Brazil, 30 August.

⁶¹ Breaking Views online information, "Under the hammer", 4 January 2017. Viewed at: http://www.breakingviews.com/considered-view/brazil-mexico-to-ramp-up-pro-market-oil-makeovers/.

⁶² CNPE Resolution No. 03, 9 November 2016.

⁶³ These commitments add an administrative burden involving a tangle of obligations requiring concessionaries to hire certification companies in order to prove compliance; furthermore, there is a lack of regulatory provisions on waiver requests by non-compliant concessionaries.

⁶⁴ Other companies with contracts, in consortium or not between themselves and with Petrobras, were: Queiroz Galvão, Brasoil Manati, Geopak Brasil, Shell Brasil, ONGC Campos, Chevron Brasil, QPI Brasil Petróleo, OGX, Total E&P Brasil, BP Energy, Parnaíba Gás, BPMB Parnaíba, Petrogal Brasil, EP Energy Pescada, Imetame, Orteng Óleo e Gás, BG Brasil, Petrosynergy, Silver Marlin, Barra Energia, Brasoil Cavalo Marinho, Repsol

to fields in production, PETROBRAS was the sole contractor for 314, and a joint operator in another 21 fields. 65 Government revenue from E&P activities continues to be collected through signature bonuses and royalties applicable to concession agreements and production share contracts, as well as special participation and area retention taxes applicable to concession agreements only.⁶⁶ Between 2013 and November 2016, annual revenue from E&P activities dropped from R\$49.5 billion to about R\$18 billion due to the drop in world crude oil prices, exchange rate developments and reduced PETROBRAS investment; royalties contributed to 46.9% and special participation 38.5% of the total revenue which was channelled to the Federal Government (42%), states and municipalities (58%), and health and education (0.11%).

4.54. Several changes were made to E&P-related duty and tax concessions during the review period.⁶⁷ In January 2016, Brazil introduced a Stimulus Programme for the Competitiveness of the Supply Chain and the Enhancement of Suppliers in the Oil and Natural Gas Sector (Programa de Estímulo à Competitividade da Cadeia Produtiva, ao Desenvolvimento e ao Aprimoramento de Fornecedores do Setor de Petróleo e Gás Natural, PEDEFOR) aimed at: improving the Local Content Policy of the E&P industry, through the legal recognition and appraisal of initiatives and investments contributing to increased competitiveness of suppliers in Brazil; stimulating national engineering; promoting technological innovation in strategic segments; expanding the chain of suppliers of goods, services and systems produced in Brazil; raising the level of local content (CL) of the suppliers already installed; and, stimulating the creation of technology-based companies in line with the local content policy applicable to the industry.⁶⁸

4.55. To further encourage E&P activities, a number of policy measures were passed on 3 March 2016 and consisted of: the extension of Round Zero Award contracts signed in the late 1990s in order to allow for further investment in already mature oil fields whose concessions end starting in 2025; suspension of concessions of fields which have been unproductive for more than six months and whose production will not restart in the next twelve months; and, the extension of federal and state tax exemptions under the Special Customs Regime (Repetro) including import taxes on specific equipment and spare parts imported for direct use in E&P activities until 31 December 2020. 69 The Special Incentive Regime (Repenec) continues to suspend 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.70

4.2.3.1.3 Downstream

4.56. According to the BP Statistical Review of World Energy 2016, Brazil was the sixth-largest oil consumer in the world in 2015, consuming 3.2 million barrels/day (b/d) down by 4.2% year on year, owing to the recession. 71 Brazil's dependency on imports of refined oil products increased in 2013 and 2014 but dropped both in 2012 and 2015. 72 Although domestic oil refining capacity rose by 13.8% in 2012-15, the refineries utilization dropped to 87.1% due to a decline in consumption, and imports of refined products grew by 15.1% (in volume terms) in the period 2012-14 while in 2015 they dropped by 17.8%. Thirteen out of seventeen refineries belong to PETROBRAS and they represented 98.2% of refining capacity in 2015. Although PETROBRAS faces more competition in the distribution and resale of petroleum products, it remains a leader in both segments. 73 As of

Sinopec, Karoon e Nord. Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf

65 ANP (2016), Brazilian Oil, Gas, and Biofuels Statistics Yearbook 2016, pp. 54. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf.

66 Laws No. 9478/97 and No. 12351/10 and ANP data.

- 67 More information on this regime is available at WTO document WT/TPR/S/283/Rev.1, 26 July 2013.
- ⁶⁸ Decree No. 8.637 of January 2016. Viewed at: http://www.mdic.gov.br/competitividade-

industrial/pedefor and http://www.planalto.gov.br/ccivil 03/ Ato2015-2018/2016/Decreto/D8637.htm.

69 CNPE Resolution No. 2, 3 March 2016; Law No. 9,478, 6 August 1997, and Decree No. 6.759, 5 February 2009.

- Law No. 12,249, 11 June 2010.
 - ⁷¹ EIU (2016), *Industry Report Energy Brazil*, 30 August.
- ⁷² Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis -2016. Viewed at:
- http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf.

 73 PETROBRAS' involvement in downstream activities includes refining, transporting and marketing oil and oil-based products, as well as the petrochemicals segment. More information on these operations is

2015, with 7,500 service stations across the entire Brazilian territory PETROBRAS remained the leading company accounting for 28% (30% in 2011) of gasoline and 37% (40% in 2011) of diesel distribution. 74

4.57. Brazil's import tariff for hydrocarbons remains set at zero.

4.58. Since 2002, all fuel and oil product prices must be set freely (e.g. without government approval) by the market. 75 However, in practice, as PETROBRAS continues to have a quasi-monopoly over Brazil's refining capacity, and controls most of its distribution and storage capacity, it can define ex-refinery prices domestically. By not adjusting fuel prices in line with fluctuations in international prices, Brazil has been delaying price hikes to shield domestic prices from international volatility. PETROBRAS has been covering the difference between world market prices and the domestic price, a policy that has cost the company billions of dollars and contributed to making it the world's most heavily indebted oil company; this policy seems to have caused about R\$60 billion (US\$17.4 billion) of fuel-sales losses in recent years. 76 In 2016, PETROBRAS announced a new pricing policy for gasoline and diesel at the refinery gate. According to the new policy, fuel prices are monthly updated based on changes in international prices, exchange rates, transportation margins, and domestic market conditions, and will not be allowed to fall below international parity.⁷⁷ Furthermore, as part of fiscal adjustments in 2015, the Government re-introduced the Contribution for Intervention in the Economic Domain (CIDE), a levy applied to gasoline and diesel that had been set to zero in June 2012.⁷⁸ During the review period, PETROBRAS raised ex-factory prices of gasoline and diesel progressively to a peak level in September 2015, reduced them in the course of 2016 to raise them again at the end of the same year to, inter alia, reflect the weakening of the domestic currency against the United States dollar that made imports more expensive; between 2013 and 2016, these prices rose by an overall 16.8% for gasoline and 20.9% for diesel.⁷⁹ Between 2012 and 2015, average petrol prices rose progressively from R\$2.736/litre to R\$3.343/litre, whereas those of diesel rose from R\$2.087/litre to R\$2.827/litre.80

4.2.3.2 Gas

4.59. Natural gas extraction increased from 25.8 billion m^3 (2012) to 38 billion m^3 (2016); PETROBRAS accounted for 93.9% of the output in 2016. Over the same period, domestic sales of natural gas decreased, from 33.3 billion m^3 to 29.4 billion m^3 , and industrial consumer prices in US dollars terms fell from US\$15.37 per MMBtu to US\$11.54 per MMBtu. To meet reduced demand, imports dropped from 17 billion m^3 to 11.8 billion m^3 of which 88% via pipelines from

available at PETROBRAS (2016), *Management Report 2015*. Viewed at: http://www.investidorpetrobras.com.br/en/annual-reports/report-administration.

⁷⁴ PETROBRAS Distribuidora online information. Viewed at: http://www.br.com.br/pc/a-petrobras-distribuidora; Sindicato Nacional das Empresas Distribuidoras de Combustíveis e de Lubrificantes (2016), http://www.sindopolis.com.br/wp-content/uploads/2016/07/ANUARIO 2016 TOTAL FINAL2 WEB-1.pdf.

⁷⁵ ANP online information. Viewed at: http://www.anp.gov.br/wwwanp/precos-e-defesa-da-concorrencia.

⁷⁶ Reuters online information, "Exclusive: Petrobras drags heels on Brazil fuel-price policy", 3 August 2015. Viewed at: http://www.reuters.com/article/us-brazil-petrobras-fuel-exclusive-idUSKCN0Q828220150803; and *Wall Street Journal*, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Journal, "Brazil's Petrobras Raises Fuel Prices", and Wall Street Prices Raises Fuel Prices Raises Raises Fuel Prices Raises Raises Fuel Prices Raises Fuel Prices Raises Raises

30 September 2015. Viewed at: http://www.wsj.com/articles/brazils-petrobras-raises-fuel-prices-1443608284.

17 IMF (2016), Brazil - Staff Report for the 2016 Article IV Consultation, Country Report No. 16/348,

14 October. Viewed at: http://www.imf.org/external/pubs/ft/scr/2016/cr16348.pdf.

78 EIU (2016), Industry Report – Automotive – Brazil – 3rd Quarter, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

⁷⁹ PETROBRAS ex-factory prices for gasoline rose from R\$1,308 per litre to R\$1.363 per litre (November 2013), R\$1.415 per litre (November 2014), R\$1.518 per litre (September 2015), R\$1.464 per litre (October 2016), R\$1.410 per litre (November 2016) and R\$1.528 per litre (December 2016). Those of diesel rose from R\$1.398 per litre to R\$1.4168 per litre (March 2013), R\$1.490 per litre (May 2013), R\$1.617 per litre (November 2013), R\$1.707 per litre (November 2014), R\$1.772 per litre (September 2015), R\$1.729 per litre (October 2016), R\$1.543 per litre (November 2016) and R\$1.690 per litre (December 2016).

80 Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf.

81 Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf. Bolivia and recently from Argentina, whereas the rest came in the form of liquefied natural gas (LNG) mainly from Nigeria, Trinidad and Tobago, and Qatar. PETROBRAS is practically the sole supplier of natural gas in the country. Although other agents produce natural gas, they usually sell their gas to the state company. In 2016, PETROBRAS was also responsible for 99.97% of imported gas, including both LNG and pipeline imports. It owns all gas processing units and regasification plants in the country and has participation, either directly or through its subsidiary Petrobras Gas (Gaspetro), in 20 out of the 27 local gas distribution utilities. The development of gas discoveries at the offshore south-eastern basins is advancing and national production is set to rise considerably; its proven reserves were estimated at 0.43 trillion m³ in 2015. Its floating storage and regasification units (FSRU) can handle imports of liquefied natural gas (LNG) in periods of peak demand for natural gas. As of December 2016, Brazil hosted 9,409 km (9,489 km in 2012) of gas transmission pipelines, 97% of which had PETROBRAS among its shareholders. Furthermore, 69% of the pipelines were operated by Transpetro, another PETROBRAS subsidiary.

- 4.60. The regulatory framework for natural gas activities remains unchanged.⁸² In addition to the E&P regime (Section 4.4.3.1.2), a 2009 Gas Law (Lei do Gás) governs auctions for concessions in specific cases, including transportation via newly built pipelines considered of "general interest", and storage in hydrocarbon reservoirs returned to the State.⁸³ The duration of the concession for storage activities is not established by law, but by the MME upon consultation with the ANP. 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.⁸⁴ 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.
- 4.61. Regulatory framework improvements are under consideration in the context of a Federal Government Gas to Grow (Gás para Crescer) initiative aimed at stimulating natural gas participation in the Brazilian energy mix through action in areas such as: natural gas commercialization; an entry-exit tariff model; shared access in essential facilities; stimulation of harmonization of state-level and federal regulations; incentives for the development of natural gas demand; harmonization of the electricity and natural gas sectors; independent integrated management of the transmission system and storage facilities; commercialization policies for sharing natural gas in production sharing contracts across the union; taxation challenges; and, support to negotiations on Bolivian gas contracts or other alternatives. 85 Following consultations with academics, companies, state entities and other stakeholders, in 2016 a working committee was set up to discuss and develop regulatory improvements in detail.

4.2.3.3 Biofuels

4.2.3.3.1 Ethanol

4.62. During the review period, Brazil retained its position as the world's second-largest producer and exporter of ethanol as output grew from 23.5 million m³ to 30.2 million m³ and exports slowed down (2012-2014) before rising by 33.6% in 2015.86 In 2016, the total number of sugar-ethanol mills was estimated at 378 units; PETROBRAS is a shareholder in 11 units which processed about 40 million tons per year of sugarcane during the review period. In the 2012/13 harvest, they

⁸² More information on the regulatory and procedural aspects of the natural gas regime is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

⁸³ This regime does not apply to natural gas pipelines covered by international treaties; an authorization regime, administered by the ANP, applies in this case. Law No. 11.909, 4 March 2009.

84 Under the Constitution, the federal states 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.

⁸⁵ Under an entry–exit gas tariff system, reservation of capacity is split into entry capacity, to transport gas from the injection points to a virtual balancing point, and exit capacity, to transport gas from the balancing point to the exit points in the system.

⁸⁶ Renewable Fuels Association online data. Viewed at:

http://ethanolrfa.org/resources/industry/statistics/#1454098996479-8715d404-e546; Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at:

http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf; and USDA Foreign Agricultural Service (2016), Brazil Biofuels Annual - Annual Report 2016, Global Agricultural Network Report Number BR16009, 12 August. Viewed at:

http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Sao%20Paulo%20ATO_Brazil_8 -12-2016.pdf.

produced 1 billion litres of ethanol. In its Strategic Plan 2017-2021, PETROBRAS foresees a regression of its biofuels production.87 The market share of PETROBRAS in Brazilian ethanol production is quite insignificant. The ethanol fuel industry remained dependent on sugar output, support and pricing developments as well as petrol prices subsidization over recent years (see below and Section 4.4.3.1.3).88

- 4.63. Since April 2010, Brazil has reduced its import tariff on ethanol (HS 2207) from 20% to zero by including it in its national basic "list of exceptions" to the MERCOSUR CET; as of 24 September 2015, this and other exceptions were extended until 31 December 2021 (Sections 2.6.2.1.1, 3.1.3.1 and 3.1.3.2).89
- 4.64. The change in ethanol blend ratio in gasoline is a policy instrument used when the biofuel supply is low. During the review period, the mandatory ethanol blend ratio, which may range from 18% to 27.5%, was raised for regular gasoline from 20% (October 2011-April 2013) to 25% (May 2013-March 2015) and as from 16 March 2015 it has been at 27% (E27). 90 The blending requirement for premium gasoline remains unchanged at 25%. 91 Ethanol prices are not controlled, and fluctuations in relative prices lead to changes in consumption patterns; as sugarcane represents 60%-70% of the cost of producing ethanol, high sugar and therefore ethanol prices act as a disincentive to the use of ethanol at petrol stations. 92 Between 2012 and 2015, the average retail price for ethanol rose progressively from R\$1,943 per litre to R\$2,230 per litre. 93 This increase was driven by the re-introduction of the CIDE levy on gasoline, the maintenance of a zero rate of PIS and COFINS taxes on ethanol and their increase for gasoline, and the readjustment of the ex-refinery prices for gasoline A and diesel (Section 4.4.3.1.3), as well as the 34% rise in demand for hydrated ethanol in 2015.94
- 4.65. During the review period, in addition to mandatory fuel blending, other support measures for the production and consumption of ethanol involving cross-subsidization, credit facilities and tax incentives remained in place. 95 Sugarcane producers from the north and northeastern states received a direct subsidy, the Regional Producer Subsidy; as of July 2015, no such subsidy has been paid to producers due to the country's economic recession. Tax incentives for flex-fuel cars (88.4% of all motor vehicles sales in 2015), involving lower rates for the tax on Industrialized Products (IPI), the Contribution to the Social Integration Program/Contribution for Financing Social Security (PIS/COFINS), and the state tax for circulation of goods and services (ICMS), continued to play an important role in supporting ethanol consumption (Sections 3.3.1 and 4.3.5).96

⁸⁹ Ministry of Development, Industry and Commerce (MDIC)/Chamber of Foreign Trade (CAMEX) Resolution 92, 24 September 2015. Viewed at: www.camex.gov.br/legislacao/interna/id/1455

⁹¹ OECD (2016), Agricultural Policy Monitoring and Evaluation 2016, 16 June. Viewed at: http://www.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2016 agr pol-2016-en.

 92 Sugarcane is virtually the sole source of feedstock for ethanol production in Brazil. EIU (2016), Industry Report – Automotive – Brazil – 3rd Quarter, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

93 Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf.

⁹⁴ EPE (2016), *Análise de Conjuntura dos Biocombustíveis Ano 2015.* Viewed at: http://www.epe.gov.br/Petroleo/Documents/An%C3%A1lise%20de%20Conjuntura%20dos%20Biocombust%C 3%ADveis%20-

%20boletins%20peri%C3%B3dicos/An%C3%A1lise%20de%20Conjuntura%20dos%20Biocombust%C3%ADvei

s1%20-%20Ano%202015.pdf.

95 USDA Foreign Agricultural Service (2016), *Brazil Biofuels Annual - Annual Report 2016*, Global Agricultural Network Report Number BR16009, 12 August. Viewed at: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Sao%20Paulo%20ATO_Brazil_8 -12-2016.pdf.

⁹⁶ According to National Association of Motor Vehicle Manufacturers (ANFAVEA) data cited in USDA Foreign Agricultural Service (2016), Brazil Biofuels Annual - Annual Report 2016, Global Agricultural Network Report Number BR16009, 12 August. Viewed at:

⁸⁷ PETROBRAS (2016), *Petrobras' Strategic Plan 2017-2021*. Viewed at: http://www.slideshare.net/petrobrasri/plano-estratgico-e-plano-de-negcios-e-gesto-20172021.

⁸⁸ EIU (2016), *Industry Report – Energy – Brazil*, 30 August.

⁹⁰ USDA Foreign Agricultural Service (2016), Brazil Biofuels Annual - Annual Report 2016, Global Agricultural Network Report Number BR16009, 12 August. Viewed at: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual Sao%20Paulo%20ATO Brazil 8 -12-2016.pdf.

Preferential tax treatment for ethanol compared to gasoline under both the Contribution for Intervention in Economic Domain (CIDE) and PIS/COFINS programmes remains in place; in addition, several states provide differential treatment for ethanol by using different rates of state taxes for circulation of goods and services (ICMS) on ethanol (12%-27%) and gasoline (25%-31%) (Section 3.3.1).

4.66. BNDES continues to provide specific administered interest rate credit lines for the sugar, ethanol, and bioenergy industries to fund investments on sugarcane production (Section 4.2.4), expansion of industrial capacity for sugar and ethanol, sugarcane biomass technology, cogeneration, logistics, and multimodal transportation. Total financing for the industry in 2015 was R\$2.74 billion, down 60% from 2014 (R\$6.8 billion) due to financial constraints faced by the Federal Government. 97 The ethanol stock programme, also known as the BNDES PAISS programme, which offered up to R\$500 million per beneficiary and was due to expire in 2013, was extended until 2015.

4.2.3.3.2 Biodiesel

- 4.67. During the review period, Brazil's biodiesel output grew steadily from 2.7 million m³ (2012) to 3.9 million m³ (2015), inter alia, supported by the increase of the biodiesel use mandate (see below). In 2015, Brazil remained the world's second-largest producer of biodiesel after the United States. 98 As at December 2016, Brazil had 48 plants authorized to produce biodiesel and their capacity represented approximately 1.9 times the mandatory biodiesel production to be blended in mineral diesel; PETROBRAS' four plants accounted for 6.8% of total installed capacity.
- 4.68. The customs tariff on biodiesel (HS 3826) remains at 14%.
- 4.69. The 2004 National Biodiesel Production Programme (PNPB) remains in place. Its aim is to promote domestic biodiesel production, reduce petroleum import dependency, lower pollutant emissions and health-related costs, generate jobs and income, and alleviate regional economic disparities by passing on benefits to family farmers. It is implemented through blending requirements and auctions promoted by ANP. Buyers in auctions are mineral diesel producers and importers, and PETROBRAS has a significant presence. Biodiesel producers holding a Social Fuel Seal Certificate sell first in these auctions (see below and Section 4.2.4.1.3).
- 4.70. Since 2014, the mandatory blending ratio of biodiesel has been raised, and it is set to rise further. It rose from 5% (January 2010) to 6% (July 2014), and then 7% (November 2014). 99 The mandatory biodiesel-use ratio is to continue rising, to 8% in March 2017, 9% in March 2018, and 10% in March 2019. 100 As of January 2016, a voluntary biodiesel blending ratio above the mandatory 7% level for several heavy duty fleets like long haul trucks, buses, rail transportation, and agricultural machinery was authorized; however, if requested by the end users, the MME has the authority not only to authorize but also set the actual voluntary blend to be used by the fleet. 101 Furthermore, in 2016, the National Congress set the need to conduct tests in diesel engines over a period of 12 to 36 months to verify the feasibility of a 10% and 15% blending ratio; if results are positive, up to 15% biodiesel mandate could be an option by March 2019.

http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Sao%20Paulo%20ATO_Brazil_8 -12-2016.pdf.

⁹⁸ Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario Estatistico ANP 2016.pdf; and Statista online data. Viewed at: https://www.statista.com/statistics/271472/biodiesel-production-in-selected-countries/.

⁹⁹ Law No. 13.033/2014; and Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario Estatistico ANP 2016.pdf.

100 Law No. 13.263/2016. Viewed at: http://www.planalto.gov.br/ccivil 03/_ Ato2015-

2018/2016/Lei/L13263.htm.

¹⁰¹ National Energy Policy Council (CNPE) Resolution No. 3, 21 September 2015. Viewed at: http://www.mme.gov.br/documents/10584/2431527/Resolu%C3%A7%C3%A3o_3_CNPE_Biodiesel.pdf/d7480 b33-c6b4-45fe-a20b-19b0e23f3293.

⁹⁷ USDA Foreign Agricultural Service (2016), Brazil Biofuels Annual - Annual Report 2016, Global Agricultural Network Report Number BR16009, 12 August. Viewed at: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Sao%20Paulo%20ATO_Brazil_8

- 4.71. Similarly to ethanol, biodiesel benefits from cross-subsidization through federal tax exemptions and incentives for PIS/PASEP and COFINS taxes depending on the nature of the raw material, size of producer and region of production, in order to encourage the production of biodiesel and to promote social inclusion.¹⁰²
- 4.72. The domestic biodiesel market remains regulated by the Government through an ANP operated electronic auction system (reverse auctions), which gives preference to producers certified with the Social Fuel Seal. The ANP sets the volume of government purchases and a maximum price that suppliers must underbid. The distributors are responsible for the commercialization of biodiesel. 104 PETROBRAS operates as a system administrator and has no interference with the volumes to be acquired by distributors. Biodiesel prices received by producers are determined by the auction system. At auctions held between June 2014 and October 2016, average prices followed an overall rising trend and ranged from R\$1,884.15 per m³ (June 2014) to R\$2,855.10 per m³ (October 2016). 106

4.2.4 Electricity

4.2.4.1 Main features

4.73. Between 2011 and 2015, Brazil's installed capacity and power generation continued to grow faster than electricity consumption. In 2015, Brazil had 140.6 GW of installed capacity for electricity generation, generated 581.5 TWh of electricity, and consumed 522.8 TWh; these figures represented annual increases of 20.1%, 9.3% and 8.9% respectively compared to 2011 levels. 107 Hydroelectric sources accounted for 64% (70.4% in 2011) of installed capacity, followed by thermal (30.2%), wind (3.5%) and, nuclear (2.4%) sources. ¹⁰⁸ Brazil's electricity imports in 2014 accounted for 5.7% of domestic supply, down from 7.4% in 2012; the drop in the hydropower share due to Brazil's exceptional drought in 2015 and 2016 was compensated by the output of thermal power plants which increased the cost of energy. 109 Electricity produced by the Itaipu

¹⁰² According to ANP data soybean oil represents 78% of total biodiesel feedstock, followed by animal tallow (18%); therefore, the profitability of the sector is highly dependent on oilseed prices. Ministério de Minas e Energía/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Anuário estatístico brasileiro do petróleo, gás natural e biocombustíveis-2016. Viewed at: http://www.anp.gov.br/wwwanp/images/publicacoes/Anuario_Estatistico_ANP_2016.pdf.

103 To obtain this certification, biodiesel producers must purchase a minimum share of raw materials from family farmers registered under the PRONAF (Section 4.2.4.3). Minimum shares differ by region: 15% in the north and mid-west; 30% in the south-east, north-east and the semiarid area; and 35% in the south. In the 2014/2015 harvest biodiesel producers purchases stood at approximately R\$ 4 billion.

¹⁰⁴ Ministério de Minas e Energia/Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (2016), Resolução ANP nº 30 - June, 2016. Viewed at: http://www.anp.gov.br/wwwanp/?dw=81898.

¹⁰⁵ Ministério de Minas e Energia *Portaria Nº 476 de 15 de agosto de 2012.* Viewed at:

http://www.lex.com.br/legis 23593044 PORTARIA N 476 DE 15 DE AGOSTO DE 2012.aspx.

106 USDA Foreign Agricultural Service (2016), Brazil Biofuels Annual - Annual Report 2016, Global Agricultural Network Report Number BR16009, 12 August. Viewed at: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Sao%20Paulo%20ATO_Brazil_8

-12-2016.pdf.

107 WTO document WT/TPR/S/283/Rev.1, 26 July 2013; and Ministério de Minas e Energia/Empresa de Macional 2016 - Relatório Síntese - ano base 2015, June.

https://ben.epe.gov.br/downloads/S%c3%adntese%20do%20Relat%c3%b3rio%20Final_2016_Web.pdf.

¹⁰⁸ There are two operational nuclear reactors in Brazil; a third reactor was due to come online by January 2016 but construction of the plant has become paralysed due to investigations by federal prosecutors into corruption.

109 Ministério de Minas e Energia/Empresa de Pesquisa Energética (2015), Balanço Energético Nacional 2015 - ano base 2014. Viewed at: http://www.mme.gov.br/web/guest/publicacoes-e-indicadores/balanco-

nacional?p p auth=dEK5UxZd&p p id=20&p p lifecycle=0&p p state=normal&p p mode=view& 20 struts action=%2Fdocument library%2Fview file entry& 20 redirect=http%3A%2F%2Fwww.mme.gov.br%2Fweb %2Fguest%2Fpublicacoes-e-indicadores%2Fbalanco-energetico-

nacional%3Fp_p_auth%3DdEK5UxZd%26p_p_id%3D20%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26 p_p_mode%3Dview%26_20_entryEnd%3D20%26_20_displayStyle%3Ddescriptive%26_20_viewEntries%3D1 %26_20_viewFolders%3D1%26_20_expandFolder%3D0%26_20_folderStart%3D0%26_20_action%3Dbrowse Folder%26_20_struts_action%3D%252Fdocument_library%252Fview%26_20_folderEnd%3D50%26_20_entry Start%3D0%26_20_folderId%3D1143895&_20_fileEntryId=2860427.

plant and imported from Paraguay continues to account for most of Brazil's imports. 110 In 2015, Brazil imported 33,651.5 GWh from Paraguay and 913.2 GWh from the Bolivarian Republic of Venezuela, and exported 219 GWh to Argentina and 0.4 GWh to Uruguay. Although under the Ten-Year Plan for Energy Expansion 2024 (Section 4.4.4.2), the share of hydropower capacity is to rise and a number of auctions have been conducted, construction of several hydroelectric plants is behind schedule. The main power consumption groups consist of manufacturing (37.6%), residential consumers (25.1%), service activities (17.5%) and agriculture (5.1%). 111

4.74. ELETROBRAS continues to play a major role in the electricity sector; as at March 2017, the Federal Government owned 40.99% of its common shares, BNDES/BNDESPAR 15.99%, Brazilian Government funds 3.44%, and others 19.94%; in addition, its preferred shares, i.e. those with a higher claim on its assets and earnings than common stock, are owned by BNDES/BNDESPAR (2.73 %) and others funds (16.89%). In the third quarter of 2016, the company accounted for 32% of Brazil's installed generation capacity, as well as 47.1% of its transmission lines compared to 35% and 55% in 2010, respectively. As of January 2017, there were 77 companies responsible for transmission networks and 64 distribution companies (same as in 2013), including state- and privately-owned enterprises. ELETROBRAS' financial problems remain an issue; in 2014 and 2015, it registered losses of R\$3 billion and R\$14.4 billion, respectively, mainly due to its distribution subsidiaries results, GSF (generation scale factor) risk and compulsory loan contingencies, and has had its American Depository Receipts suspended by the New York Stock Exchange (NYSE) between May and October 2016. 113 The Government was committed to improving ELETROBRAS' indebtedness by making advanced payments of R\$2.9 billion for future capital increase in 2016. Although ELETROBRAS is likely to remain a state-owned company, it is expected to privatize its distribution companies by the end of 2017.

4.2.4.2 Policy and institutions

4.75. Brazil's Strategic Planning 2014-17 for the electricity sector consolidates strategic objectives and initiatives to improve its performance. 114 Its objectives include: the development and competitiveness of the electricity market; the balanced expansion of the electricity sector ensuring energy security; the supply of adequate and qualitative electricity services; the boosting of the efficiency and innovation of the power industry; the search for qualitative and expeditious decision-making and simplification and reduction of bureaucracy; and, increased coherence of regulatory acts.

4.76. The electricity sector's institutional framework remains unchanged and 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), conducting informative studies for energy

http://relatorios.aneel.gov.br/_layouts/xlviewer.aspx?id=/RelatoriosSAS/RelSampClasseCons.xlsx&Source=htt p://relatorios.aneel.gov.br/RelatoriosSAS/Forms/AllItems.aspx&DefaultItemOpen=1.

http://ri.eletrobras.com/pt/ri/Paginas/Capital-Social.aspx; ENEL online information. Viewed at: https://www.enel.com/content/dam/enel-common/press/en/1666524-1_PDF-1.pdf; and Investopedia online information. Viewed at: http://www.investopedia.com/terms/p/preferredstock.asp

¹¹⁰ Itaipu is jointly administered by Brazil through ELETROBRAS and Paraguay; each country has rights on half of its capacity.

¹¹¹ ANEEL online data. Viewed at:

¹¹² ELETROBRAS consists of the following 14 companies: Holding, CGTEE, Chesf, Eletronorte, Eletronuclear, Eletrosul, Furnas, Amazonas Energia, Amazonas Geração e Transmissão, Distribuição Acre, Distribuição Alagoas, Distribuição Piauí, Distribuição Rondônia, Distribuição Roraima, and it owns half of Itaipu Binacional. ELETROBRAS had 50.93% of the shares of the company Celq Distribuição S.A. (CELG) an energy distribution company operating in the Brazilian state of Goiás until November 2016 when Enel Brasil S.A. (subsidiary of the Italian Enel S.P.A.) acquired 94.6% of CELG's shares in a public tender. Moreover, the ELETROBRAS holding controls the Electric Energy Research Center (Eletrobras Cepel), and Eletropar Participações S.A. (Eletrobras Eletropar). It owns 47 hydroelectric power plants, 121 thermal power plants, 2 nuclear power plants, 60 wind farms, and 1 solar power plant. ELETROBRAS (2016), Annual and Sustainability Report 2015. Viewed at: http://www.eletrobras.com/elb/main.asp?Team={D00A1456-A64A-40DC-B7D8-BB2E23A8FACE}; ELETROBRAS online information. Viewed at:

¹¹³ In May 2016, the NYSE suspended the trading of the ADRs issued by ELETROBRAS because it was not in a position to file its annual reports on Form 20-F for the years ending on 31 December 2014 and 2015; Both the 2014 20-F and 2015 20-F were filed in October 2016, and ELETROBRAS' ADRs resumed their NYSE trading as from 13 October 2016. EIU (2016), *Industry Report – Energy – Brazil*, 30 August.

114 ANEEL online information. Viewed at: http://www.aneel.gov.br/planejamento-estrategico-ciclo-2014-

<u>2017</u>.

policy-making; the Electric Energy Commercialization Chamber (CCEE), a non-profit private entity managing electricity trading; and the Electricity Industry Monitoring Committee (CMSE), which monitors the continuity and safety of electricity supply.

4.2.4.3 Regulatory and operational aspects

- 4.77. During the review period, the main regulatory framework of the electricity sector remained virtually unchanged. Law No. 12,783 of 11 January 2013, which governs electricity generation, transmission, and distribution concessions, was amended by Law No. 13.203 of 8 December 2015, which provides for the renegotiation of the hydrological risk of electricity generation and establishes the bonus for the granting of a concession. ¹¹⁵
- 4.78. 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 and carried out by the CCEE. The generation concessions granted for hydropower 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 set by the ANEEL, including the remuneration tariffs to be applied, a guaranteed supply quota allocation, and quality standards. Quotas are allocated through contracts and they are revised periodically by ANEEL. Regarding self-generation of hydropower, concessions for up to 50MW may be extended once for up to 30 years; generators may sell any non-consumed surplus in the spot market and those not linked to the National Interconnected Grid (SIN) are not bound by the 50MW threshold. In the case of thermo-electric power generation, the renewal of concessions is allowed for up to 20 years and must be requested by the concessionary at least 24 months prior to the expiration of the concession.
- 4.79. 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. 117 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 with a capacity greater than 50 MW are granted for 35 years, non-renewable. In 2015, legislation in this area was modified to include the possibility of undertaking existing hydropower plants auctions as a means of collecting a bonus for the concession (a payment for the concession right); two MME ordinances were issued to define the possible bidding evaluation criteria, i.e. through the offering of the lowest tariff (2015) and the additional possibility of bidding by offering the largest payment of bonus (2017). 118 On 25 November 2015, Brazil held one auction under the new regulatory framework that led to the concession of 29 existing hydropower plants, totalling 6 GW of installed power, representing a R\$17 billion bonus payment for these concessions. As of March 2017, no auctions have been held under the 2017 alternative criterion.
- 4.80. Concessions for transmission and distribution of electricity can be extended once for up to 30 years. In the case of transmission, annual revenue in the form of a user transmission fee paid by the generators and consumers is fixed by ANEEL. In 2015, the Government extended for 30 years the concessions of 39 energy distributors that were maturing between 2015 and 2017, subject to quality, economic, financial and management goals; the signing of these extension contracts represented the beginning of a new tariff cycle aimed at reaching a competitive tariff

¹¹⁵ MME online information. Viewed at:

http://www.mme.gov.br/documents/10584/496731/Lei n 13.203-2015/f6c5c545-1cce-40c5-8ba2-3150861c3774?version=1.0.

ANEEL may delegate its responsibility for conducting energy auctions to the CCEE.

Thermoelectric and hydroelectric power plants with generation capacities of up to 5 MW and 1 MW, respectively, need only be registered with ANEEL.
 Law No. 12.783/2013 modified by Law No. 13.203/2015, and Auction ANEEL No. 15/2015. Portal

¹¹⁸ Law No. 12.783/2013 modified by Law No. 13.203/2015, and Auction ANEEL No. 15/2015. Portal Brasil online information. Viewed at: http://www.brasil.gov.br/economia-e-emprego/2015/11/leilao-de-hidreletricas-negocia-r-17-bilhoes-em-outorgas.

level within five years, i.e. by 2020. 119 The generation, transmission, and distribution of electricity concessions that are not renewed are granted in a competitive auction, for up to 30 years.

- 4.81. Brazil's electricity market remains 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 are not allowed to operate in the ACL, where large consumers (above 3MW/year) may purchase energy from generating or trading companies through freely negotiated bilateral contracts. 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. 120 In 2016, the size of the ACL market with more than 6,000 (1,427 in 2012) entities registered as free consumers at the CCEE was estimated to account for 25% (27.2% in 2012) of domestic electricity consumption.
- 4.82. Energy auctions organized by the MME 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. 121 Between 2013 and 2016, 19 energy purchase auctions for new power plants were conducted. As of 2016, more than 20,000 MW of new capacity was contracted by distribution companies, with contracts ranging from 15 to 30 years. 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 (Section 3.1.1).
- 4.83. Average electricity supply tariffs dropped by 13% in 2013 and then rose progressively by 8.8% (2014), 42.6% (2015), and 6.7% (2016) to R\$ 421.72 per MWh excluding taxes; these developments (except for 2015) were broadly in line with the average inflation rate of 6.7% in the period 2012-15 (Section 1.2.1). 122 These tariff developments, inter alia, were due to: the mid-2012 compensation to some electricity companies in return for an early renewal of contracts due to expire in 2015 at lower tariffs; electricity tariff cuts for households and businesses in 2013 compensated by subsidies to distributors as energy costs rose when low water levels at hydro-plants forced a turn to more expensive thermal plants (Section 4.4.4.1); the post-October 2014 sharp rise in tariffs; and, the 2015 above-average rainfall and a fall in electricity demand allowing dialling down of generation from thermal plants. 123
- 4.84. The tariffs charged to the final consumer remain regulated by the ANEEL and vary depending on operational and other costs incurred by the distribution company. Several changes were introduced during the review period. Since 2015, a tariff flag system, which allows the monthly pass-through of the extra costs of generating thermal energy to consumers, has been applied by all concessionaires connected to the SIN and as of 1 July 2015 it was expanded to energy distribution concessionaires; the system is aimed at preventing energy distributors experiencing financial problems again. 124 Electricity tariffs continue to ensure cross-subsidization among different consumer categories; in 2016, aquafarming, agricultural irrigation, and manufacturing benefited from 52.8%, 41.5% and 11.3% lower electricity tariffs (excluding taxes)

¹¹⁹ EBC Agência Brasil online information, "Aumento da oferta de energia pode estabilizar tarifas em 2016", 1 January 2016. Viewed at: http://agenciabrasil.ebc.com.br/economia/noticia/2016-01/aumento-<u>da-oferta-de-energia-pode-estabilizar-tarifas-em-2016</u>.

¹²⁰ Decree No. 5.163 of 30 July 2004.

¹²¹ 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.

¹²² ANEEL online data. Viewed at: http://relatorios.aneel.gov.br/ layouts/xlviewer.aspx?id=/RelatoriosSAS/RelSampRegCC.xlsx&Source=http://r <u>elatorios.aneel.gov.br/RelatoriosSAS/Forms/AllItems.aspx&DefaultItemOpen=1</u>.

123 EIU (2016), *Industry Report – Energy – Brazil*, 30 August.

The system is operated through three flags depending on the conditions of electricity generation: green flag (favourable generation conditions, no tariff increase); yellow flag (less favourable generation conditions, tariff increase by R\$0.015 per kWh); and, red flag - tier 1 (more costly generation conditions, tariff increased by R\$0.030 per kWh) and red flag - tier 2 (even more costly generation conditions, tariff increase by R\$0.045 per kWh consumed). ANEEL online information. Viewed at: http://www.aneel.gov.br/bandeiras- tarifarias.

than those set for services activities, respectively. The tax burden on end-user electricity tariffs remains significant and differs greatly across consumer groups; in 2016, taxes and charges raised the average electricity supply tariff by 38.8% whereas tax-inclusive tariffs for aquafarming, agricultural irrigation, manufacturing, and services activities reflected an increase of 12.8%, 14.4%, 37.4% and 42.2%, respectively. According to a 2011 Federation of Industries of the State of Rio de Janeiro (FIRJAN) survey at the time of the previous TPR, Brazil had the fourth (out of 27 countries) highest electricity price for industrial consumers; 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. No recent appraisal on Brazil's electricity tariff competitiveness and the budgetary outlays for tariff subsidization was available from the authorities.

4.85. During the review period, the energy development account (CDE), which is a fund regulated by the MME and managed by ELETROBRAS, continued to be used for: the promotion of universal access to electricity (see below); the granting of electricity tariff discounts to various end-users (e.g. low income consumers, agricultural producers, and irrigation); power generation in isolated electrical systems (fuel consumption account – CCC); payment of compensation for concessions; the maintenance of a moderate tariff; and, the promotion of the competitiveness of energy produced from coal among others. 128 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, the annual payments made by the concessionaires, fines paid to ANEEL, and Federal Government credits. On 17 November 2016, Law No. 13,360 set the objective of promoting a better distribution of CDE resources, as well as measures to promote the privatization of power distribution companies whose concessions expired and were not renewed but remain operated by ELETROBRAS because a legislative amendment provided for the possibility of their privatization. Between 2013 and 2015, the CDE funding rose from R\$14.1 billion to R\$25.2 billion, and in 2016 dropped to R\$18.3 billion of which 34.7% was channelled to the fuel consumption account and 33.7% to support tariff discounts to certain end-users; in 2015 and 2016, 74.9% and 64.8% of its funding originated in fees for the use of the distribution and transmission systems.

4.86. No major changes were made to the 2003 Light for All (*Luz Para Todos*) programme, aimed at promoting universal access to electricity, in addition to the subsidized electricity tariffs to low-income families, involving invoice discounts ranging from 10% to 100%. As of November 2015, the programme had brought electricity to 15.6 million (11.2 million in 2009) households in remote areas. ¹²⁹ Originally intended to terminate in 2008, the programme was included in the *Programa de Aceleração do Crescimento* (PAC) and extended until 2018. ¹³⁰ By 2015, an amount of R\$22.7 billion was invested under the programme, of which R\$16.8 billion was financed by the Federal Government, and the remainder with resources from state governments and energy distributors.

http://relatorios.aneel.gov.br/ layouts/xlviewer.aspx?id=/RelatoriosSAS/RelSampRegCC.xlsx&Source=http://relatorios.aneel.gov.br/RelatoriosSAS/Forms/AllItems.aspx&DefaultItemOpen=1.

¹²⁵ ANEEL online data. Viewed at:

There are federal (PIS/COFINS), state (ICMS), local (CIP or COSIP (Contribuição para Custeio do Serviço de Iluminação Pública or Contribution for the Cost of Public Lighting) and other taxes/taxes (CCC (Conta de Consumo de Combustíveis or Fuel Consumption Account); ECE (Encargo de Capacidade de Emergência or Emergency Capacity Charge); RGR (Reserva Global de Reversão or Global Reservation of Reversion); TFSEE (Taxa de Fiscalização de Serviços de Energia Elétrica or Electric Energy Services Supervisory Tax); CDE (Conta de Desenvolvimento Energético or Energetic Development Account); ESS (Encargos de Serviços do Sistema); P&D (Pesquisa e Desenvolvimento e Eficiência Energética or Research and Development and Energetic Efficiency); ONS (Operador Nacional do Sistema or National System Operator); and, CFURH (Compensação financeira pelo uso de recursos hídrico or Financial compensation for the use of water resources) included in the electricity bill. *The Brazil Business*, "Electricity Prices in Brazil". Viewed at: http://thebrazilbusiness.com/article/electricity-prices-in-brazil;; and ANEEL online data. Viewed at: http://relatorios.aneel.gov.br/ layouts/xlviewer.aspx?id=/RelatoriosSAS/RelSampClasseCons.xlsx&Source=htt p://relatorios.aneel.gov.br/ RelatoriosSAS/Forms/AllItems.aspx&DefaultItemOpen=1.

p://relatorios.aneel.gov.br/RelatoriosSAS/Forms/AllItems.aspx&DefaultItemOpen=1.

127 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. WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

128 ANEEL online information. Viewed at: http://www.aneel.gov.br/informacoes-tecnicas/-

¹²⁸ ANEEL online information. Viewed at: http://www.aneel.gov.br/informacoes-tecnicas/-/asset_publisher/CegkWaVJWF5E/content/conta-de-desenvolvimento-energetico-cde/654800?inheritRedirect=false.

¹²⁹ Portal Brasil online information, "Programa Luz para Todos chegou a 15,6 milhões de brasileiros em 12 anos", 11 November 2015. Viewed at: http://www.brasil.gov.br/infraestrutura/2015/11/programa-luz-para-todos-chegou-a-15-6-milhões-de-brasileiros-em-12-anos.

¹³⁰ Decree No. 8.493, 15 July 2015.

4.3 Manufacturing

4.3.1 Main features

4.87. Brazil has a large and diversified manufacturing sector, but while parts of it are thriving, others are facing hard times, in part because they are weakly integrated into the world economy (Sections 4.3.5 and 4.3.6). 131 Manufacturing's share of total value added decreased progressively from 12.6% in 2012 to 11.7% in 2016 (Table 1.1); its share in employment also declined slightly from 12.8% in 2012 to 12.2% in 2014. No labour or total factor productivity data are available from the authorities; in 2014, its employment share was virtually equal to its share in gross value added, which implies that labour productivity in manufacturing was much higher than in agriculture. Manufacturing continued to register a trade deficit during the review period, although a reduction in unit labour costs and currency depreciation contributed to a rise in exports of manufactured goods. 132 It accounted for 37.9% of total merchandise exports in 2016 (33.8%) in 2012), mainly transport equipment, machinery, chemicals, and iron and steel, as compared to 77.1% (73.1% in 2012) of total imports with major categories remaining chemicals, electrical machines, non-electrical machinery and transport equipment (Chart 1.1). 133

4.3.2 Policy and institutions

4.88. During the review period, as a response to the persisting effects of the economic crisis and the growing trade deficit in the manufacturing sector, the Plano Brasil Maior (2011-14), aimed at stimulating industrial production and technology development, replaced the Productive Development Policy (2008-10); virtually all tools used under these plans, including credit lines under administered interest rate or favourable conditions, public procurement preferences (until 2016 and June 2017), fiscal incentives, and border measures, remain in place (Sections 3.2.4, 3.3.1, 4.3.3 and 4.3.4). ¹³⁴ In April 2016, the More Productive Brazil (*Brasil Mais* Produtivo) initiative, aimed at increasing the productivity of up to 3,000 participating SMEs by at least 20%, was launched (Section 4.3.4).

4.89. The Ministry of Industry, Foreign Trade and Services (Ministério da Indústria, Comércio Exterior e Serviços (MDIC)) remains, inter alia, responsible for policy development on industry, trade and services, which is implemented through its four agencies: the Secretariat of Industrial Development and Competitiveness (SDCI); the Secretariat of Foreign Trade (SECEX); the Secretariat of Trade and Services (SCS); and, the Secretariat of Innovation and New Business (SINN). 135

4.90. Several structural issues continue to affect the international competitiveness of Brazilian manufacturing, where a few key reforms could unleash significant unexploited potential and play a leading role in raising productivity. According to the OECD, in addition to low integration into international trade, the sector faces high production costs, extensive red tape, insufficient infrastructure, skill shortages, and an overly complex tax system that all together make up the so-called "Brazil cost" holding back domestic industry, which has not benefited enough from the global trends that have shaped industrial production elsewhere. 136 On the other hand, it has many assets to build on, starting with the benefits of scale from its large domestic market but also the

¹³¹ Arnold, J. (2016), *Brazil: A tale of two industries or how openness to trade matters*, OECD online article, 22 March. Viewed at: https://oecdecoscope.wordpress.com/2016/03/22/brazil-a-tale-of-two-industriesor-how-openness-to-trade-matters/.

¹³² IMF (2016), Brazil - Staff Report for the 2016 Article IV Consultation, Country Report No. 16/348, 14 October. Viewed at: http://www.imf.org/external/pubs/ft/scr/2016/cr16348.pdf.

¹³³ In 2015 Brazil broke into the top ten leading iron and steel exporters reaching eighth position compared with its 11th place in 2014. WTO (2016), World Trade Statistical Review 2016, 21 July. Viewed at: https://www.wto.org/english/res e/statis e/wts2016 e/wts2016 e.pdf.

134 More information on the *Plano Brasil Maior* is available in WTO document WT/TPR/S/283/Rev.1,

²⁶ July 2013.

**MDIC online information. Viewed at: http://www.mdic.gov.br/.

***Indicates of firms make it harder for them to

Costs beyond the influence of firms make it harder for them to compete with external competitors both on domestic and export markets, limiting their ability to exploit scale economies. Distorted incentives, including low competitive pressures, mean that firms will not exploit the full potential of internal productivity improvements. They can also impede the functioning of market mechanisms that reallocate resources towards the most productive firms, including new entrants. OECD unclassified document TAD/TC/WP (2016)13/FINAL, 8 September 2016; and OECD (2015), OECD Economic Surveys: Brazil 2015, November. Viewed at: http://www.oecd.org/eco/surveys/Brazil-2015-overview.pdf.

opportunity to develop value chains from its existing areas of strong comparative advantage – such as the agro-food chain, minerals, or "pre-salt" (Section 4.4.3.1) – to develop a more buoyant, more diversified, more sophisticated manufacturing base. Competitive services could enable and maximise the benefits from structural reform (Section 4.5.1).

4.3.3 Border measures

4.91. Since 2012, the average MFN applied tariff for manufacturing products remained virtually unchanged and stood at 11.8% in 2017 (HS definition, Table 3.3). Almost all of the 113 HS tariff lines whose applied rates were increased in 2016 were manufactured goods; similarly, 131 out of the 140 HS tariff lines whose rates decreased were manufactures. Clothing, textiles, and transport equipment benefit from the highest tariff protection among WTO categories of products, with average MFN applied tariffs of 35.0%, 22.6%, and 18.3%, respectively. The number of manufactured products subject to non-automatic import licensing is to decline when the single window reforms will be implemented. Recourse to trade defence mechanisms was strengthened (Sections 3.1.5 and 3.1.6).

4.92. Several export incentives are available (e.g. drawback programme, refund of Social Integration Program (PIS) and Contribution for the Financing of Social Security (COFINS) taxes, official export financing, the Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP)), special zones (e.g. export-processing zones), and action under the June 2015 National Export Plan (Plano Nacional de Exportações). Additional tax refunds also continue to be available under the Reintegra scheme (Section 3.2.4.1). 137 Under Law 13,043 of 2014, the Reintegra scheme, first introduced in 2011 as part of Plano Brasil Maior and due to expire at end-2013, was reinstated and made permanent. Although the Reintegra refund rate was to vary from 0.1% to 3% of export revenue, with a possible additional credit of 2% subject to certain criteria, during the review period, the rate of additional tax refunds was reduced as part of the Government's budget-cutting efforts. 138 Its maximum refund rate was reduced temporarily from 3% of the export revenue to 1% in March 2015, and 0.1% in 2016; the National Export Plan set the rate at 2% in 2017 and 3% in 2018. In order to be eligible, exports must not contain more than 40% imported content. Exceptions apply to goods deemed high-tech (such as aircraft, electronics and pharmaceuticals), which are allowed a 65% imported-content limit. The scope of the programme, which covers 8,620-8,630 tariff items mostly manufactures, was expanded in September 2014 (Decree 8,304) to, inter alia, add sugar, ethanol, and cellulose to the list of eligible products. Under the Brazilian tax system, companies that tend to systematically accumulate tax credits and do not generate enough tax debits to offset them, are entitled to the suspension of some indirect tax on their purchases of inputs and capital goods, in order to avoid such accumulation; the functioning of this regime is currently under consideration under the WTO Dispute Settlement Mechanism (Section 2.5.1).

4.3.4 Domestic support

4.93. Domestic support, amplified under the *Plano Brasil Maior* (Section 4.3.2) and aimed at producers and exporters of manufactured products, continued under several programmes. As of end-August 2016, the following general incentives remained in place: financing in the form of administered interest rate or concessional loans by the National Bank for Economic and Social Development (BNDES), the Brazilian Innovation Agency (FINEP) or federal states; government procurement preferences to local suppliers expanded in 2014 to cover all manufactured goods (until 2016 and 2017); federal, state and municipal tax and non-tax incentives (e.g. IPI tax reductions on several consumer and capital goods, rental subsidies, and donation of land sites); R&D and information technology tax incentives; and, subsidized equipment financing through

¹³⁷ The stated purpose of REINTEGRA is to exempt taxes that are charged throughout the production process of industrialized goods, such as ISS, IOF and CIDE (Section 3.2.4.1). EIU (2016), *Country Commerce - Brazil*, September; and USTR (2016), *2016 National Trade Estimate Report on Foreign Trade Barriers*. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate

¹³⁸ According to Decree 8,415, article 2 (27 February 2015), export revenue is understood as: for direct exports, the value of the goods on board (f.o.b.); and, for exports through exporting commercial enterprises (ECE), the value in the fiscal invoice of goods bought by the ECE. Presidencia da República online information. Viewed at: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Decreto/D8415.htm#art10Exceptions.

BNDES' industrial-financing arm FINAME.¹³⁹ Industry-specific incentives are available for some sectors, including automotive, aeronautics, computing and infrastructure (Sections 4.3.5 and 4.3.6).¹⁴⁰ Some support programmes are linked to Basic Productive Process (PPB) criteria, which constitute agreed manufacturing steps established to recognize the degree of production step-related local content of a product (Sections 3.2.5 and 3.3.1).

4.94. Public procurement preferences to domestic suppliers (until December 2016 and June 2017), tax reductions or financing from public banks linked to production step-related local content requirements have to some extent shielded certain domestic producers from foreign competition (Sections 3.3.1 and 3.3.6). 141 BNDES provided approximately R\$20.8 billion to the Investment Maintenance Program (PSI) in 2015, compared to US\$18 billion (R\$42.5 billion) in 2014, to finance the purchase of locally manufactured capital goods at administered interest rates. 142 BNDES also provides similar financing for wind and solar farm development, contingent upon progressively more stringent production step-related local content requirements. Wind turbine suppliers of any origin are also eligible to BNDES administered interest rate financing, provided the wind towers are built with at least 70% Brazilian steel by 2016, and photovoltaic suppliers use 60% Brazilian-made components by 2020. BNDES funding for FINAME was approximately US\$22.9 billion (R\$53.85 billion) in 2014 and R\$24.9 billion in 2015. The planned total value of foregone tax revenue (i.e. tax expenditure) under the Plano Brasil Maior was estimated at R\$44.2 billion in 2012, R\$46.1 billion in 2013, and R\$46.2 billion in 2014, mainly channelled to the manufacturing sector; no recent implementation data in this area were available from the authorities.

4.95. On 19 December 2013, the European Union requested consultations with Brazil with respect to certain measures concerning, *inter alia*, taxation and charges in the automotive sector, the electronics and technology industry, and tax advantages for exporters; on 22 March 2015 a panel was composed to examine the case (Section 2.5.1). On 2 July 2015, Japan requested consultations with Brazil with respect to the same measures; on 29 September 2015, a panel was composed with the same members as the other dispute to examine the case following a harmonized procedure.

4.96. The 2016 More Productive Brazil (*Brasil Mais Produtivo*) initiative, which has a first-year budget of R\$50 million, will apply lean manufacturing principles through consultancy services in partnership with the National Service of Industrial Education (*Serviço Nacional de Aprendizagem Industrial* (Senai)) (Section 4.3.2).¹⁴³ Under the new initiative, diagnostics are to be undertaken based on lean manufacturing methodology, which is based on a reduction of the most common waste from the production process, such as overproduction, waiting time, transportation, excess processing, inventory movements and defects. Consulting services will last 120 hours and cost a total of R\$18,000 per company, of which R\$15,000 will be subsidized by the More Productive Brazil programme, and the remaining amount may be paid by the company or with the BNDES Card, which has not been used so far. In its first phase, the programme's eligible activities, due to their greater adherence to lean manufacturing tools, will be metal mechanics, clothing and footwear, furniture, and food and beverages.

¹³⁹ On 31 December 2016, fourteen decrees providing for preferences in government procurement to local suppliers expired; another two such decrees remained in force until March and June 2017. Furthermore the authorities indicated that BNDES financing is consistent with WTO agreements. EIU (2016), *Country Commerce – Brazil*, September.

¹⁴⁰ EIU (2016), *Country Commerce – Brazil*, September.

¹⁴¹ The authorities indicated that their policy aims at developing the domestic industry and bringing new technology to the sector rather than shielding domestic producers. They also indicated that production steps – related requirements cannot be equated to local content requirements and their objection to characterizing the margin of preference in government procurement as local content requirements. OECD (2015), *OECD Economic Surveys: Brazil 2015*, November. Viewed at: http://www.oecd.org/eco/surveys/Brazil-2015-overview.pdf

¹⁴² USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

estimate.

143 Portal Brasil online information. Viewed at: http://www.brasil.gov.br/economia-e-emprego/2016/04/brasil-mais-produtivo-vai-ampliar-a-produtividade-industrial.

4.3.5 Automotive sector

4.97. Brazil's inward-focused and protected automotive sector accounted for 0.6% of gross value added (or 1.1% including automotive parts and accessories) and 4.6% of manufacturing output in 2014; in 2016, the motor vehicle industry employed 104,412 persons (down by nearly 30,931 from the peak in 2013) in 67 factories distributed across eleven states. He arazil's motor vehicle industry, the world's ninth largest in 2015 (down from fifth in 2013), is facing severe challenges with production dropping from 3.7 million units in 2013, a peak year, to 2.4 million in 2015 (83.1% passenger cars) and a further 2.2 million units in 2016; its installed capacity is estimated at 4.5 million units, suggesting that there is overcapacity. During the review period, tariff-jumping FDI inflows continued, *inter alia*, to defend foreign investors' domestic market shares (Section 4.3.3); investments now tend to be more focused on sales within Brazil rather than part of a regional strategy implemented as a result of high tariff protection on automotive products from outside MERCOSUR. Most foreign producers have not integrated their Brazilian plants into global value chains; productivity has fallen sharply behind car manufacturers in the region, who are fully integrated into global production chains and have achieved remarkable gains in global market share.

4.98. During the review period, as a result of the recession and higher interest rates, the domestic sales of motor vehicles fell progressively from 3.8 million units in 2012, a peak year, to 2.6 million in 2015 and 2 million in 2016, thus making Brazil slip from the world's fourth-largest vehicle market in 2013 to the seventh place in 2015. Sales remain dominated by European carmakers followed by US and Asian producers. High taxation, weak competition, and border protection continue to keep cars relatively expensive. Currency appreciation and the attractiveness of the Brazilian market lifted the import penetration ratio from 7% in 2006 to 27% in December 2011, but as of early 2016 it was reduced to 15.1% due to the impact of the increase in the Industrial Production tax (IPI) on automotive imports (see below) and currency devaluation; imports dropped progressively and drastically from 737,907 units in 2012 and 717,027 in 2013 to

¹⁴⁴ According to the authorities the conclusion that the automotive sector is well protected is not based on any reliable evidence as imports of vehicles from 2009 to 2014 were greater than exports. IBGE Sistema de Contas Anuais online data. Viewed at:

ftp://ftp.ibge.gov.br/Contas_Nacionais/Sistema_de_Contas_Nacionais/2014/tabelas_xls/sinoticas/tab13_2.xls;

ANFAVEA (2017), Anuario da Industria Automobilistica Brasileira 2017, January. Viewed at:

http://www.virapagina.com.br/anfavea2017/#1/z; EIU (2016), Industry Report – Automotive – Brazil –

3rd Quarter, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf; and

Arnold, J. (2016), Brazil: A tale of two industries or how openness to trade matters, OECD online article,

22 March. Viewed at: https://oecdecoscope.wordpress.com/2016/03/22/brazil-a-tale-of-two-industries-or-how-openness-to-trade-matters/.

Trade (SECEX/MDIC) data; International Organization of Motor Vehicle Manufacturers online data. Viewed at: http://www.oica.net/category/production-statistics/2015-statistics/; and EIU (2016), *Industry Report – Automotive – Brazil – 3rd Quarter*, 16 July. Viewed at: http://www.eiu.com/EileHandler.asbx?issue.id=15844741428;mode=pdf

http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

146 For example, Mexican plants produce 53 cars per worker and year, as opposed to 27 in Brazil, although the cars produced in Mexico are on average smaller models. Arnold, J. (2016), Brazil: A tale of two industries or how openness to trade matters, OECD online article, 22 March. Viewed at: https://oecdecoscope.wordpress.com/2016/03/22/brazil-a-tale-of-two-industries-or-how-openness-to-trade-matters/

matters/.

147 EIU (2016), Industry Report – Automotive – Brazil – 3rd Quarter, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

¹⁴⁸ In 2015 Fiat-Chrysler Auto (UK) held a market share of around 17% of sales, ahead of General Motors (16%) and Ford (15%). Volkswagen (VW) had a share of 14%, while Renault-Nissan held a combined share of 10%. Hyundai-Kia (8%), Honda (6%) and Toyota (7%) make up the rest of the top eight in the market. Volkswagen, Fiat, GM and Ford have dominated Brazil for years but pressure is coming from global rivals like Kia, Hyundai, Honda, Nissan and BMW, as well as new players like China's Chery, Geely, JAC and Hafei, and India's Tata and Mahindra. Arnold, J. (2016), *Brazil: A tale of two industries or how openness to trade matters*, online OECD article, 22 March. Viewed at:

 $\frac{\text{https://oecdecoscope.wordpress.com/2016/03/22/brazil-a-tale-of-two-industries-or-how-openness-to-trade-matters/;}{\text{matters/;}} \text{ and EIU (2016), } \\ Industry \\ Report - \\ Automotive - \\ Brazil - \\ 3^{rd} \\ Quarter, \\ 16 \\ \text{July. Viewed at:} \\ \\ \underline{\text{http://www.eiu.com/FileHandler.ashx?issue_id=1584474142\&mode=pdf.}}$

149 Brazil's car affordability (the price of an item as a percentage of monthly personal disposable income) rank ranges from 30th to the 45th out of 60 countries depending on the type of vehicle. EIU (2016), Industry Report – Automotive – Brazil – 3rd Quarter, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf; and UNSD Comtrade data for HS positions 8702, 8703, and 8704.

237,140 in 2016.¹⁵⁰ Exports used to account for nearly one third of car output but this share fell to 11.5% in 2014, owing to an erosion of the country's competitiveness and fluctuations in Argentina's economy, Brazil's main market; the real's devaluation and the steady reduction of domestic output and sales boosted the share of exported cars to 16.8% in 2015 and 26.7% in 2016.¹⁵¹ Rising total motor vehicle export earnings and units have fallen from a 2013 peak (about US\$8.7 billion, 596,924 units) to partly recover in 2016 (US\$7.6 billion, 577,077 units). A weaker real helped the automotive industry to stabilize production in 2016 as contracting domestic demand was offset by an increase in exports of Brazilian vehicles and import substitution by new producers' models.¹⁵²

4.99. Border protection, including a 35% MFN tariff on motor vehicles and the IPI tax reduced rate under the INOVAR-Auto scheme (see below), remains unchanged. In March 2012, a bilateral agreement with Mexico was renegotiated imposing a tariff rate quota limiting the duty-free entry of motor vehicles to protect domestic producers; this arrangement was extended in March 2014 and again in March 2015 for an additional four-year period. Under the renegotiated agreement, US\$1.56 billion of duty-free vehicle imports were agreed for the first year of the agreement; this amount will rise by 3% each year until the agreement expires in 2019 and the countries return to a free-trade regime. Similar agreements were concluded with Uruguay (December 2015) and Argentina (June 2016). As of October 2015, the import duty on electric and cell-powered vehicles was removed, and the 35% import duty on other hybrid vehicles was reduced, depending on certain specifications such as energy efficiency, in a bid to make these vehicles more attractive to buyers compared to the flex-fuel vehicles.

4.100. Since the last TPR, the industry's support programme for the period 2013-17, the *Programa de Incentivo à Inovação Tecnológica e Adensamento da Cadeia Produtiva de Veículos Automotores* (Incentive Programme for Technological Innovation and Consolidation of the Automotive Vehicle Supply Chain) or INOVAR-Auto, which is aimed at promoting technological development in the Brazilian automotive industry and addressing competition challenges, has been subject to changes (Table 4.10). INOVAR AUTO was, *inter alia*, modified by Decree No. 8.015 of 17 May 2013, which altered accreditation conditions for beneficiary companies by requiring more manufacturing steps to be performed in Brazil in order to benefit from IPI reduction (see below). Law 12.996 of 18 June 2014 elaborated the traceability criteria applicable to the car parts used by the beneficiaries of the scheme.

Table 4.10 Timetable for compliance with INOVAR-Auto Programme requirements, 2013-17

Requirement	2013	2014	2015	2016	2017			
Minimum manufacturing steps in Brazil								
Light vehicles	8 out of 12	9 out of 12	9 out of 12	10 out of 12	10 out of 12			
Heavy vehicles	9 out of 14	10 out of 14	10 out of 14	11 out of 14	11 out of 14			
Minimum local investment in R& D (% of gross revenues (after tax))								
	0.15	0.3	0.5	0.5	0.5			

 ¹⁵⁰ Secretariat of Foreign Trade (SECEX/MDIC) data; EIU (2016), Industry Report – Automotive – Brazil – 3rd Quarter, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.
 151 Despite being among the largest producer of cars in the world, Brazil ranked only 24th in automotive

¹⁵¹ Despite being among the largest producer of cars in the world, Brazil ranked only 24th in automotive exports (in value terms) in 2015. Brazilian vehicle exports have the third-lowest foreign value added content among the 62 countries in the OECD-WTO Trade in Value Added database. Arnold, J. (2016), *Brazil: A tale of two industries or how openness to trade matters*, OECD online article, 22 March. Viewed at: https://oecdecoscope.wordpress.com/2016/03/22/brazil-a-tale-of-two-industries-or-how-openness-to-trade-matters/; EIU (2016), *Industry Report – Automotive – Brazil – 3rd Quarter*, 16 July. Viewed at: http://www.worldstopexports.com/car-exports-country/.

152 EIU (2016), *Industry Report – Automotive – Brazil – 3rd Quarter*, 16 July. Viewed at:

http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

¹⁵³ Wall Street Journal, "Brazil, Mexico Agree to Extend Auto Trade Agreement", 9 March 2015. Viewed at: http://www.wsj.com/articles/brazil-mexico-to-renew-auto-trade-agreement-1425899470; and EIU (2016), Industry Report – Automotive – Brazil – 3rd Quarter, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

154 Brazil's use of flex-fuel vehicles and production of ethanol makes it a global leader in cleaner fuels

¹⁵⁴ Brazil's use of flex-fuel vehicles and production of ethanol makes it a global leader in cleaner fuels and vehicles. Flex-fuel vehicles accounted for 88.4% of total sales of passenger cars and light vehicles in 2015. EIU (2016), *Industry Report – Automotive – Brazil – 3rd Quarter*, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

Requirement	2013	2014	2015	2016	2017				
Engineering, basic industrial technology and supplier training (% of gross revenues (after tax))									
	0.5	0.75	1	1	1				
Tagging/labelling (% of vehicles produced)									
	36	49	64	81	100				

Decree No. 7.819 of 2012 and modifications established by Decree No. 8.015 of 2013.

- 4.101. INOVAR-Auto, operated by the MDIC, provides for a reduction of the IPI tax rates on automobiles manufactured or imported by accredited companies.¹⁵⁵ This discount is in the form of: presumed IPI tax credits; and, reduced IPI tax rates on the importation of vehicles originating in certain countries as well as on certain domestic vehicles. Accreditation is granted, under certain conditions, for: companies that manufacture automobiles in Brazil; companies that obtain official approval for their plans to invest in domestic production of items listed in the INOVAR-Auto Decree (52 tariff lines); and, for companies without manufacturing activities that market automobiles in Brazil. 156 To be accredited, companies 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/labelling programme (Programa de Etiquetagem Veicular, PBEV) for a minimum percentage of the company's output. 157 These requirements were set to rise progressively in the period 2013-17 (Table 4.10). Companies that only trade automotive products are not subject to the requirement of minimum manufacturing steps in Brazil; however, to qualify for the programme, they must meet the remaining three conditions.
- 4.102. Accredited companies under INOVAR-Auto may benefit from IPI tax credits, which can be used under certain conditions, to offset the IPI otherwise due on the domestic sale of automobiles covered by the programme. 158 IPI tax credits can be used to offset up to 30 percentage points of the IPI tax due on the sale of automobiles. Any remaining tax credits can be used to offset up to 30 percentage points of the IPI due on the automobiles imported by the company, but only up to a maximum of 4,800 units per year. Companies that manufacture or plan to manufacture automotive products in Brazil could benefit from a 30 percentage point IPI tax reduction on imports of vehicles originating in MERCOSUR and Mexico until the expiry of the INOVAR-Auto regime. 159
- 4.103. INOVAR-Auto has further encouraged tariff-jumping FDI which has stepped up investment plans and gradually increased production step-related local content. During the review period, importing companies such as BMW (Germany), Hyundai, Kia Motors, and Chery (China) have invested in local plants, whereas Jaguar Land Rover (owned by Tata of India) began plant construction and JAC Motors (China) have plans in this area. 160 No information on the amount of total domestic support to the automotive industry under INOVAR-Auto (e.g. foregone tax revenue and budgetary outlays) and an appraisal on its achievements (e.g. investment, output, employment, and exports) were available from the authorities.
- 4.104. In June and October 2014, in the context of the WTO Committee on Trade-Related Investment Measures, certain Members raised questions on several aspects linked to local content conditions under the INOVAR-AUTO programme. 161 Two dispute settlement cases involving domestic support to the automotive industry are under way (Sections 2.5.1, 4.3.4 and 4.3.5).

 157 The PBEV, a labelling programme only for cars, measures the consumption of fuel, gas and Co_2 and No₂ emissions. These labelling standards are issued by INMETRO in partnership with MDIC. Every year INMETRO issues the labelling technical regulation according to the type of the vehicle. INMETRO online information. Viewed at: http://www.inmetro.gov.br/consumidor/tabelas_pbe_veicular.asp.

¹⁵⁵ In 2011, Brazil increased the IPI tax on automotive products (48 tariff lines) to between 30% and 55%, and almost simultaneously i.e. in 2012, it introduced the INOVAR-Auto regime.

¹⁵⁶ Decree No. 7,819 of 3 October 2012.

¹⁵⁸ The IPI tax credits are linked to the level of certain expenditures in Brazil, including on so-called strategic inputs (i.e. raw materials and automotive components), tooling (ferramentaria), R&D, and capacity-building of automotive suppliers. WTO document WT/DS497/1, G/L/1119 G/TRIMS/D/41, G/SCM/D108/1, 9 July 2015.

¹⁵⁹ Article 21 of Decree No. 7.819, 3 October 2012.

¹⁶⁰ EIU (2016), *Industry Report – Automotive – Brazil – 3rd Quarter*, 16 July. Viewed at: http://www.eiu.com/FileHandler.ashx?issue_id=1584474142&mode=pdf.

161 WTO documents G/TRIMS/M/36, 5 September 2014, and G/TRIMS/M/37, 21 November 2014.

4.3.6 Other activities

4.105. The development of the information technology (IT) industry has been a longstanding policy objective in Brazil. According to the authorities, the IT industry's share of GDP decreased slightly from 2.95% in 2013 to 2.62% in 2016, whereas its share in gross value added stood at 0.4% in 2014; during the same period, employment also declined considerably from 134,295 to 90,000. The trade deficit in IT items peaked in 2015 (R\$31.6 billion) and bottomed in 2016 (R\$23 billion); in 2015, imports were about eight times higher than exports.

4.106. The IT industry benefits from tariffs ranging from zero to 20%. Brazil remains a non-participant in the WTO plurilateral Information Technology Agreement (ITA). In addition to incentives under PADIS and PATVD (until 2017) (Table A3.2), the Special Regime for the Information Technology Exportation Platform (REPES) suspends Social Integration Program (PIS) and Contribution to Social Security Financing (COFINS) taxes on goods imported and information technology services provided by companies that commit to export software and information technology services to the extent that those exports account for more than 50% of the company's annual gross income. 163 Since 2005, several IT-specific tax breaks (e.g. PADIS, PATVD (until 2017) (Table A3.2)), IPI reduction similar to automotive, and incentives linked to production step-related local content (see below) remain in place; they cover many domestically-produced IT and digital goods qualifying for status under the Basic Production Process (Processo Productivo Básico, PPB) requiring a certain minimum amount of production step-related local content (Sections 3.2.5 and 3.3.1, and below). Companies producing IT and automated goods and services that invest in R&D may qualify for tax incentives. During the review period domestic support to the activity has been strengthened. Law 13,023 of 2014 extended the IPI reduction linked to production step-related local content through 2029. 164 The existing 80% reduction in IPI seems to apply through 2024; it then falls to 75% through 2026 and to 70% through 2029. This benefit applies only to companies that make R&D investments equivalent to 5% of their gross income; moreover, at least 46% of such investments must be made jointly with research institutes and schools of high academic standards. The law also extended benefits for the Amazon and Northeast regions. BNDES has extended its Information Technology and Software Development Programme (Programa para o Desenvolvimento da Indústria de Software e Serviços de Tecnologia da Informação-Prosoft) until January 2017; the programme, originally funded with R\$5 billion, provided administered interest rate loans to companies that include Brazil in their development plans and add value in or export from the country. The same dispute settlement cases involving domestic support to the automotive industry cover the IT industry (Sections 2.5.1, 4.3.4 and 4.3.5). No information on the amount of total domestic support to the IT industry (e.g. foregone tax revenue, budgetary outlays) and an appraisal on its achievements (e.g. investment, output, employment, and exports) were available with the authorities.

4.107. In aeronautics Brazil's privately-owned *Empresa Brasileira de Aeronautica* (Embraer), where the State retains interest through possession of golden shares allowing it veto power, is the world's third largest aircraft producer and the global leader in the 70-130 seat aircraft segment, where it accounts for 60% of global deliveries. Embraer has always been strongly integrated into global production chains, and imports still account for 70% of its value added. Aircraft imports (HS 8802 and 8803) remain subject to zero customs duty. At the same time, exports have grown steadily, performing significantly stronger than motor vehicle exports. No data on the aeronautics industry contribution to Brazil's GDP, manufacturing value added, employment and exports were available with the authorities.

4.108. Aeronautics industry-specific tax incentives under the RETAERO scheme (Table A3.2) remained in place during the review period. In 2014 a venture capital fund for the aerospace

¹⁶² IBGE online information, "Contas Nacionais Trimestrais data". Viewed at:

ftp://ftp.ibge.gov.br/Contas Nacionais/Sistema de Contas Nacionais/2014/tabelas xls/sinoticas/tab13 2.xls
and http://www.ibge.gov.br/bome/estatistica/indicadores/bib/defaultent_shtm

and http://www.ibge.gov.br/home/estatistica/indicadores/pib/defaultcnt.shtm.

163 The authorities indicated their disagreement with productive stages and basic production processes being considered as elements of local content. USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

¹⁶⁴ EIU (2016), *Country Commerce – Brazil*, September.

¹⁶⁵ Arnold, J. (2016), *Brazil: A tale of two industries or how openness to trade matters*, OECD online article, 22 March. Viewed at: https://oecdecoscope.wordpress.com/2016/03/22/brazil-a-tale-of-two-industries-or-how-openness-to-trade-matters/.

industry the Aerospace Investment Fund in Equities (Aeroespacial Fundo de Investimento em Participações), was launched by the state development bank BNDES, the Brazilian Innovation Agency (Financiadora de Estudos e Projetos (FINEP)), the São Paulo Development Agency (Agência de Desenvolvimento Paulista) and Embraer, with the goal of strengthening the industry's supply chain. The fund was to invest under market conditions in three to four start-ups and four to six SMEs working on innovations in the aeronautics, aerospace, defence, security and systems integration sectors. The fund's initial capitalisation was of R\$131.3 million. Embraer, FINEP and BNDES have subscribed R\$40 million each. By December 2016, five companies received a total investment disbursement of R\$42 million. 166

4.109. Other industry-specific support, inter alia, is available for fertilizers and pharmaceuticals. The 2013 Special Regime for the Development of the Fertilizer Industry (REIF) which was to provide to fertilizer producers tax benefits, including an exemption for the IPI on imported inputs, provided they comply with minimum production step-related local content requirements and can demonstrate investment in local research and development projects, has not come into force since its implementing rules and regulation have not been issued yet. 167

4.4 Services

4.4.1 Main features

4.110. The services sector continues to be the main contributor to Brazil's gross value added and job creation, but suffers from structural weaknesses and subpar international performance. The sector's gross value added share rose progressively from 69.1% (2012) to 73.3% (2016) (Table 1.1); its share in total employment stood at 65.7% in 2014, suggesting a rise in labour productivity. According to Brazilian Institute of Geography and Statistics (IBGE) data, labour productivity (gross value added divided by people employed in the sector) rose by 7.3% from R\$59,467 of value added per employee in 2013 to R\$64,010 in 2014. 168 No TFP growth indicators were available from the authorities. Public administration, education, public health, and distributive trade (i.e. wholesale and retail trade, and repair of motor vehicles, motorcycles and personal and household goods) remain the leading activities in GDP terms; other important activities are financial intermediation and insurance, and transportation, storage, and courier services. According to the OECD, services inputs also account for nearly two fifths of Brazil's manufacturing value added and an even larger share in the sectors prioritized for industrial development. 169 Flows of foreign investment have decreased in recent years, even though Brazilian services remain a significant destination for foreign investors aiming to serve the local market. The FDI directed to services activities dropped from US\$31.4 billion in 2012 to US\$28.4 billion in 2015 and US\$19.3 billion in 2016 (November). 170

4.111. While not always producing a direct export, the performance of the services sector remains a key component of the country's overall export competitiveness. The growth of Brazil's services exports has not kept pace with other large emerging economies, leading to a widening services trade deficit which peaked in 2014 (Table 1.5). In 2015, Brazil was the world's 32nd largest exporter and 19th importer of services. ¹⁷² Trade in services remains a minor component of Brazil's foreign trade; in 2016, exports of commercial services represented 15.3% of total exports of goods and services whereas imports accounted for 29.3% of total imports of goods and services (Table 1.4). According to Siscoserv (Brazilian Integrated System of Foreign Trade in Services and

¹⁶⁶ Central de Sistemas online information. Viewed at: http://sistemas.cvm.gov.br/?fundosreq.

¹⁶⁷ USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-tradeestimate.

168 IBGE (2013), Pesquisa Anual de Serviços 2013. Viewed at:

http://biblioteca.ibge.gov.br/visualizacao/periodicos/150/pas 2013 v15.pdf; IBGE (2014), Pesquisa Anual de Servicos 2014. Viewed at: http://biblioteca.ibge.gov.br/visualizacao/periodicos/150/pas 2014 v16.pdf.

¹⁶⁹ OECD (2016), Serv ices and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September 2016.

¹⁷⁰ Central Bank of Brazil (BCB) online data. Viewed at:

http://www.bcb.gov.br/htms/Infecon/SeriehistFluxoInvDir.asp.

171 OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September 2016.

¹⁷² WTO online data. Viewed at:

http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=BR.

Intangibles) data, in 2015 the major export services were management and management consulting services, other professional, technical and management services, services auxiliary to financial services, water transport services of freight and maintenance and repair services of fabricated metal products, machinery and equipment, whereas its main imports were operational leasing, water transport services of freight, licensing on copyright and related rights, other professional, technical and management services and financial services except investment banking, insurance services and supplementary pension plans.

4.112. Low services performance acts as a constraint to the dynamism of the whole Brazilian economy.¹⁷³ In order to bolster industrial competitiveness, attract foreign investment and participate in global value chains, Brazil's economy requires quality services at competitive prices. According to the OECD, the areas with the largest potential for regulatory reform include improvements in the general business and trading environment as well as specific policies in transport, telecoms and financial services; the OECD Services Trade Restrictiveness Index (STRI) indicates that regulations in these areas tend to be more restrictive towards foreign services providers than in its Latin American peers.¹⁷⁴ Transport, logistics and credit suffer from severe deficiencies in infrastructure as well as inadequate competitive pressures. Royalties, technical assistance and outsourced business services require a stable, simplified general policy environment to grow. A number of initiatives to boost private entry and improve the functioning of core services, many of which are under discussion or have been recently launched, were undertaken. The timely implementation of pro-competitive reforms and co-ordination between public stakeholders will be critical to ensure their effectiveness. Services reforms have strong potential to unlock manufacturing performance and productivity (Section 4.3.1).

4.4.2 Commitments under the General Agreement on Trade in Services and RTAs

4.113. Brazil's commitments under the GATS were last changed in March 2016 with the ratification and insertion of the Fifth Protocol undertakings in the area of financial services. ¹⁷⁵ Brazil's Schedule of Specific Commitments contains undertakings in certain business services (including professional services), construction services, courier services, distribution services, financial services, hotels and restaurants services, as well as rail, road and pipeline transport services and those auxiliary to all modes of transport. ¹⁷⁶ It covers less than a third of all services subsectors in the Services Sectoral Classification List; measured in such a way, this is less than the average sectoral coverage among WTO Members. ¹⁷⁷ Brazil has not ratified the Fourth Protocol on basic telecommunications. ¹⁷⁸ Its list of Article II (MFN) Exemptions covers measures in relation to audiovisual co-production agreements, the supply of land transport services with countries of South America, and bilateral maritime transport agreements on cargo reservation and cargo sharing. ¹⁷⁹

4.114. Brazil maintains two RTAs involving commitments on trade in services: MERCOSUR (ACE-18) (2005); and, Mercosur-Chile Agreement (ACE 35) (2009) (Section 2.6.2.1.1). The entry into force of a third agreement, the Agreement on Economic and Trade Expansion between Brazil

¹⁷³ For example, the tax burden on services is heavier than in other sectors. While the average tax burden on the production and consumption of goods and services was 19.4% in 2013, it was much higher in the services segments most critical to other sectors of the economy; the tax burden exceeded 23% in transport and business services, and 27% in IT services. OECD (2016), *Services and Performance of the Brazilian Economy - Analysis and Policy Options*, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September, Paris.

¹⁷⁴ OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September, Paris.

¹⁷⁵ More information on Brazil's GATS commitments may be found, *inter alia*, in WTO documents GATS/SC/13, 15 April 1994; and, GATS/SC/13/Suppl.3/Rev.1, 27 June 2016.

¹⁷⁶ Sectors in which there are no commitments include computer, telecommunication, audiovisual, education, health, environmental, recreational, maritime transport, and air transport services.
¹⁷⁷ WTO document MTN.GNS/W/120, 10 July 1991.

¹⁷⁸ During the negotiations of the Fourth Protocol of GATS, certain WTO Members raised reservations about Brazil's offer, because it referred to Article 18 of the General Law of Telecommunications (Law No. 9.472/97), which allowed the Executive Branch to review the participation of foreign capital in telecom operators established in Brazil. As a result, Brazil withdrew its telecom offer. Nevertheless, in the context of the Doha Round, Brazil did include telecommunications services in its revised offer of 2005 (TN/S/O/BRA/Rev.1).

¹⁷⁹ WTO document GATS/EL/13, 15 April 1994.

and Peru, concluded in April 2016 and covering trade in services, is pending. ¹⁸⁰ Brazil has notified one MERCOSUR RTA under Article V of the GATS. In MERCOSUR, Brazil undertook specific commitments on trade in services that went significantly beyond the commitments under the GATS. These commitments covered new sectors (computer, R&D, telecommunication, audiovisual, educational, environmental, and maritime transport services) and improved sectoral coverage and/or the level of treatment bound in a number of other sectors (professional, distribution, financial, and other business services). Under the Brazil-Peru agreement, Brazil undertook market access commitments in sports event promotion and organization, and sport facility operation services.

4.115. As from 4 November 2015, Brazil has accorded preferential market access treatment to services and services suppliers of least developed countries (LDCs) on certain business, construction and related engineering, distribution, insurance and insurance-related, travel agency and tour operator/guide, sporting, auxiliary maritime transport, and freight transportation services. ¹⁸¹ Preferences are predominantly accorded to the supply of these services through commercial presence.

4.4.3 Financial services

4.116. Brazil remains the largest financial services market in Latin America. During the review period, its financial system (SFN) remained sound amidst the recession and low credit growth. The contribution of financial and insurance services to gross value added rose between 2012 and 2016, from 6.4% to 8.3% (Table 1.1); in 2014, the sector employed 1.2% (1.1% in 2012) of the labour force, suggesting a rise in labour productivity. The sector's assets peaked in 2012 and then dropped by 25.4% as of 2015, followed by a rise of 26.3% in 2016 (Table 4.11). In 2016, banks accounted for 59.4% of the system's assets, whereas insurance companies accounted for 1.3%, compared to 60.5% and 1.5% in 2012, respectively; investment and pension funds held 26.4% and 11.1% of the assets. Within services, financial services constitute the largest recipient of foreign capital and the sector where most mergers and acquisitions take place. According to the IMF, there seems to be scope for making SFN even more robust by enhancing the financial safety net as well as ensuring continued vigilance and close monitoring of the health of the corporate sector and its links to the banking sector.

Table 4.11 Structure of the financial system, 2010-16

(US\$ billion)

	2010	2011	2012	2013	2014	2015	2016
Total financial system assets, of which	4,138.8	4,306.6	4,668.5	4,441.6	4,372.9	3,262.0	4,120.3
Banks	2,533.7	2,639.9	2,823.8	2,711.6	2,716.6	2,055.1	2,447.4
Assets of state-owned banks	1,049.2	1,123.2	1,252.1	1,257.5	1,276.8	950.6	1,143.6
Non-bank financial and credit institutions (NBFCIs)	50.2	50.6	54.9	57.4	60.2	46.5	63.8
Insurance companies	76.5	70.8	73.4	66.2	62.9	43.3	55.7
Pension funds	466.4	489.1	541.0	486.2	460.7	336.0	456.9
Investment funds	996.9	1,042.1	1,159.9	1,104.2	1,057.8	771.0	1,086.3
Other	18.4	17.7	19.4	19.6	18.6	13.2	10.2
Credits, of which	1,083.3	1,146.8	1,232.7	1,255.7	1,245.6	1,009.1	1,147.6
Banks	1,056.2	1,118.1	1,200.5	1,221.1	1,209.5	981.3	1,112.1
State-owned banks	538.6	581.4	665.6	715.0	734.5	558.9	634.6
NBFCIs	27.1	28.7	32.2	34.6	36.1	27.8	35.5
Non-performing loans/total loans (%)	3.0	3.2	3.9	3.3	3.0	3.5	3.7
Non-performing loans/bank loans (%)	3.0	3.1	3.7	3.1	2.9	3.3	3.6
Non-performing loans/NBFCI loans (%)	3.4	5.0	7.3	5.4	5.0	5.9	5.1
Loans in foreign currency/total loans (%)	4.5	5.6	5.7	5.2	5.3	6.8	4.8
Credits/GDP (%)	46.5	49.2	52.3	55.2	57.3	65.7	59.7
Deposits, of which	882.7	897.0	860.9	803.0	740.9	534.0	652.4
Banks	863.4	875.4	837.4	778.1	714.6	512.9	622.1
State-owned banks	388.4	406.3	422.9	399.2	368.0	259.1	323.7
NBFCIs	19.3	21.6	23.5	24.9	26.3	21.1	30.3

¹⁸⁰ Ministério da Indústria, Comércio Exterior e Serviços (MDIC) online information. Viewed at: http://www.mdic.gov.br/comercio-exterior/negociacoes-internacionals.

¹⁸¹ WTO document S/C/N/839, 5 November 2015.

¹⁸² EIU (2016), *Industry Report - Financial services – Brazil – 3rd Quarter*, 23 August.

¹⁸³ OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September 2016.

¹⁸⁴ IMF (2016), *Brazil - Staff Report for the 2016 Article IV Consultation*, Country Report No. 16/348, 14 October. Viewed at: http://www.imf.org/external/pubs/ft/scr/2016/cr16348.pdf.

	2010	2011	2012	2013	2014	2015	2016
Deposits in foreign currency/total deposits (%)	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Deposits/GDP (%)	37.8	38.5	36.5	35.7	34.6	35.3	33.9
Interest rate spread (domestic currency) (%)	-	17.8	14.4	13.8	14.9	18.6	22.5

Source: Central Bank of Brazil.

4.117. The main SFN regulators remain the National Monetary Council (CMN) and the National Council of Private Insurance (CNSP). The CMN sets policies and issues regulations for financial institutions in line with recommendations from the Central Bank of Brazil, the Brazilian Securities Exchange Commission (CVM), and the Superintendence of Private Insurance (SUSEP). According to OECD, the regulators, other than CVM, lack operational and management independence; the Central Bank does not have independent funding sources, two out of three leading members of the CMN are Ministers, and the members of the Board of the Central Bank have no fixed-term appointment.¹⁸⁵

4.4.3.1 Banking and finance

4.118. The banking system, which consists of 1,616 institutions, remains roughly unchanged and relatively concentrated, with the five largest banks (two public: Banco do Brazil, Caixa Econômica Federal; three private: Bradesco, Itau Unibanco, Santander) accounting for 72% of the banking sector assets and 84% of the deposit base. 186 Brazilian legislation considers that every financial institution (FI) established in the country is a national FI. Notwithstanding this feature, Central Bank data indicate that the market share of foreign-owned banks remains low, accounting for 15% of total banking assets. As of March 2017, foreign-owned banks and financial institutions consisted of 130 institutions covering: 56 multiple banks (56 in 2012), 10 commercial banks (9 in 2012) and 8 investment banks (6 in 2012), 3 consumer finance companies (CFI, 4 in 2012), 16 security brokerage companies (CTVM, 20 in 2012), 2 exchange brokerage companies (CC, 1 in 2012), 18 security distribution companies (DTVM, 18 in 2012), 14 leasing companies (SAM, 14 in 2012), 1 mortgage company (CH, 1 in 2012) and 2 micro-financing institutions (SCM, 1 in 2012). Government-owned banks' share of total bank assets rose from 44.3% in 2012 to 47.32% in September 2015 (Table 4.11); these banks receive 51% of deposits and issue 57% of total domestic loans, including those directed to agriculture, housing and infrastructure. No divestment/privatization action or plans were undertaken during the review period. The CMN is entitled to channel the allocation of resources of private financial institutions towards priority regions or sectors.

Institutional framework

4.119. Although the Central Bank has enjoyed administrative autonomy since the mid-1990s it is one of the few remaining major central banks in the world that are not independent under the law; legislation allowing for more autonomy would possibly be considered as from when the economy

¹⁸⁵ OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September 2016.

based on the market share of the four biggest institutions, the classical indicator of concentration based on the Herfindahl–Hirschman Index (HHI), ranks the Brazilian financial system as moderately concentrated. In June 2016, its HHI ranged from to 1,381 to 1,602, depending on the aggregate basis (total assets, deposits or loans) and always under 1,800, the limit that defines high concentration. These numbers remained basically the same over the previous four years. No recent data on the structure of the system were available with the authorities. As at September 2016, the system comprised: 133 multiple banks (137 in 2012), 21 commercial banks (20 in 2012), 4 development banks (4 in 2012), 1 savings banks (1 in 2012), 14 investment banks (14 in 2012), 3 exchange banks (2 in 2012), 53 consumer finance companies (CFI, 58), 79 security brokerage companies (CTVM, 94 in 2012), 63 exchange brokerage companies (CC, 57 in 2012), 101 security distribution companies (DTVM, 118 in 2012), 25 leasing companies (SAM, 30), 4 real estate credit companies and savings and loans associations (SCI & APE, 12), 9 mortgage companies (CH, 7), 16 development agencies (16 in 2012), 1.081 credit unions (1,254), and 38 micro-financing institutions (SCM, 40 in 2012). OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September 2016.

¹⁸⁷ Other than participation in the retail market by Santander, foreign banks are involved in trade finance, foreign-exchange operations, recycling of foreign funds and financing of the subsidiaries of multinational firms in Brazil. EIU (2016), *Industry Report - Financial services – Brazil*, 3rd Quarter, 23 August.

stabilizes in 2018 or 2019.¹⁸⁸ The Central Bank continues to authorize financial institutions, and supervise deposit-taking financial institutions, other financial institutions, financial intermediaries, payment institutions, consortium companies and payment schemes.¹⁸⁹ 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, as well as financial conduct and competition issues, and the CVM supervises capital market operations.

Regulatory framework

4.120. During the review period the main legal framework for banking remained unchanged. The banking sector and other financial services are regulated at the federal level. The Central Bank's *Manual of Norms and Instructions* containing most banking regulations issued by the CMN is no longer in place, as all regulatory amendments and guidelines including licensing requirements are now available online. ¹⁹¹

4.121. Market access conditions in financial activities remain unchanged. Foreign banks are allowed to establish only subsidiaries; those directly responsible for the administration of the financial institutions must be Brazilian residents. Direct branching by foreign banks is not allowed. The establishment of new subsidiaries of foreign financial institutions and the increase in participation of foreign individuals or legal entities in the equity of national financial institutions remain subject to authorization by Presidential Decree that so far has been granted to nearly all applications. 192 The President of the Republic grants authorization upon CMN recommendation, which is contingent upon Central Bank recommendation. Applications by foreign investors must specify, inter alia, the amount of foreign participation in total capital, the investor's existing activities in the Brazilian financial system, and the benefits to the Brazilian economy. The authorizing Presidential Decree is not required if authorizations are granted under international agreements or reciprocity conditions. Representation within Brazil of financial institutions headquartered abroad requires prior authorization by the Central Bank; local representatives must be individuals or legal entities domiciled in Brazil. Representative offices are prohibited from taking deposits or undertaking any other financial transactions. Cross-border supply of banking services is not permitted. Consumption of banking services abroad is not regulated.

Prudential requirements and soundness

4.122. Since March 2013, Brazil has implemented the Basel III framework recommendations on banking supervision, which establish minimum capital requirements of 10.5% (8% requirement + 2.5% conservation buffer) similar to the Brazilian requirements (9.25% requirement +1.25% conservation buffer in 2017). Rules regarding the countercyclical capital buffer (0% requirement of risk-weighted assets (RWA)) and additional requirement for systemically important banks have already been implemented (0.25% requirement of RWA in 2017). Implementation of the capital framework follows the schedule recommended by Basel III, ending in 2019. Recommendations on liquidity and leverage ratios have also been implemented according to the Basel III schedule. A

¹⁸⁸ According to the authorities, constitutional amendments may be required too. Reuters, "Brazil central bank autonomy bill not a priority –source", 31 January 2017. Viewed at: http://www.reuters.com/article/brazil-cenbank-autonomy-idUSL1N1FL1M5.

¹⁸⁹ The payments institutions and payments schemes have been supervised by the Central Bank since the enactment of Law 12.865 of 9 October 2013. They operate in the payment intermediation sector, involving prepaid cards, electronic money and customer accrediting.

¹⁹⁰ The main legislation includes Article 192 of the Federal Constitution; Article 52 of the Temporary Constitutional Provisions Act; Law No. 4,595, 31 December 1964; Law No. 4,728, 14 July 1965; Law No. 6,024, 13 March 1974; Law No. 7,492, 16 June 1986; Law No. 9,613, 3 March 1998; Supplementary Law No. 105, 10 January 2001; and Resolution No. 3,040/2002.

¹⁹¹ Central Bank of Brazil online information. Viewed at: http://www.bcb.gov.br/?MANUMCR.

¹⁹² Under Article 192 of the Federal Constitution and Article 52 of the 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. More information on this matter is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013. OECD (2016), *Services and Performance of the Brazilian Economy - Analysis and Policy Options*, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September 2016.

requirement that systemically important banks adopt a recovery plan has already been in place since 2016. The 1995 Credit Guarantee Fund (FGC), a private not-for-profit entity, administers a compulsory deposit insurance scheme contributing to the SFN's stability. As of June 2016, the credit covered by the FGC (R\$993 billion) was equivalent to around 55% of total deposits (R\$1.823 trillion). In May 2013, the individual coverage ceiling was increased from R\$70,000 to R\$250,000 (US\$77,000). 193 A new resolution framework to include backstop for the deposit insurance fund from the Central Bank is to be implemented in 2017. Since September 2013, the credit unions have had their own guarantee fund (FGCoop), which follows in general the same conditions applicable to the FGC, including individual coverage ceilings.

4.123. According to the IMF, the banking system remains largely sound, although the recession has affected profitability and asset quality. 194 The system-wide capital ratios were raised slightly since 2013, remaining well above the regulatory minima (Table 4.12); in December 2016, all except two small institutions exceeded the solvency ratios of 4.5% of common equity capital, 6.0% of Tier 1 capital and 10.5% of total capital, a comfortable buffer. Profitability rose in 2015, but declined in 2016 owing to a spike in provisions for loan losses and a lower domestic credit portfolio. Non-performing loans (NPLs) have gradually increased, but remain moderate. Banks have remained well provisioned with loan loss reserves covering, according to the authorities, 178.4% of NPLs as at end-2016, compared to 175.2% in 2013. External funding exposures remain low and have gradually decreased since 2015. A comprehensive and timely stress testing framework is in place and being enhanced through a "bottom-up" approach.

Table 4.12 Banking soundness indicators^a, 2012-16

(%)								
	2012	2013	2014	2015	2016			
Capital adequacy ratio	16.4	16.1	16.7	16.4	17.2			
Tier 1 capital ratio	11.9	12.6	13.0	12.7	13.7			
Return on assets	1.4	1.4	1.3	1.5	1.1			
Non-performing loans to total gross loans	3.4	2.9	2.9	3.3	3.6			
External funding to total funding	9.3	8.5	9.4	13.0	10.3			

Includes public and private banks.

IMF (2016), Brazil - Staff Report for the 2016 Article IV Consultation, Country Report No. 16/348, Source: 14 October. Viewed at: http://www.imf.org/external/pubs/ft/scr/2016/cr16348.pdf; and revised 2016 data provided by the authorities.

4.124. High interest spreads between lending rates and the remuneration of deposits remain in place; following a decline due to public banks' reduced lending rates, these spreads have been on the rise from 2013 onwards, though the authorities indicated that they are now in decline due to monetary policy action to reduce interest rates (Table 4.11, Chart 4.2). The rising trend has been attributed to inflationary pressures and volatility in macroeconomic conditions, but also the existing regulatory framework and the lack of competitive pressure on major banks. 196 Furthermore, credit allocation is distorted by the size of BNDES lending and that of other state-owned banks; the majority of BNDES loans are to large enterprises rather than SMEs.

4.125. According to the IMF, the resilience of the banking sector could be bolstered by, inter alia, strengthening the procedures for use of the FCG deposit insurance fund and enhancing the Central Bank's emergency liquidity assistance. 197 To improve competition in the banking sector, a 2016 OECD paper suggests measures such as harmonizing the requirements for the establishment of foreign financial institutions with those of domestic banks, enhancing the independence of the

¹⁹³ The FGC is financed by associated financial institutions, which must contribute 0.0125% of the balance of the accounts quaranteed (current accounts, savings accounts, and term deposits). Credits of up to R\$ 250,000 (approximately US\$77,000) per person per financial institution are eligible for FGC coverage.

¹⁹⁴ IMF (2016), Brazil - Staff Report for the 2016 Article IV Consultation, Country Report No. 16/348, 14 October. Viewed at: http://www.imf.org/external/pubs/ft/scr/2016/cr16348.pdf.

195 EIU (2016), Industry Report Financial services – Brazil, 3rd Quarter, 23 August.

¹⁹⁶ The authorities indicated that this assumption has no connection with the Brazilian reality since the Brazilian regulation is in line with the best international standards and all foreign financial institutions willing to operate within Brazil are already operating in Brazil. OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September.

197 IMF (2016), Brazil - Staff Report for the 2016 Article IV Consultation, Country Report No. 16/348,

¹⁴ October. Viewed at: http://www.imf.org/external/pubs/ft/scr/2016/cr16348.pdf.

Central Bank and continuing the work on developing a unified and easily searchable registry of security interests. 198

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Chart 4.2 Interest rate spread, January 2008 to December 2016

Source: IMF, International Financial Statistics online information.

4.126. Brazil maintains information-sharing agreements with the financial supervisory authorities of 15 countries and territories: Argentina, the Bahamas, the Cayman Islands, China, Germany, Indonesia, Italy, Mexico, Panama, Paraguay, Portugal, South Africa, Spain, Uruguay, and the United States. Informal arrangements are in place with the United Kingdom, with whom a formal agreement was being negotiated at the time of the previous TPR, as well as with Austria, Korea (Rep. of), and Switzerland; no information on developments in this area were available from the authorities.

Securities 199

4.127. Brazil's stock exchange, the São Paulo Stock Exchange (BM&FBovespa), remains the largest in Latin America and, according to World Federation of Exchanges data, as of November 2016 it became the world's 19th largest in terms of domestic market capitalization.²⁰⁰ Trading in securities and derivatives in Brazil takes place in both the BM&FBovespa and the publicly held company Cetip, which organizes the over-the-counter markets. Between December 2012 and July 2016, the number of BM&FBovespa listed companies fell from 440 to 428, and the number of Brazilian companies with listed stocks for trading also dropped from 364 to 353; the latter represented a market value of US\$734 billion, equivalent to 35% of GDP (July 2016), compared to US\$1.16 trillion and 50% of GDP in 2012. As at end-December 2015, there were 67 securities companies authorized to trade on BM&FBovespa and they represented a net aggregate income of US\$478 million.

4.128. The CVM, an independent government entity under the Ministry of Finance, remains in charge of regulating and supervising the securities markets in Brazil, with the exception of government and private bonds, which are regulated by the Central Bank. Administrators of stock exchanges and organized over-the-counter platforms, as well as some market associations, have been granted self-regulatory power and are considered auxiliary entities of the CVM.

¹⁹⁸ OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September 2016.

¹⁹⁹ The main legislation includes: Law No. 6,385/76 (the Securities Law) and Law No. 6,404/76 (the Corporation Law) as amended by Law No. 10,303 of 31 October 2001 and Law No. 10,411 of 26 February 2002; and Law No. 11,638 of 28 December 2007. More information on regulatory, institutional and procedural matters in this area is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

²⁰⁰ EIU (2016), *Industry Report - Financial services – Brazil*, 3rd Quarter, 23 August.

4.129. No changes have been made to the main laws governing the securities market since 2013. Activities and products related to public offering of securities, tender offers, intermediation or brokerage as regards trading involving securities or derivatives, clearing and settlement of such operations, investment funds, and securitization, among others are regulated and subject to registration and authorization. A Financial Transaction Tax (IOF) on capital for investment in equity and debt securities remains in place to reduce the volatility, and to correct imbalances in the foreign exchange market; it was last revised in April 2016 to add new provisions on financial transactions (IOF) triggered on foreign exchange conversions (IOF-FX) and transactions involving bonds and securities (IOF-Securities).²⁰¹ Currently, the IOF rates on the investments of non-resident investors in the financial and capital markets are all zero.

4.130. No distinction is made between financial institutions on the basis of origin, as institutions registered in Brazil are considered Brazilian. Foreign investors have access to all the investment products available to domestic investors, including forward, futures, and options contracts of farm products. Poreign investors receive national tax treatment in relation to operations in the financial and capital markets.

4.4.3.2 Insurance

4.131. During the review period, the contribution of insurance activities to GDP rose from 2.92% (2012) to 3.29% (2015). Despite rapid growth over recent years, Brazil's population remains underinsured.²⁰³ Between 2012 and 2015, insurance companies' assets, in US dollars, shrunk by 42.1% (Table 4.11) owing to the real's depreciation. Market concentration in the insurance industry, albeit still high, was slightly reduced as a result of mergers and incorporation/absorption of firms; in 2015, the market share of the ten largest companies in the industry stood at 68% in terms of direct premiums, as compared to 68.2% in 2012 and 66.1% in 2013.²⁰⁴ Bancassurance plays a significant role, particularly in life business; many larger banks (e.g. Banco Bradesco, Itaú Unibanco and Banco do Brasil) continue to offer a full range of insurance services, whereas large stand-alone insurers (e.g. Porto Seguro, Mapfre (Spain) and Sul América) tend to dominate non-life insurance. Stand-alone insurers such as Porto Seguro and to Bancassurance distribution channels have access through arrangements/cross-ownership. By the end of 2015, there were 117 insurance companies, 16 local reinsurers and 38 admitted reinsurers compared to 118, 12 and 29 in 2012, respectively. In 2015, there were 46 foreign-owned companies with a market share of 17.8% (life insurance) and 32.4% (non-life insurance).

Institutional framework

4.132. No changes were made to the institutional framework of the insurance industry. The Federal Government has responsibility for formulating insurance policy, as well as for establishing standards and overseeing operations in the national insurance system (SNSP). The National Council of Private Insurance (CNSP) remains the main body responsible for setting policies for the private insurance industry, including establishing the characteristics of the various insurance contracts, and for the regulation of the national private insurance system. SUSEP, an autonomous body under the Ministry of Finance, is in charge of the control and supervision of insurance, reinsurance, open private pension funds, and capitalization (investment plans) and brokerage operations. SUSEP implements the CNSP policies. SUSEP signed MoUs with the Federal Insurance Office (FIO) (United States) and Argentina, and an MoU with the International Association of Insurance Supervisors (IAIS) through which it can cooperate and exchange information with all other signatories (currently 60 insurance supervisors). In 2015, SUSEP was granted provisional

²⁰¹ Decree No. 8,731 of 2 May 2016; Global Tax Alert online information (http://www.ey.com/Publication/vwLUAssets/Brazil revises tax on financial transactions/\$FILE/2016G 0137 9-161Gbl Brazil%20revises%20tax%20on%20financial%20transactions.pdf).

²⁰² Resolution CMN 4,373, 29 September 2014.

²⁰³ Premium expenditure in OECD countries is typically 7%-12% of GDP. EIU (2016), *Industry Report - Financial services – Brazil*, 3rd Quarter, 23 August.

²⁰⁴ Superintendência de Seguros Privados (SUSEP)/Diretoria de Autorizações (DIRAT)/Coordenação-geral de produtos (CGPRO)/Coordenação de Estudos, Projetos e Estatística (COEST) (2014), *2º Relatório de Análise e Acompanhamento dos Mercados Supervisionados*, 28 November 2014, Rio de Janeiro. Viewed at: http://www2.susep.gov.br/menuestatistica/SES/principal.aspx; and EIU (2016), *Industry Report - Financial services - Brazil*, 3rd Quarter, 23 August.

equivalence to Solvency II (article 227) by the European Insurance and Occupational Pensions Authority (EIOPA), a step towards full equivalence.²⁰⁵

Regulatory framework

- 4.133. During the review period, the legal framework for insurance remained largely unchanged. 206 CNSP Resolutions and SUSEP Circulars regulate the industry's operational activities. Insurance companies are precluded by law from engaging in other financial activities; nevertheless, they may provide more than one type of insurance service and may hence be composite (life and non-life). Between 2013 and 2015, the main regulatory changes involved the regulation of remote sales of insurance, open private pension products, micro-insurance, travel insurance, whole life insurance, formalization of reinsurance and retrocession contracts, Enterprise Risk Management (ERM) and revision of investment norms (CMN Resolution No. 4444/2015). Since 1984 (when *Bradesco* bought *Atlântica-Boavista seguros*), Bancassurance has been the main distribution channel of insurance in Brazil. The only exceptions apply to: health insurance companies, which must be specialized; life insurance companies, which may deal in open pension funds; and reinsurance companies. Insurance policies issued by insurers belonging to the same economic group, such as banks, are commonly sold inside bank branches as part of the services mix offered therein.
- 4.134. All insurance, local reinsurance (see below), capitalization/investment, and private pension fund companies remain subject to a supervisory fee (*Taxa de Fiscalização dos Mercados de Seguro e Resseguro, de Capitalização e de Previdência Complementar Aberta*); the fee increases in line with the margin of solvency whereas for admitted reinsurers there is a single fee per supplier.²⁰⁷ Insurance companies must pay a (higher) fee for the head office and for each risk location.
- 4.135. Insurance brokers must register with SUSEP after passing a technical exam. New insurance products do not require SUSEP's prior approval but they should be submitted for analysis and filing prior to their marketing. Life insurance products that offer survivor coverage and annuities, as well as capitalization plans and open pension products, require prior approval from SUSEP. SUSEP may suspend any product that is found not to comply with the industry's regulatory framework or specific provisions thereof, including technical flaws. Between 2013 and 2015, there were 11,898 products submitted to SUSEP of which 471 were suspended.
- 4.136. Market access conditions remain unchanged, except for improvements in reinsurance (see below). Establishment of a foreign life or non-life insurance company requires prior approval from SUSEP, whose authorization ensures the granting of national treatment to the foreign company concerned; between 2013 and 2015, there were 12 approvals and 1 rejection. Foreign insurance companies providing insurance of any kind, except reinsurance, are required to be incorporated under Brazilian law, in the form of a corporation.²⁰⁸ Direct branching by foreign insurance companies is not allowed.

²⁰⁵ The EU's prudential regulatory regime sets out rules to develop a single market for the insurance sector. After receiving equivalence, EU insurers can use local rules to report on their operations in third countries, while third country insurers are able to operate in the EU without complying with all EU rules. These equivalence decisions take the form of delegated acts and they concern Switzerland, Australia, Bermuda, Brazil, Canada, Mexico and the United States. They provide more legal certainty for EU insurers operating in a third country as well as for third country insurance companies operating in the EU. European Commission online information. Viewed at: http://europa.eu/rapid/press-release_IP-15-5126_en.htm.

²⁰⁶ The main legislation includes 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.

²⁰⁷ The calculation of the margin of solvency varies in accordance with the type of insurance provided: for private pension funds or investment funds, the fee is 8% of all technical provisions and funds related to their activity; for life insurance with capitalization, the fee is 8% of all technical provisions and funds related to their activity plus 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; 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. Annex I to Law No. 12,249 contains the table of fees.

²⁰⁸ WTO document GATS/SC/13/Suppl.3, 26 February 1998.

- 4.137. Minimum capital requirements vary according to the region of operation, the company's internal risk-management model, and the type of activity. There are no barriers to the domestic trade of insurance services as long as a company complies with these minimum capital requirements.
- 4.138. The contracting of insurance abroad by resident natural persons or legal persons established in Brazil is allowed 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 resident natural person in Brazil, for which the term of the insurance contract is limited exclusively to the period in which the insured person is abroad; and, insurance policies that are the subject of international agreements ratified by Brazil. The law allows Brazilian legal persons to contract insurance abroad to cover risks abroad upon notification to SUSEP.

Reinsurance

- 4.139. Brazil accounts for more than 40% of Latin America's reinsurance market, and the volume of business written in Brazil is expected to grow as the Government invests in energy projects and infrastructure upgrades. As at December 2015, 161 reinsurance companies were authorized to do business in Brazil, of which 16 were local and 145 foreign-owned (38 registered as admitted and 97 as occasional (see below)), compared to 102 in late 2012. Until 2007, IRB-Brasil Resseguros was the sole provider of reinsurance in Brazil and it remains the top reinsurer operating in Brazil with a share of 39.9% of reinsurance premiums ceded by insurers in 2015.
- 4.140. Since 2007, the reinsurance business has been open to private reinsurance companies, including foreign-owned and foreign-based companies. Reinsurance and retrocession may be held with: a local reinsurer (established as a corporation under Brazilian law and headquartered in Brazil, with the sole object of conducting operations of reinsurance and retrocession); an admitted reinsurer (based abroad, with a representative office in Brazil, registered at SUSEP to carry out reinsurance and retrocession); or an occasional reinsurer (foreign reinsurance company based abroad without a representative office in Brazil, also registered as such at SUSEP). 212
- 4.141. A significant relaxation of reinsurance requirements on foreign companies relating to the mandatory cession level to local reinsurers took place in July 2015. Under the new rules, the preferential offer to local reinsurers remains at 40% of each cession, but the mandatory minimal cession rates are being gradually decreased to 30% in 2017, 25% in 2018, 20% in 2019, and 15% in 2020. On the other hand, the cap on intra-group cession for companies affiliated or belonging to the same financial conglomerate headquartered abroad provided that they are admitted or occasional reinsurers, currently at 20% of each cession, is being raised annually to 30% in 2017, 45% in 2018, 60% in 2019, and 75% in 2020.

4.4.4 Telecommunications

4.142. Telecommunications market growth slowed during the review period; information services (including telecoms, computer, and broadcasting services) accounted for 3.1% of gross value added in 2016 compared with 3.6% in 2012 (Table 1.1). Fixed-line penetration has fallen steadily from 20.1 per 100 people in 2007 to 14.9 per 100 in 2015; this has occurred on the back of cheaper mobile-phone technology and services, a particular driver of telephony penetration among

²⁰⁹ In accordance with CNSP Resolution No 321/2015, insurance companies must maintain as a capital base not less than R\$1.2 million in fixed capital plus a variable amount of 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 at all times the highest amount among the capital base and the required risk-based capital. The required risk-based capital is established by CNSP Resolutions 321/2015.

²¹⁰ EIU (2016), *Industry Report - Financial services – Brazil*, 3rd Quarter, 23 August.

Supplementary Law No. 126 of 15 January 2007.

²¹² Retrocession is the cession of reinsurance by reinsurers.

²¹³ A cession is the portion of insurance transferred to a reinsurer by the ceding company. CNSP Resolution No. 322 of 20 July 2015. USTR (2016), *2016 National Trade Estimate Report on Foreign Trade Barriers*. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

low-income users.²¹⁴ Brazil is the world's fourth-largest mobile telephony market on a subscription basis (behind China, the United States and India). As elsewhere in Latin America, the introduction of pre-paid cards has been a major spur to deeper mobile-phone penetration; nevertheless, the share of pre-paid subscriptions has fallen from above 80% in 2004-12 to 70% in July 2016, a figure that is still high compared with the United States and western European markets, but is similar to levels in Eastern Europe and Africa. Nevertheless, in 2015 – for the first time since the establishment of the service – the number of mobile telephony users registered a 8.2% decline, from 280.7 million in 2014 to 257.8 million. This was partly the result of the decrease in the value of interconnection between fixed and mobile networks (VC) and the mobile telephony network usage fee (VU-M), thus enabling operators to introduce new service offers with reduced tariffs for calls between networks (off-net), meaning that users did not need to subscribe to multiple mobile phone services.²¹⁵ During the review period, the number of fixed broadband service users continued to increase, including in 2015 when the users of other information services – i.e. fixed telephony, mobile telephony and pay-tv – decreased; at the end of 2015, there were 25.5 million users.

4.143. During the review period, the telecommunications market remained fully open to competition, though dominated by a handful of large operators from abroad, including Telefónica (Spain), Telecom Italia (Italy) and Teléfonos de México (Telmex)/América Móvil (Mexico), as well as a domestic company, Oi, in which the State maintains a strategic stake through BNDES and the pension funds of state-owned enterprises.²¹⁶ Concentration in the mobile and broadband services segments has risen. Following a May 2015 regulatory approval that established certain conditions, a US\$10 billion takeover of Global Village Telecom (GVT), the Brazilian broadband business of Vivendi (France), gave Telefónica control of one of the country's fastest-growing operators and lead to the creation of the largest telecoms operator in Latin America. 217 As at 2015, the fixed-line market, consisting of 65 operators (32 in 2012), was dominated by Telefónica (34.26%), Oi (formerly Telemar) (34.21%), and Embratel (owned by Telmex, 26.61%); Telefonica's share rose by 12.24 percentage points after the GVT takeover. As at 2015, the mobile telephony market, consisting of 20 operators (18 in 2012), continued to be dominated by Vivo (28.42%), Tim (25.69%), Claro (25.59%) and Oi (18.65%).²¹⁹ Between 2014 and 2015, the number of companies authorized to supply fixed broadband service grew by 19.5%, and, following the acquisition of GVT, Telefónica's market share rose by 11.5 percentage points; as at 2015, the market consisting of 3,223 operators (1,725 in 2012), was dominated by Claro (31.84%), Oi (25.02%), and Telefonica (including GVT) (28.63%). 220

Policy and institutions

4.144. The sector's 2015-2024 Strategic Plan is aimed at: expanding access to and use of services of an adequate quality and at affordable prices; stimulating competition and sustainability; supporting consumer satisfaction; and, promoting the dissemination of sectoral data and information. ²²¹ Its Operational Plan 2015-2016 prioritized action through 29 strategic projects

²¹⁴ EIU (2016), *Industry Report – Telecommunications – Brazil – 3rd Quarter*, 26 September.

²¹⁵ Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*, Brasilia. Viewed at: http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

²¹⁶ Among large operators from abroad, Telefonica is the only 100% foreign-owned company, whereas for all other companies local participation in ownership is the minority.

²¹⁷ The telecommunications regulator (ANATEL, see below) imposed certain conditions on the deal, including the ceding of certain fixed licenses, maintenance of geographical coverage of fixed-line, fixed-broadband and pay- TV networks, and commitment to ensuring a minimum broadband speed. EIU (2016), *Industry Report – Telecommunications – Brazil – 3rd Quarter*, 26 September.

²¹⁸ Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*. Viewed at: http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

cacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

219 Claro's shareholders are Embratel, Claro, Star One and Net. Agência Nacional de Telecomunicações - ANATEL (2016), Relatório Anual 2015. Viewed at:

 $[\]frac{\text{http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736\&assuntoPublicacao=342736\&assuntoPublicacao=null\&caminhoRel=null&filtro=1\&documentoPath=342736.pdf.}$

²²⁰ Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*. Viewed at: http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

²²¹ Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*. Viewed at: http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

grouped into seven programmes involving: advanced inspection; simplification of the concession granting and licensing procedures; economic regulation in converging networks; management of consumer relations; regulatory developments by 2025; institutional strengthening; and, regulatory intelligence and industry data.

4.145. The Ministry of Science, Technology, Innovation and Communication, through the Secretariat of Telecommunications, remains the federal body responsible for policy formulation and planning for the sector as well as for radio and TV broadcasting. 222 The National Telecommunications Agency (ANATEL), the sector's administratively independent and financially autonomous regulator, is responsible for policy implementation, licence regulation, overseeing incumbents' operations, managing the electromagnetic spectrum, certifying telecommunications equipment, and protecting consumers' rights. It also has the legal authority to review and control retail prices of fixed telephony services under the public service regime as well as to approve mergers in the sector from a regulatory perspective, whereas competition issues per se are analysed by CADE (the competition authority) (Section 3.3.4.1 and below).

Regulatory and operational framework²²³

4.146. No major changes (see below) were made to the main legislation governing the sector, e.g. the General Telecommunications Law (LGT), a unified regulatory framework for pay-tv services regardless of the technology used, and the General Plan for Updating Telecommunications Regulations.²²⁴ The legislation allows telecommunication operators more flexibility to offer converged services e.g. triple-play offerings (voice, broadband, and television) and quadruple-play multi-service packs (also including mobile telephony), thus leading to further consolidation of Brazil's major telecom groups. Under the LGT, telecom services remain divided into two regimes: the public service regime, which covers the incumbent operators of fixed telephony; and the private service regime, encompassing all other telecommunications services. In order to provide telecommunication services, a concession (public service regime) or authorization (private service regime) must be obtained from ANATEL. 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 (last 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. 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 telecommunication service regulated by ANATEL; the authorities indicated that it is possible to have independent suppliers as long as they create content (e.g. Netflix). The legislation makes no distinction between foreign and domestic capital, and there are no restrictions on foreign participation in the telecom companies (except in radio and TV broadcasting, which are not covered by the LGT).

4.147. New infrastructure legislation, the "Antenna Law", was signed into law in April 2015 but has not yet been fully implemented; the law, inter alia, seeks to exempt telecommunication operators from compensation from the right of way on public roads and other public property of common use, to encourage facilities sharing and to standardize/streamline the licensing procedures for the implantation of telecommunications infrastructure. 225 As of late 2016, the Federal Government was considering reforms to the telecoms legislation, which was designed for the privatization period and is thought to have held the industry back from further expansion.²²⁶

²²² The Ministry of Communications was merged with the Ministry of Science, Technology, Innovation and Communication in 2016.

²²³ More information on the issues discussed in this section is available in WTO document

WT/TPR/S/283/Rev.1, 26 July 2013.

²²⁴ Law No. 9,472 of 16 July 1997, Law No. 12,485 of 12 September 2011; and ANATEL Resolution No. 516 of 30 October 2008.

⁵ Law No. 13,116, 20 April 2015; EIU (2016), Industry Report – Telecommunications – Brazil, 3rd

Quarter, 26 September.

226 Brazil's telecommunication sector was privatized in 1998 and further liberalized in the early 2000s. Overbearing regulatory requirements related to a pre-mobile-phone market impose high costs and could benefit from an overhaul. There are also a high number of performance targets monitored by the regulators with large fines for non-compliance, but there is sufficient competition now for market forces to drive quality of mobile telephony. EIU (2016), Industry Report – Telecommunications – Brazil – 3rd Quarter, 26 September.

Legislation that would allow ANATEL to convert landline concessions into authorizations and transfer leased assets to carriers was being discussed at the Senate and the Supreme Court in January 2017, and was to be introduced in the course of the year; in practice, it could help the sector by removing requirements for costly investments in areas where demand is waning, like public phones, and relocating them elsewhere, e.g. to broadband access.²²⁷

Interconnection

4.148. Network interconnection under non-discriminatory conditions and at reasonable rates is mandatory for the provision of public telecommunication services.²²⁸ Cross-subsidization, discriminatory discounts, abusive behaviour, and other anti-competitive practices are prohibited.²²⁹ ANATEL sets the interconnection prices for telecom services under the public service regime, while interconnection tariffs for services under the private service regime are negotiated freely, but subject to control by ANATEL. Interconnection prices of public service entities (operating under a public concession rather than state-owned) must be based on costs and calculated through cost-based methodologies. ANATEL is empowered to apply a cap to interconnection prices charged by all operators deemed to have significant market power; no such cap has been set so far.²³⁰

Domestic support

- 4.149. The 2010 National Broadband Plan (PNBL), which was aimed at boosting access to broadband services across the country and bridging the digital divide, operated from 12 July 2011 to 31 December 2016; it was to reach 5,385 municipalities by 31 December 2014, and offer attractive prices targeted at the most deprived regions. It has been operated under the June 2011 terms of commitments signed between the then Ministry of Communications, ANATEL and the companies Oi, Vivo, CTBC and Sercomtel under which they were supposed to ensure minimum speeds of 1 mbps, at a cost of up to R\$35 (US\$15) per month; by the end of 2015, 5,400 municipalities out of 5,570 were provided with 5,399 retail and 4,161 wholesale internet package offers.²³¹
- 4.150. As of May 2016, the Brazil Smart Programme (*Programa Brasil Inteligente*) was introduced with the following objectives: expand the fibre optic transport networks; increase the coverage of fibre-based access networks in urban areas; expand the mobile broadband coverage of rural villages and agglomerates; provide public entities with high-speed internet access, with priority for education and health services; increase interconnection with international telecommunications networks; promote the implementation of smart cities; promote research, development and innovation in fifth generation mobile technologies; foster the development and adoption of national solutions for the Internet of Things (IoT) and machine-to-machine communication systems; promote training and professional qualifications in information and communication technologies; provide broadband satellite capability for civil and military purposes; and expand fibre optic transport networks in Amazonia through sub-fluvial cables.²³²
- 4.151. To achieve its policy objectives, the Government uses its 2012 Geostationary Satellite Defence and Strategic Communications (*Satélite Geoestacionário de Defesa e Comunicações Estratégicas* (SGDC)) project which implemented via *Visiona Tecnologia Espacial*, a joint venture

edium=29112016&utm_campaign=informativo.

http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf; EIU (2016), Industry Report – Telecommunications – Brazil – 3rd Quarter, 26 September.

²²⁷ Valor International online information, "Telecommunications reform heads to Senate",
28 November 2016. Viewed at: <a href="http://www.valor.com.br/international/news/4790153/telecommunications-reform-heads-senate?utm_source=newsletter_international&utm_term=telecommunications+reform+heads+senate&utm_m

²²⁸ Law No. 9,472 (Articles 146, 147 and 152).

²²⁹ General Regulation on Interconnection, annexed to ANATEL Resolution No. 410 of 11 July 2005.

 $^{^{230}}$ Criteria for defining "significant market power" are established in ANATEL Resolution No. 438 of 10 July 2006, and No. 458 of 8 February 2007.

However, it seems that data on user numbers is scarce, largely because many operators chose not to enter the uneconomic scheme; a report presented to the Brazilian Senate's Science and Technology Committee in December 2014 concluded that the PNBL was falling short of its goals. Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*, Brasilia. Viewed at:

²³² Decree No. 8.776 of 11 May 2016.

between Embraer (51%) and Telebras (49%).²³³ The launch of the satellite was scheduled for 21 March 2017 and it was to become operational in the second half of the same year. Furthermore, an Internet of Things (IoT) Chamber (or M2M Chamber), composed of government, university and private sector associations stakeholders, was set up in 2014 to monitor, encourage and promote the entire ecosystem of IoT in Brazil; a National IoT Plan containing general guidelines, specific actions and goals is to be launched, and a public consultation for its subsidization was concluded on 16 January 2017.

- 4.152. Under the 2012 National Broadband Programme Special Taxation Regime (REPNBL), 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 and imported equipment acquired in the domestic market, including building materials, and for contracting deployment of networks that utilize locally developed products and investments. ²³⁴ Tax exemption upon inspection of the network implementations. The REPNBL, which was terminated on 31 December 2016, resulted in total foregone tax revenue estimated at R\$750 million (about US\$232 million). Furthermore, tax exemptions and reductions under the Law of Digital Inclusion (11,196 of 21 November 2005) for smartphones, machine-to-machine communications, networks using the 450 MHz spectrum, and satellite stations were in force until 2015. ²³⁵ As at late September 2016, internet service providers (ISPs), which provide unlimited fixed broadband services to subscribers, were gearing up to place data caps on these fixed broadband services thereby limiting the amount of Internet data that can be used monthly; ANATEL was unlikely to challenge broadband operators on the issue of implementing the changes but discussions were still ongoing as of March 2017. ²³⁶
- 4.153. During the review period, local content requirements, in addition to those under the REPNBL incentives, were applied to the auctioning of radio spectrum frequencies in 2014 and, to a seemingly lesser extent, in 2015; the authorities indicated that local suppliers had difficulty in meeting these requirements and it is unlikely that they would be used in the future.²³⁷ ANATEL extended the local content requirements used in a 2012 auction to a 2014 auction for the 700 MHz frequency spectrum. Under these requirements, wireless carriers were required to ensure that 50% of the infrastructure, including software, installed to supply the licensed service met the requirements of the PPB (Sections 4.3.4 and 4.3.6); they were also required to use a minimum percentage of technology developed in Brazil. In November 2015, ANATEL's auction for the 1.8, 1.9, and 2.5 GHz spectrum was aimed at increasing competition and attracting smaller carriers, and did not contain specific *ex-ante* local content requirements; however, in the case of equivalent bids, the auction rules provided for a preference for a bid utilizing services, equipment, or materials produced in Brazil, including those with national technology.
- 4.154. As from 2013, government agencies have been required to procure e-mail, file sharing, teleconferencing and voice-over-Internet-protocol (VoIP) services from SERPRO, Brazil's Federal Data Processing Agency. In May 2014, the Ministry of Planning, Budget and Logistics issued implementing regulations (Portarias 141 and 54) that may require access to source code for hardware and software used in the Federal Government's e-mail, file-sharing, teleconferencing, and VoIP solutions.

²³³ The SGDC will integrate the national network of Telebras and will enable the service of rural and remote areas, which, for technical and economic reasons, cannot be reached by terrestrial broadband networks. The X band will be used for strategic defence communications and the Ka band for commercial broadband provision. The operation of the SGDC will cover the entire national territory with a data transmission capacity of 56 Gbps. Decree No. 7,769 of 28 June 2012.

²³⁴ Law No. 12,715 of 17 September 2012; USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

²³⁵ Provisional Measure 669, 26 February 2015.

²³⁶ EIU (2016), *Industry Report – Telecommunications – Brazil – 3rd Quarter*, 26 September.

²³⁷ ANATEL's June 2012 terms of auction for the 2.5 GHz and 450 MHz radio spectrum involving the possibility of implementing local content requirements were discussed at the May and October 2012 meetings of the WTO Committee on Trade-Related Investment Measures (TRIMS); Brazil provided written replies to questions on the local-content provisions in the auction bid. USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

²³⁸ Decree No. 8,135/2013; USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

Number portability

4.155. Number portability has been required since 2007.²³⁹ A private association, contracted through public bidding, manages the central reference databank for number portability. As a result of the bidding process, the management of portability operations to ABR Telecom, was delegated by ANATEL to the Brazilian Telecommunication Resources Association, which also supervises infrastructure wholesale in the country and has representatives of the largest telephone operators on its board. Number migration is subject to conditions set by ANATEL and ABR Telecom, including a fee of R\$4.²⁴⁰ Around 350,000 fixed-line and mobile phone subscribers in Brazil carry their number to a new operator each month. Between 2008 and January 2017, 42,680,517 lines including fixed and mobile phones were carried to a different operator.

Tariffs

4.156. Under the LGT, ANATEL reviews and controls the retail prices of fixed telephony services rendered by the companies operating under the public service regime (see above). It sets 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. No retail price caps for mobile telephony or for fixed telephony provided under the private service regime are in place; caps are only fixed under the public service regime (i.e. public concession). Cross-subsidization between different services or user markets is prohibited. Telecom operators under the private service regime are free to set retail prices for their services. The cost of wholesale (carrier-to-carrier) leased lines up to certain capacities is also regulated by ANATEL as well as certain interconnection charges.

4.157. Strong market competition continued to lead to further improvements in the quality of service and to reductions in tariffs. According to the International Telecommunications Union's ICT Price Basket (IPB) index, in 2014 Brazil's average prices for telecom services (fixed-telephony, mobile cellular telephony, and fixed broadband services) represented 1.8% of GNI per capita (4.8% in 2010) and Brazil ranked 67th out of 170 countries.²⁴¹ Between December 2013 and January 2015, the average price per minute for calls from fixed-line to fixed-line rose by 8.4% (from R\$0.08375 to R\$0.09082), partly reflecting inflationary pressures; on the other hand, in February 2015, the rates on local and long-distance calls made from fixed to mobile phones were reduced as a result of the lowering of the benchmark for network remuneration rates (ANATEL Act 1,082/2015).²⁴² In 2015, ANATEL authorized fixed telephony tariff adjustments of 3.684% (Oi (Telemar and Brasil Telecom), Sercomtel, Telefônica), 4.546% (Algar Telecom (CTBC Telecom)) and 6.279% (Embratel).²⁴³ It is estimated that the average price per minute of mobile phone calls fell by 26.3% (from R\$0.19 to R\$0.14) from the first quarter of 2012 to the third quarter of 2015. Between 2012 and 2015, the average monthly broadband prices also dropped by 44% (from R\$10.74 to R\$5.98).

Competition-related issues

4.158. ANATEL is responsible for approving mergers in the telecommunications sector from a regulatory perspective. The General Plan of Competition Goals addresses the asymmetric obligations placed on groups deemed to have significant market power (SMP) in identified relevant markets. In 2015, it was changed to avoid the interval between the end of asymmetries in the payment scheme of mobile network use values (RVU-M) on 24 February 2016 and the entry into force of the reference values, initially calculated on a top-down model and converging to a long run incremental model as from 2019.²⁴⁴ During 2015, ANATEL dealt with 91 proceedings involving

²³⁹ ANATEL Resolution No. 460 of 3 March 2007.

²⁴⁰ TechinBrazil online information. Viewed at: http://techinbrazil.com/telephone-number-portability-in-

²⁴¹ International Telecommunication Union (2015), Measuring the Information Society Report - 2015.
Viewed at: http://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf.
²⁴² Agência Nacional de Telecomunicações - ANATEL (2016), Relatório Anual 2015. Viewed at:

²⁴² Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*. Viewed at: http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

²⁴³ Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*. Viewed at: http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

²⁴⁴ ANATEL Resolution No. 649/2015.

interconnection (improper retention, technical, and fraud matters) and Industrial Exploitation of Dedicated Line (EILD).

Universal service obligations

4.159. Universal service obligations (USO) continue to apply to telecommunication operators under the public service regime (i.e. the incumbents of local fixed telephony services), which must meet the goals established by the legislation.²⁴⁵ The R\$2.1 billion Universal Service Plan (PGMU) for 2011-15, inter alia, provided for the installation of public telephones in all rural schools and rural health posts across Brazil; its funding is undertaken directly by fixed-line operators under the public service regime.²⁴⁶ Following the completion of the PGMU, in March 2017 there were discussions at the National Congress on changing the USO terms from fixed-line coverage to broadband penetration. The Universal Telecommunications Service Fund (FUST), managed by ANATEL, continues to be funded, inter alia, by the federal budget and by compulsory contributions from all telecom operators (i.e. both public and private service suppliers) equal to 1% of their gross operating income; in addition, broadcasters contribute on a different basis, i.e. the FISTEL tax levied for installing an antenna. In 2015, the federal budget and compulsory contributions from all telecom operators accounted for 60.6% and 38.2% of the year's FUST funding, respectively. In 2015, FUST funds totalled R\$1.8 billion, 1.5% more than in 2014. Since its inception, the Fund has raised R\$19.5 billion. 247 So far the revenue collected through FUST and FISTEL has been retained by the National Treasury and never been used in USO-related activities. To date, isolated and remote areas have been reached only through the implementation of PGMU obligations established under the five fixed-line operators' public service regime concessions which contain their investment targets in these areas.

Audiovisual and broadcasting services

4.160. Brazil remains Latin America's largest media market with major growth potential, and the only Portuguese-speaking country on the continent; in 2015, it boasted a US\$48.4 billion media and entertainment industry (M&E), twice as large as Mexico's.²⁴⁸ Brazil has thousands of radio stations and hundreds of TV channels, both very influential media with highly concentrated ownership that are tightly regulated by the Government. More than 30% of Brazilian households subscribe to pay-tv where *Globo*, Brazil's cable giant and the largest in Latin America, has a viewership of almost half of the country's population. It provides pay-tv channels, magazines, radio, film production and newspapers, although the bulk of its US\$6.3 billion (2013) fortune comes from its broadcast network which airs telenovelas (soap operas) that are popular throughout the continent. The digital TV transition scheduled to switch off analogue in 2016 was held off until 2018 in 1,326 cities, where the analogue shutdown is mandatory for the operation of fourth generation mobile services in the 700MHz band, whereas the remaining 4,244 cities will have their analogue shutdown processes completed by 2023.

4.161. Investment barriers seem to make market entry a challenge.²⁴⁹ Foreign ownership in "free to air" television broadcasting is limited to 30%, and 80% of the programming aired on "free to air channels" must be Brazilian.²⁵⁰ In the subscription television market, including satellite and cable television, content quotas require every channel to air at least three and a half hours per week of Brazilian programming during prime time, thereby creating enormous demand for independently

²⁴⁵ Presidential Decree No. 7512/2011.

²⁴⁶ ANTEL Resolution No. 539 of 24 February 2010.

²⁴⁷ Agência Nacional de Telecomunicações - ANATEL (2016), *Relatório Anual 2015*. Viewed at: http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=342736&assuntoPublicacao=null&caminhoRel=null&filtro=1&documentoPath=342736.pdf.

²⁴⁸ Brazil ranked fifth on the United States Department of Commerce/International Trade Administration list of top 25 M&E export markets in 2016. M&E is an industry that is broader than audiovisual since the definition also includes publishing and videogames. U.S. Department of Commerce/International Trade Administration (2016), 2016 Top Markets Report - Media and Entertainment, October. Viewed at: http://trade.gov/topmarkets/pdf/Media and Entertainment Top Markets Report.pdf.

²⁴⁹ U.S. Department of Commerce/International Trade Administration (2016), 2016 Top Markets Report - Media and Entertainment, October. Viewed at: http://trade.gov/topmarkets/pdf/Media and Entertainment Top Markets Report.pdf.

²⁵⁰ USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

produced national content to be acquired or co-produced by channels in order to fulfil the quotas. One third of all channels included in any television package must be Brazilian. Subscription television programmers are also subject to the 11% CONDECINE levy on remittances, which can be waived if an amount equal to at least 3% of remittances is invested in local productions.

- 4.162. The Federal Government has dedicated many resources to growing the domestically filmed entertainment sector. ²⁵² Since 2014, a R\$921 million "A Cinema Near You" project has provided film and TV incentives aimed at expanding the movie theatre industry. This project is publicly funded and managed by the National Film Agency (ANCINE), which is the programming and advertising regulatory authority, and its Audiovisual Sector Fund (FSA) in cooperation with BNDES.
- 4.163. A fixed tax on each foreign film released in theatres, on foreign home entertainment products, and on foreign programming for broadcast television is levied; the taxes seem significantly higher than the corresponding taxes levied on domestic productions. ²⁵³ Remittances to foreign producers of audiovisual works are subject to a 25% income withholding tax; the producer can elect to invest 70% of this tax in local independent productions. In addition, local distributors of foreign films are subject to a levy of 11% of remittances to the foreign producer; the authorities indicated that the same rules apply to local films. This levy, a component of the CONDECINE (Contribution to the Development of a National Film Industry), is waived if the producer agrees to invest 3% of the remittance in local independent productions same as for subscription TV programming. The CONDECINE levy is also assessed on foreign video and audio advertising.
- 4.164. All films and television shows must be printed locally, as importation of colour prints for the theatrical and television markets is prohibited; audiovisual content distributed in six copies or less do not need to be printed locally.²⁵⁴ Domestic film quotas also exist for theatrical screening and home video distribution.

4.4.5 Transport

- 4.165. During the review period, the share of transport (including storage and courier) in total trade in services remained stable, albeit a minor drop was registered from 4.5% in 2012 to 4.4% in 2016 (Table 1.1). In 2016, transport services accounted for 13.8% (11.3% maritime, 3% air) of services imports and 15.2% (8.7% maritime, 4.8% air) of services exports (Table 1.5). Brazil's merchandise export transportation mix is as follows: 56.5% maritime; 22.5% air; 20.7% road; 0.2% river; and, 0.1% rail. 255
- 4.166. Transport, logistics and credit command a large share of expenses incurred by manufacturers on intermediate services, but according to the OECD they suffer from severe deficiencies in infrastructure as well as limited competition pressure. ²⁵⁶ Transport services are mostly composed of maritime and air transport services; land transport suffers from numerous bottlenecks that Brazil has tried to address through public investment and private participation in infrastructure development. Brazil seemingly has inferior overall infrastructure quality relative to

²⁵¹ Law No. 12.485/2011; USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate; and U.S. Department of Commerce/International Trade Administration (2016), 2016 Top Markets Report - Media and Entertainment, October. Viewed at: http://trade.gov/topmarkets/pdf/Media and Entertainment Top Markets Report.pdf.

²⁵² U.S. Department of Commerce/International Trade Administration (2016), 2016 Top Markets Report - Media and Entertainment, October. Viewed at: http://trade.gov/topmarkets/pdf/Media and Entertainment Top Markets Report.pdf.

²⁵³ The list of rates of these taxes are available at: Portaria Interministerial No. 835 of 13 October 2015. Viewed at: http://www.ancine.gov.br/sites/default/files/portarias/Portaria%20n%C2%BA835 condecine.pdf; and USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-ostimate.

estimate.

254 USTR (2016), 2016 National Trade Estimate Report on Foreign Trade Barriers. Viewed at: https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/2016-national-trade-estimate.

estimate.

255 Confederação Nacional Da Indústria (CNI)/FGV-EAESP (2016), Desafios à Competitividade das Exportações Brasileiras, Brasilia.

²⁵⁶ OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September.

almost all its export competitors.²⁵⁷ Its scores for adequacy of physical capital across all areas of transport infrastructure – roads, ports, railroads and air transport infrastructure – are substantially lower than those of its main export competitors. Infrastructure gaps in transport appear more dramatic when quality and quantity indicators are coupled with Brazil's transportation mix, as 60% of its agricultural commodities are transported by road, while most of the exported iron ore travels by rail. Ports and airports are also constrained; although the port of Santos (São Paulo) was in the top-100 list of best ports in the world in 2013, occupying the 41st position, thanks to a 6.2% rise in throughput in 2012. While part of the growing infrastructure gap may be due to inadequate maintenance and intensification of use, the largest share of the gap is most likely due to a prolonged period of underinvestment relative to other countries.

4.167. Between 2011 and 2014, a series of infrastructure investment projects were approved as part of the second phase of the Growth Acceleration Programme. These projects included the expansion of transport capacity via the extension of highways, roads, and railways, as well as the construction of new ports and airports while improving existing ones. Nevertheless, it seems that the implementation of these projects has not been very time-effective and results remain so far limited. More recently, initiatives to tackle infrastructure bottlenecks included the launch of a Logistics Investment Programme (PIL) to promote private investment in infrastructure projects through a series of concessions, leases and authorizations. By March 2017, a Brazil-China US\$20 billion joint fund was to begin financing infrastructure projects, including bidding for government-sponsored road, port, airport and logistics operating licences. The fund is to finance the construction of railroads linking Brazilian soy- and corn-producing belts to ports. China provides three quarters of the fund (US\$15 billion), while the state-run banks BNDES and Caixa Economica Federal provide the rest. 259

4.4.5.1 Air transport

4.4.5.1.1 Airline services

4.168. Brazil is the world's third (fourth in 2012) largest domestic aviation market and second in terms of number of airports. ²⁶⁰ In 2015, both the domestic and international air transport markets registered a decline in the number of operated flights reflecting the slowdown of the country's economy. ²⁶¹ Concerning the domestic and international passenger markets, aircraft utilization also known as load factor stood at 79.9% in 2015, 0.9% less than in 2014, registering a first reduction after 5 consecutive years of rise. The average domestic air fare for scheduled passenger transportation was estimated in real terms at R\$334.5 in 2015, corresponding to a direct average distance of 1,105 km between the origin and the destination of the passenger, regardless of stopovers or connections; this fare was 9% lower than the 2014 average fare which corresponded to an average direct distance of 1,072 km. Between January and November 2016, 21.3% of Brazil's imports (by value) and 5.9% of its exports were moved via air cargo compared to 17% of imports and 4.3% of exports in 2011. Brazilian companies accounted for 24% of total international air cargo transported in the country in 2015, compared to 22% in 2014.

4.169. The air transport market remains highly concentrated; no domestic companies with state participation operate in this segment and no mergers or take-overs took place from 2013 onwards in this market. In 2015, 13 Brazilian companies provided scheduled and non-scheduled public air transport services (excluding air taxi), of which three provided mainly cargo operations. In the same year, a total of 79 companies provided international air transport services, of which

²⁵⁷ Mercedes Garcia-Escribano, Carlos Goes, and Izabela Karpowicz (2015), *Filling the Gap: Infrastructure Investment in Brazil*, IMF Working Paper WP/15/180, July. Viewed at: http://www.imf.org/external/pubs/ft/wp/2015/wp15180.pdf.

http://www.imf.org/external/pubs/ft/wp/2015/wp15180.pdf.

258 OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September.

²⁵⁹ Reuters online information, "Brazil Expects \$20b Fund with China to Begin Financing Projects by March", 9 January 2017. Viewed at: http://www.reuters.com/article/brazil-china-infrastructure-idUSL1N1EZOPJ.

²⁶⁰ The authorities indicated that this ranking is dynamic and it depends on the evolution of other domestic markets, for which they do not have constant updated data. Secretariat of Civil Aviation online data. Viewed at: http://www.aviacao.gov.br/assuntos/aeroportos.

²⁶¹ Agência Nacional de Aviação Civil – ANAC (2016), *Anuário do Transporte Aéreo 2015*, 3 October. Viewed at: http://www.anac.gov.br/assuntos/dados-e-estatisticas/dados-do-anuario-do-transporte-aereo.

23 operated only in the cargo transportation market. Among Brazilian companies, four (Gol, Tam, Azul, and Avianca) represented individually only 1% of the domestic market share (in terms of revenue passenger kilometres (RPK)) and 98.4% of the passengers transported on domestic flights in the country. Among the main cargo companies, LATAM Cargo Brasil (previously Absa LAN cargo) carried 12.6% of the total cargo freight in the domestic market. Brazilian companies accounted for 32.8% of international flights to and from Brazil in 2015, compared to 28.4% in 2014. While the number of international flights by Brazilian companies grew by 49% from 2006 to 2015, those of foreign companies grew faster at 64%. Tam, Gol and Azul accounted for 94.8% of international flights operated by Brazilian companies; considering both domestic and foreign carriers, these three Brazilian companies had shares of 18.3%, 11.5% and 1.3% in flights in 2015, respectively, whereas the foreign companies American Airlines, Copa Airlines, Tap, and Austral had shares of 7.2%, 5.7%, 5.0% and 3.2% respectively.

4.170. The institutional framework governing the aviation sector was changed in 2016. 263 The Civil Aviation Secretariat (SAC/PR) was directly linked to the Presidential Executive Office and headed by a Chief-Minister and was 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. Its portfolio was transferred to the Ministry of Transportation, Ports and Civil Aviation (MTPA), thus merging SAC/PR into MTPA's structure. 264 The Civil Aviation Council (CONAC), chaired by the Minister of Transportation, Ports and Civil Aviation (previously the Chief-Minister of SAC/PR), is now in charge of advising the President in matters of civil aviation policy and setting guidelines for the sector. The National Agency for Civil Aviation (ANAC) is in charge of the regulation and supervision of civil aviation. Its responsibilities include, inter alia, regulating safety and security matters related to civil aircraft, certifying aircraft and granting airline operation permits, conducting bidding procedures for airport concessions, regulating the allocation of slots in congested airports, and licensing civil aviation personnel.²⁶⁵ 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.

Regulatory and operational framework

4.171. The main legal instrument remains the Brazilian Aeronautical Code (CBA) of 1986, last amended in 2016. 266 In addition to minor changes to the CBA, the ATAERO surcharge on airport fees was suppressed (Section 4.5.5.1.2); an increase of foreign capital participation in Brazilian air carriers remains under discussion. 267 Concessions for the provision of domestic scheduled 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. 268 Domestic public air transport services (cabotage) remain reserved to Brazilian legal persons. 269 The lease of foreign aircrafts requires prior authorization.

4.172. Domestic air fares are determined freely by airline companies, with no prior approval being necessary. However, companies must report their fares on a monthly basis to ANAC for statistical purposes.²⁷⁰

²⁶² Agência Nacional de Aviação Civil – ANAC (2016), *Anuário do Transporte Aéreo 2015*, 3 October. Viewed at: http://www.anac.gov.br/assuntos/dados-e-estatisticas/dados-do-anuario-do-transporte-aereo.

 $^{^{263}}$ More information on the institutional framework is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

²⁶⁴ Law 13,341, 29 September 2016.

²⁶⁵ Law No. 11,182 of 27 September 2005.

²⁶⁶ Law No. 7,565 of 19 December 1986; Law 13,319, 25 July 2016. OECD (2016), *Services and Performance of the Brazilian Economy - Analysis and Policy Options*, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September.

²⁶⁷ Law No. 7,565 of 19 December 1986. Amendments to the Brazilian Aeronautical Code – CBA are being discussed at the National Congress but were not approved yet. The increase of foreign investments on Brazilian air carriers also remains under discussion within the Brazilian Government.

²⁶⁸ Articles 180 and 181 of Law No. 7,565 of 19 December 1986.

²⁶⁹ Article 216 of Law No. 7,565 of 19 December 1986.

 $^{^{\}rm 270}$ Article 49 of Law No. 11,182 of 27 September 2005, and ANAC Resolution No. 140/2010.

4.173. Since 2006, an administrative model for the allocation of arrival and departure times at airports (slots) has applied, which preserves the slots of companies that already operated at the airport with capacity restrictions (grandfathering model); this model was deemed restrictive to the entry of new firms. 271 To address some criticisms as well as to promote the efficiency, quality and comprehensiveness of the services provided, in 2014, ANAC Resolution No. 338/2014 was enacted establishing the coordination parameters and rules for the allocation of slots at all airports that present a relevant degree of saturation. Under this regulation, a company must comply with a minimum of 80% of regularity and 75% of punctuality for maintenance of the series of slots, and 50% of new slots should be allocated for new entrants. These measures aim to optimizing the allocation of slots in saturated airports, promote efficiency, and increase competitiveness, thus improving the public services to air transport users in Brazil. 272 According to the OECD, the allocation of airport slots through grandfathering and the fact that commercial exchange of slots is not allowed contribute to favouring incumbent carriers, as the availability of take-off and landing slots may represent a significant bottleneck in congested airports at peak hours.²⁷³ Furthermore, according to IATA, the 2014 regulation differs significantly from the Worldwide Slot Guidelines (WSG), the accepted global standard for the policies, principles, and procedures of airport slot management, and the industry continues to advocate for amendments.²⁷⁴ Currently, ANAC is responsible for the coordination of four airports (Level 3): Congonhas Airport – São Paulo (SBSP), Guarulhos Airport (SBGR), Santos Dumon Airport (SBRJ) and Pampulha Airport (SBBH). In addition to these airports, four others are classified as Airports of Interest (Level 2) and are under the responsibility of the airport operator: Galeão Airport (SBGL), Viracopos Airport (SBKP), Confins Airport (SBCF) and Brasília Airport (SBBR).

4.174. Since 2015, ANAC has been revising regulations on the general conditions of carriage and passenger rights in Brazil. On 14 March 2017, the General Conditions of Carriage entered into force, introducing regulations based on international best practices and in line with the Brazilian Consumer Protection Code (allowing the consumer the right to cancel a purchase before its completion); the harmonization between the general conditions of carriage and the Consumer Protection Code is important to promote regulatory stability and to reduce judicial cases. 275 As from 14 March 2017, the air transport companies have been free to include checked baggage in the ticket price or to charge separately.

4.175. Civil aviation policy pursues greater insertion of Brazilian aviation into international markets to improve the country's connectivity, through the conclusion of air services agreements (ASAs). Virtually no new ASAs (except for one with the Philippines in 2013) were signed during the review period (Table A4.2). Brazil maintains 102 bilateral ASAs, including open skies agreements with more than 49 countries. Renegotiations of existing ASAs or negotiations for new ASAs are under way with several partners, and from 2013 onwards MoUs were signed with Aruba; Cabo Verde; Congo (Dem. Rep. of); Curaçao; Egypt; Guinea-Bissau; Hong Kong, China; Israel; Côte d'Ivoire; Jamaica; Japan; Mauritius; Namibia; Nigeria; Norway; Philippines; Serbia; Seychelles; Saint Maarten; Sri Lanka; Sudan; Tanzania; Togo; Turkey; Viet Nam; Yemen; and Zambia. Most ASAs 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. Most ASAs date back nearly 20 years and most score between 10 and 20 (out of a possible maximum of 50) on the 2011 Air Liberalization Index (ALI) of the WTO. 276 This is largely a reflection of the absence of any 7th freedom or cabotage traffic rights.²⁷⁷

²⁷¹ ANAC Resolution No. 02/2006.

²⁷² International Air Transport Association (2015), *Annual Review 2015 – 71st Annual General Meeting*, June. Viewed at: http://www.iata.org/about/Documents/iata-annual-review-2015.pdf; and International Air Transport Association (2016), Annual Review 2016 - 72nd Annual General Meeting, June. Viewed at: http://www.iata.org/publications/Documents/iata-annual-review-2016.pdf.

273 The authorities indicated that they do not share this observation. OECD (2016), Services and

Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September.

²⁷⁴ International Air Transport Association (2015), *Annual Review 2015 – 71st Annual General Meeting*, June. Viewed at: http://www.iata.org/about/Documents/iata-annual-review-2015.pdf; and International Air Transport Association (2016), Annual Review 2016 - 72nd Annual General Meeting, June. Viewed at: http://www.iata.org/publications/Documents/iata-annual-review-2016.pdf.

275 ANAC Resolution No. 400 of 13 December 2016.

²⁷⁶ WTO online data. Viewed at: https://www.wto.org/asap/index.html.

²⁷⁷ The authorities indicated that in the context of the negotiation of an ASA, Brazil tries to replace "substantial ownership and effective control" by a criteria for air carriers designation based on the principle

4.176. Brazil participates in the Fortaleza Agreement on regional air transport services covering all routes that are not operated under bilateral agreements among the parties.²⁷⁸ It is also a signatory to the 2012 Multilateral Open Skies Agreement for the member States of the Latin American Civil Aviation Commission (LACAC) with reservations regarding 7th, 8th and 9th freedom traffic rights. The agreement was sent to the National Congress in August 2016 and will enter into force in Brazil after its ratification.

4.4.5.1.2 Airport and auxiliary services

- 4.177. During the review period, airport capacity has increased by 63% from 223.9 million passengers per year (2011) to 365.86 million passengers per year (2016) due to infrastructure development including expansion by 43% in aircraft parking patios, 74% in passenger terminals, and 78% in the number of boarding bridges. As a result, the punctuality index (delays up to 30 minutes) of flights improved from 85.5% in 2011 to 91.9% in 2016.²⁷⁹ However, it seems that some bottlenecks, in particular in São Paulo - the country's most important hub, persisted in 2014. 280 In 2015, around 80% of boarded cargo was concentrated in 10 airports: São Paulo (GRU), Manaus, Brasília, São Paulo (Congonhas), Rio de Janeiro (Galeão), Fortaleza, Recife, Salvador, Belém and São Paulo (Campinas). The three biggest airports in terms of domestic cargo accounted for 23% of the cargo transported in the country. ²⁸¹ In 2015, the 20 largest airports accounted for 81% of domestic landings; those with the highest number of departures were Guarulhos/SP (10.8%), Congonhas/SP (9.2%) and Brasília/DF (8.4%), respectively, which together accounted for 28.4% of domestic flight take-offs. 282
- 4.178. As of 2016, Brazil maintained 2,564 airports (18 international) and airstrips of which 606 were state-owned compared to 1,875 and 722 in 2012, respectively.²⁸³ INFRAERO, a public enterprise linked to the SAC/MTPA, remains in charge of the operation and management of 60 main commercial airports, 68 air navigation support stations, and 28 cargo terminals across the country compared to 64, 120 and 34 respectively in 2012; this reduction was mainly due to the implementation of the airports concessions programme (see below).²⁸⁴ The airports managed by INFRAERO are fully owned by the Federal Government or in partnership with the states and municipalities (see below). All other INFRAERO airports with concessions signed up until 2015 are managed by a Special Purpose Entity (SPE), in which INFRAERO holds 49% of the capital. In 2015, INFRAERO's airports handled Brazil's regular air traffic equivalent to 1.8 million take-offs and landings, and transported 122 million passengers and 287.5 million tonnes of cargo.
- 4.179. The institutional framework governing airports and auxiliary services remains unchanged.²⁸⁵ The National Civil Aviation Fund (FNAC), which is administered by the SAC/MTPA and financed through the revenues from airport concession fees, part of the international boarding fees, and from the ATAERO surcharge applied on airport fees (until 2016, see below), continues to provide resources for the development of airport and air traffic control infrastructure. The National Airport Authorities Commission (CONAERO), remains responsible for coordinating and organizing

place of business and regulatory control. It supports free pricing, free capacity determination and traffic rights up to 6th freedom. Brazil refrains from negotiating 7th freedom traffic rights due to the lack of evidence regarding their possible positive impact on the sector.

278 Other signatories are Argentina, the Plurinational State of Bolivia, Chile, Paraguay, Peru, and

Uruguay.

279 Further information on the Brazilian airports' capacity expansion is available at Aviação online information. Viewed at: http://www.aviacao.gov.br/5anos/.

²⁸⁰ The opening of new Terminal 3 at São Paulo Guarulhos failed to address long-standing operational bottlenecks, such as outbound immigration and transfer gueues, and has not improved the transfer process or time. This is an example of how insufficient user consultation can limit the return on major infrastructure investments. International Air Transport Association (2015), Annual Review 2015 – 71st Annual General Meeting, June. Viewed at: http://www.iata.org/about/Documents/iata-annual-review-2015.pdf.

³¹ ABEAR (Brazilian Association of Air Carriers) and ANAC (Civil Aviation National Agency) online data.

Viewed at: http://www.abear.com.br/dados-e-fatos.

Agência Nacional de Aviação Civil – ANAC (2016), Anuário do Transporte Aéreo 2015, 3 October. Viewed at: http://www.anac.gov.br/assuntos/dados-e-estatisticas/dados-do-anuario-do-transporte-aereo

²⁸³ ANAC online data. Viewed at: http://www.anac.gov.br/Anac/assuntos/setor-regulado/aerodromos.

²⁸⁴ INFRAERO (2016), *Relatório Anual 2015*. Viewed at:

http://www.infraero.gov.br/images/stories/Infraero/Contas/Relatorios/relatorio2015.pdf.

285 More information on the institutional framework is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

the activities of all government bodies and agencies that operate in airports (e.g. Customs, migration, health, etc.), and headed by the SAC/MTPA.

4.180. Upgrading infrastructure remains critical for improving international competitiveness. Under the Growth Acceleration Programme (PAC), in the course of 2015, INFRAERO prioritized investments in its airports located in cities hosting the 2016 Olympic Games as well as in regional aviation development works, major resumed works and the acquisition of vehicles and equipment aimed at modernizing airport security and operations. ²⁸⁶ As from May 2011, private investors have been allowed to build, manage, and operate airports through concessions, a fundamental factor for the development and modernization of the airport infrastructure in Brazil. No legal restrictions for the participation of foreign investors in Brazilian airports are in place though so far many large public airports have been managed by the state-owned enterprise INFRAERO. All concessions must have prior approval from the SAC/MTPA, while the ANAC is in charge of carrying out the bidding procedures. In line with a concessions programme for private participation in expanding infrastructure and operating airports, between 2012 and 2015 six international airports (São Gonçalo de Amarante/RN, Guarulhos/SP, Viracopos/SP, Brasília/DF, Confins/MG and Galeão/RJ) were passed from INFRAERO to private management; INFRAERO retained 49% of the shares in each of the concessionaries. 287 Since 2012, approximately R\$10 billion were invested in these six airports and further investment should exceed R\$26 billion during the period of the concession (20-30 years); it should expand the capacity of these airports from 80 million passengers (2011) to 270 million passengers in 2032. On 9 July 2015, the second phase of the Investment Programme in Logistics (PIL 2) was announced to transfer four airports (International of Porto Alegre/RS, Salvador/BA, Florianópolis/SC and Fortaleza/CE) to the private sector. Their auction is scheduled for the first half of 2017 and approximately R\$6.5 billion are expected to be invested during the concession term.

4.181. The ANAC determines ceiling fees for different airport services and adjusts them annually; the fees are applied to the service provided (i.e. boarding, connection, landing and permanence). 288 The boarding fees for domestic and international flights are different, but according to the authorities there is no discrimination between national and foreign air carriers, as the fee charged is the same for the same service provided. Airport services (e.g. take-off, landing, and parking of aircraft, and storage of air cargo) were subject to the Additional Airport Tax (ATAERO), at a rate of 35.9% on service fees until it was terminated at the end of 2016.²⁸⁵

4.182. 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 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.

4.4.5.2 Maritime transport and ports

4.4.5.2.1 Shipping

4.183. During the review period, 94.8% of Brazil's merchandise trade (domestic and foreign) was carried by sea of which 4.6% was transported by national flag vessels. Brazil's national flag merchant fleet capacity rose from 3.4 million deadweight tonnes (dwt) in 2010 to 4.3 million dwt in 2016.²⁹⁰ According to UNCTAD data, in 2016 Brazil owned the world's 25th (21st in 2011) largest fleet in dwt terms (0.88% of total dwt) consisting of 15.8 million dwt (387 vessels) - or 22% less than in 2015; this drop was due to the reduction of Brazilian-owned foreign flagged vessels (mostly in Singapore, Panama and Liberia) which represented a 76.6% (151 vessels) dwt share

²⁸⁶ INFRAERO (2016), *Relatório Anual 2015*. Viewed at:

http://www.infraero.gov.br/images/stories/Infraero/Contas/Relatorios/relatorio2015.pdf.

²⁸⁷ INFRAERO (2016), *Relatório Anual 2015*. Viewed at:

http://www.infraero.gov.br/images/stories/Infraero/Contas/Relatorios/relatorio2015.pdf.

288 The latest adjustments are contained in ANAC Resolution No. 216 of 30 January 2012.

²⁸⁹ Law No. 13,319 of 25 July 25 2016.

²⁹⁰ UNCTAD online data. Viewed at: http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx.

compared to 80.2% the previous year. 291 In 2015, the national flag fleet consisted, in dwt terms, mainly of oil tankers (39.8%), bulk carriers (19.5%) and container ships (17.6%), reflecting the structure of Brazil's merchandise exports.²⁹² It remains concentrated, with the five largest operators controlling 88.3% (2016) of the market (83.4% in 2011). As at 2016, the largest Brazilian flagged fleet (international and domestic routes) was owned by the state company PETROBRAS/TRANSPETRO (Section 4.4.3.1), with 62 ships and 62.9% of total dwt, followed by Alliança (10.1%), ELCANO (8.2%), Log-in (3.9%) and Norsul (3.2%). 293

Policy and institutions

4.184. Brazil's national maritime policy plan dates back to 1994 and its objectives remain unchanged. In 2016, the Secretariat of Ports was integrated into the Ministry of Transportation, Ports and Civil Aviation (MTPA) (Section 4.5.5.1.1). The Secretariat of Ports formulates policies and guidelines for the development and promotion of the maritime, river and lake ports and port facilities sector. Brazil's regulatory agency for maritime services remains the National Waterways Transport Agency (ANTAQ), a public-law independent agency linked to the MTPA (Section 4.5.5.2.2). 294 The ANTAQ regulates and supervises the Port Authority, the federal waterway infrastructure, private terminals, and shipping companies.

Regulatory and operational framework

- 4.185. The main regulatory framework governing maritime services remains unchanged.²⁹⁵ 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. In order to operate as a Brazilian navigation company, only registration for legal persons is required, with representation and administration in Brazil. Brazil does not impose foreign equity restrictions. No restrictions apply to the origin of capital for the establishment of a multimodal transport operator in Brazil. ²⁹⁶
- 4.186. Reciprocity is required in international maritime transport services as specified in international agreements signed by Brazil. ²⁹⁷ As of 2017, Brazil had bilateral agreements on maritime transport services with 11 countries, of which three (with Argentina, Chile, and Uruguay) had cargo-sharing provisions.²⁹⁸ As at March 2017, the maintenance of the agreement with Chile was under consideration.
- 4.187. Cargo of government entities (including public enterprises), and goods benefitting from official tax or credit programmes must be transported by Brazilian-flag vessels.²⁹⁹ Exports of crude oil extracted in Brazil must also be transported by Brazilian-flag vessels unless there is no such availability. In case of non-availability of a ship with a Brazilian flag or the flag of the importer or exporter for transporting freight, ANTAQ may release the shipment to a specifically designated third flag ship. When no Brazilian flag ship is available or the fares are considered unreasonable, a permit (certificate of release of cargo prescribed, CLCP) may be issued for the carriage of import cargos by foreign flagged vessels; 1,960 certificates were issued in 2014, 1,994 in 2015, and

²⁹¹ UNCTAD online data. Viewed at: http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx; and UNCTAD (2016), Review of Maritime Transport 2016. Viewed at: http://unctad.org/en/PublicationsLibrary/rmt2016_en.pdf.

²⁹² UNCTAD online Maritime Profile. Viewed at:

 $[\]frac{http://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/076/index.html.}{^{293}} \ ANTAQ \ online \ information. \ Viewed \ at:$

http://www.antaq.gov.br/Portal/Frota/ConsultarFrotaGeral.aspx and http://www.antaq.gov.br/anuario.

294 More information on the institutional framework is available in WTO document WT/TPR/S/283/Rev.1,

²⁶ July 2013. It mainly consists of: Law No. 9,432 of 8 January 1997; Law No. 7,652 of 3 February 1998; and Law 295 It mainly consists of: Law No. 9,432 of 8 January 1997; Law No. 7,652 of 3 February 1998; and Law No. 10,233 of 5 June 2001.

²⁹⁶ Law No. 9,611 of 19 February 1998 and Decree No. 3,411.

²⁹⁷ Article 178 of the Constitution and Article 5 of Law No. 9,432 of 8 January 1997.

²⁹⁸ These countries are: Algeria, Argentina, Chile, China, France, Germany, Poland, Portugal, the Russian Federation, the United States, and Uruguay.

²⁹⁹ Decree Law No. 666 of 2 July 1969.

- 1,386 in 2016. Foreign vessels that enter Brazilian ports are charged a specific lighthouse fee, with exemptions for vessels under 1,000 dwt and in cases of reciprocity under bilateral trade agreements (Section 4.5.5.2.2).300
- 4.188. Cabotage is reserved for Brazilian-flag vessels operated by domestic shipping companies authorized by ANTAQ. 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 for foreign vessels may be granted when: a Brazilian-flag vessel of the required type is not available; for public interest reasons; or if the foreign vessel replaces a vessel that is under construction at a Brazilian shipyard. 301 Between July 2013 and 2016, 7,268 (5,434 in 2008-11) such waivers were granted for the chartering of foreign vessels in cabotage navigation, mainly due to the inexistence or unavailability of Brazilian flag vessels of the type and size suitable for the intended transport. 302

Domestic support

- 4.189. Domestic support in the form of tax measures remains in place. The Additional Freight Charge for the Renovation of the Merchant Navy (AFRMM), a federal tax levied on maritime freight, continues to be applied on the combined cost of freight and insurance at rates 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 cargos in Brazil's north and north-east regions.³⁰³ The AFRMM is levied only on unloaded (domestic and import) cargos; transit and export cargos are exempt. 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.
- 4.190. AFRMM resources are deposited in the Merchant Marine Fund (FMM), which is managed by the MTPA, with BNDES, Banco do Brasil and Caixa Economica Federal as its financial agents, to finance the development of the Brazilian merchant fleet and shipyard industry through administered interest rate loans to domestic shipping companies ordering ships from domestic shipyards and to local shipbuilders producing vessels for domestic shipping companies. The conditions of these loans 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.). 304 Between 2012 and 2015, the FMM allocated a total of R\$19.7 billion in credits to the shipping industry compared to R\$8.9 billion in the period 2008-11.305
- 4.191. Freight revenues from goods carried between Brazil and a foreign country by vessels registered at the Special Brazilian Registry (REB) remain exempt from the Contribution to the Social Integration Programme (PIS) and the Contribution to the Social Security Financing (COFINS). 306 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).³⁰⁷ Reciprocal income tax exemption applies to foreign shipping companies domiciled in countries where Brazilian shipping companies benefit from the same treatment for international shipping traffic activities. 308 Neither an estimate of the amount of foregone tax revenue through these measures nor an appraisal on the attainment of

³⁰⁰ OECD (2016), Services and Performance of the Brazilian Economy - Analysis and Policy Options, unclassified document TAD/TC/WP(2016)13/FINAL, 8 September.

³⁰¹ Articles 7 and 9 of Law No. 9,432 of 8 January 1997.

³⁰³ 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.

304 Central Bank Resolution BACEN No. 3828 of 17 December 2009.

305 Central Bank Resolution BACEN No. 3828 of 17 December 2009.

 $^{^{305}}$ National Monetary Council (CMN) 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].

³⁰⁶ Provisional measure No. 2,158-35 of 4 August 2001.

³⁰⁷ Decree No. 25.403 of 2 July 1999.

³⁰⁸ Income Tax Code (Article 176) and Decree Law No. 5,844 of 1943 (Article 30).

any targets set (e.g. investment, output, employment, or exports) was available from the authorities.

4.192. Brazil signed the UN Convention on a Code of Conduct for Liner Conferences in 1975 but has not ratified it yet, as its provisions on rejection of proposals on freight rates put forward by Liner Conferences (article 14, paragraph 6) do not conform with Brazilian law. 309 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, and civil liability, among others. During the review period, no action was taken to either sign or ratify any other IMO conventions or recent amendments to those that it is already a signatory. 310 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.

4.4.5.2.2 Port services

4.193. During the review period, port cargo movement continued to increase. Between 2012 and 2015, it rose from 904 million tonnes to 1 billion tonnes. In the same period, private terminals continued to handle about 65% of total cargo movements which mainly consist of loading (68.7% in 2012, 70.5% in 2015) rather than unloading merchandise. 311 The main products transported remain commodities including iron ore, petroleum and petroleum products, soybeans, bauxite, corn, coal, and sugar, which all together continue to account for almost three quarters of all cargo moved. Average dwell times for bulk vessels were reduced mainly due to the improvement in the operational efficiency of the terminals and the start-up of new private port terminals. In 2015, the average waiting and working times fell from 5.17 and 2.04 days respectively, compared to 6.44 and 12.08 in 2014, and the estimated waiting costs dropped by 61%. 312

4.194. In 2016, there were 37 (35 in 2012) "organized" maritime and fluvial public ports under the jurisdiction of the MTPA (see below), of which 18 were operated by state or municipal governments, and 19 (18 in 2012) were administered by the publicly owned *Companhia Docas*; the MTPA is in charge of another 39 inland fluvial ports.³¹³ As at December 2016, there were 188 (134 in 2012) private port facilities/terminals (TUPs); many companies operate TUPs, mostly used for exporting their own cargos. 314 Some of the ports and terminals specialize in the shipment of a single commodity (e.g. mineral ore in the ports of Ponta da Madeira and Tubarão). In 2015, the main Brazilian ports in terms of tonnes of cargo handled were Santos (29%), Itaquaí (16%), and Paranaguá (12%).315 Concerning TUPs, Ponta da Madeira (19%) and Tubarão (17%) were the leaders in cargo handled, followed by Tebar (7%, exclusively for oil cargo).

Policy and institutions

4.195. During the review period, the port policy framework consisted of the 2013 National Ports' Plan, comprising a Master Plan, a Zone and Development Plan, and the General Port Concession Plan (PGO), as well as the 2014 Port Logistics Plan which was aimed at solving problems related to the lack of a uniform allocation of tasks and responsibilities between private and public entities. 316 At the time of the previous TPR, under a General Port Concession Plan (PGO) establishing the procedures for public port concessions, there were 159 potential areas for building new terminal

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XII-6&chapter=12&clang=_en#EndDec.

http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx.

³¹¹ ANTAQ (2014), Estatístico Aquaviário 2013, 18 February. Viewed at:

http://www.antaq.gov.br/Portal/Anuarios/Anuario2013/index.htm; and ANTAQ (2016), Estatístico Aquaviário 2015, February. Viewed at:

http://www.antaq.gov.br/Portal/PDF/Anuarios/ApresentacaoAnuario2015.pdf.

312 UNCTAD (2016), Review of Maritime Transport 2016. Viewed at:

http://unctad.org/en/PublicationsLibrary/rmt2016_en.pdf.

313 SEP online information. Viewed at: http://www.portosdobrasil.gov.br/assuntos-1/sistema-portuarionacional and http://www.portosdobrasil.gov.br/assuntos-1/gestao/companhias-docas.

314 SEP online information. Viewed at: http://www.portosdobrasil.gov.br/assuntos-

http://www.antaq.gov.br/Portal/PDF/Anuarios/ApresentacaoAnuario2015.pdf.

316 Ministerial Decrees SEP/PR No.15/2013 and SEP/PR No. 3/2014.

 $^{^{\}rm 309}$ UN online information. Viewed at:

³¹⁰ IMO online information. Viewed at:

^{1/}investimentos/terminais-de-uso-privado.

315 ANTAQ (2016), Estatístico Aquaviário 2015, February. Viewed at:

areas for ports to address bottlenecks and meet increasing demand. Furthermore, US\$3 billion had been earmarked for dredging, port infrastructure, port logistics, and passenger terminals under the Growth Acceleration Plan/PAC-2 programme. Between 2010 and 2014, more than R\$1 billion were invested under the National Dredging Programme (PND) for the maintenance and expansion of maritime access channels to public ports.

4.196. In 2016, the Secretariat of Ports (SEP) was integrated into the MTPA. It is in charge of developing plans in accordance with the policies and guidelines of integrated logistics, covering both port access and infrastructure and urban development.³¹⁷ The MTPA nominates the presidents of the Port Authority Councils (CAP), which are advisory bodies in all port administrations, and of the state-owned *Companhia Docas*, which also participates in the Port Authority Councils.³¹⁸

Regulatory and operational framework

4.197. During the review period, changes were brought to the regulatory framework governing port services. A new Port Law, which regulates direct and indirect public use of ports and their installations along with activities deployed by port agents, was enacted in 2013 to raise competitiveness, increase competition, and promote the development of the sector. 319 The main changes under the new Law included the centralization of port planning at SEP, the release of private terminals for the handling of third-party cargos and the transformation of the CAPs from deliberative to consultative bodies. Other areas of regulatory change included: conflict arbitration in the port sector; rules and proceedings to recompose the economic and financial balance in signed grant contracts; validity term extension in grant contracts; and chartering of vessels by Brazilian shipping companies in port support navigation, maritime support, cabotage and long-course shipping. The regulatory framework still allows the leasing of public port areas and facilities to the private sector, including foreign companies. Many activities in the public ports are carried out by private local and foreign companies under leasing contracts, which have an initial duration of 25 years that is renewable for another period of 25 years. Firms supplying auxiliary port services must be established in Brazil, but foreign capital may participate and receive national treatment. The REPORTO scheme continues to provide for IPI, COFINS, PIS, and import duty exemption on machinery and equipment used to modernize and expand ports (Table A3.2).

4.198. The lighthouse fee (TUF) on foreign vessels to cover lighthouse operation costs, which is charged each time a foreign ship uses a port in a different Brazilian state, remains in place at the following rates: US\$1,500 for vessels from 1,000 dwt to 50,000 dwt; US\$2,250 for vessels from 50,000 dwt to 100,000 dwt; and US\$3,000 for vessels of over 100,000 dwt. Vessels under 1,000 dwt are exempt. The TUF revenue 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. During the review period, TUF revenue rose from US\$40 million in 2012 to R\$101.52 million in 2013, R\$ 110.73 million in 2014, R\$151.23 million in 2015, and R\$141.85 million in 2016 compared.

4.199. According to the authorities, port charges in Brazil are at a similar level to those at other ports in Latin America. Regarding public ports, there are two pricing schemes. For ports operated by the Public Port Authority charges are calculated under the "total cost of the service" model, and need ANTAQ approval; upon ANTAQ authorization, discounts for certain types of cargo may apply. The charges are set out in individual tables for each port and must be approved by ANTAQ; each port may independently decide to lower a certain charge (applicable in a uniform manner) without ANTAQ approval. For the leased terminals, a "price cap" model may be established at the lease contract and discounts can be freely negotiated among the parties. A new port tariff and price regulation, updating the existing rules under a modern and reliable pattern (e.g. benchmarking the Brazilian energy sector) and providing enhanced discipline and data transparency, is to be set in 2018. Private terminal prices are not subject to control.

³¹⁷ Prior to the entry in force of the new Port Law no. 12,815/2013, each Port Authority was responsible for its individual port planning without ensuring that this planning was integrated with a national investment programme.

³¹⁸ Law No. 11,518 of 5 September 2007. More information on the institutional framework is available in WTO document WT/TPR/S/283/Rev.1, 26 July 2013. SEP online information. Viewed at:

http://www.portosdobrasil.gov.br/assuntos-1/gestao/conselho-de-autoridade-portuaria-cap.

319 Law No. 12,815/2013, Presidential Decree No. 8,465/2015, Ministerial Decree 499/2015, Ministerial Decree No. 349, Normative Resolution No. 01-ANTAQ of 13 February 2015, and Normative Resolution No. 05-ANTAQ of 23 February 2016.

4.4.6 Distribution and e-commerce

4.4.6.1 Distribution

4.200. Distribution services (including retail and wholesale) accounted for 12.5% of gross value added in 2016 (13.4% in 2012) and 22.9% (22% in 2013) of total employment (Table 1.1). 320 The sector consists of large national and international distribution networks as well as of a large number of micro and small family establishments; in 2014, there were 1,647,204 firms (60.7% retail, 12% wholesale) employing 10,698,741 people. 321 The importance of retail in the economy has been increasingly recognized and highlighted; besides being the largest generator of formal jobs, in the last four years the sector has shown significant revenue growth and consistent indicators of modernization. The Brazilian distribution market (retail and wholesale) is heterogeneous. Retail supermarkets and the retail appliance market are concentrated, and there have not been any relevant changes regarding mergers and acquisitions since 2013. As at 2015, the supermarket chains segment accounted for 5.4% of GDP; the five largest companies (CIA Brasileira de Distribuição (Pão de Açucar), Carrefour Com Ind Ltda, WalMart Brasil Ltda, Ceconsud Brasil Comercial Ltda, and Cia Zaffari Comércio e Industria) accounted for 55.2% of the outlets and 80.7% of the turnover of the 20 major chains operating in Brazil. 323

4.201. The main legislation on distribution services remains the Commercial Law Code. Several municipal and state level regulations, the Code of Consumer Protection (CDC) and the new legislation on e-commerce govern the activity (Section 4.4.6.2). No foreign equity limit is imposed in the sector, and no quotas or economic needs tests are applied in relation to the establishment or expansion of distribution services suppliers. No products are subject to exclusive distribution rights, and both franchising and direct selling are allowed. Commercial presence in retail services and franchising is unrestricted. Foreign entry in wholesale is allowed except for wholesale trade services of solid, liquid and gaseous fuels and related products where the foreign company must be legally established in Brazil and meet domestic requirements. Furthermore, the Agreement on Economic and Trade Expansion Brazil-Peru, whose implementation is pending, contains WTO-plus commitments in distribution services (commissioned agent services, wholesale, retailing services, and franchising) for which there is no limitation in cross-border supply, consumption abroad and commercial presence. Distribution sector activities are subject to the competition policy and consumer protection legislation (Section 3.3.4.1).

4.4.6.2 E-commerce

4.202. With retail e-commerce sales just below US\$20 billion in 2015, Brazil is the only Latin American country in the top-10 worldwide ranking for retail e-commerce, and one of the fastest growing among these main markets. During the review period, e-commerce in Brazil registered fast growth, largely driven by the rising number of Internet users in the country. E-commerce

 $\underline{http://www.ibge.gov.br/home/estatistica/indicadores/pib/defaulttabelas.shtm}.$

³²⁰ Sistema de Contas Trimestrais. Viewed at:

³²¹ Brazilian Institute of Geography and Statistics (IBGE) online information. Viewed at: http://brasilemsintese.ibge.gov.br/comercio.html and

 $[\]underline{\text{http://www.sidra.ibge.gov.br/bda/comerc/default.asp?t=4\&z=t\&o=13\&u1=1\&u2=1\&u3=1\&u4=1.}}$

³²² U.S. Department of Commerce (2015), *Doing Business in Brazil: 2015 Country Commercial Guide for U.S. Companies.* Viewed at: http://www.iberglobal.com/files/2015/brazil ccg.pdf.

^{323'} DIEESE (the Inter-union Department of Statistics and Socio-economic Studies) online information. Viewed at: http://www.dieese.org.br/boletimindicadoresdocomercio/2015/boletimindicadoresComercio08.pdf.

³²⁴ Law on franchising (*Lei sobre o contrato de franquia empresarial*), 15 December 1994 (http://www.planalto.gov.br/ccivil_03/Leis/L8955.htm).

³²⁵ WTO document S/DCS/W/BRA, 24 January 2003, and Resolution No. 58 58, 17 October 2014. (http://www.lex.com.br/legis_26081041_RESOLUCAO_N_58_DE_17_DE_OUTUBRO_DE_2014.aspx_).

³²⁶ These commitments exclude: CPC 62118 - Sales on a fee or contract basis of goods; CPC 62271 - Wholesale trade services of solid, liquid and gaseous fuels and related products; CPC 63297 - Retail sales of fuel oil, bottled gas, coal and wood.

³²⁷ These estimates exclude sales of services online. Online E-Marketer information (https://www.emarketer.com/Article/Brazil-Ranks-No-10-Retail-Ecommerce-Sales-Worldwide/1011804) and Fung Global Retail & Technology, 8 March 2015

⁽https://www.fbicgroup.com/sites/default/files/Overview%20of%20Brazil%20Ecom%20by%20Fung%20Global%20Retail%20Tech%20Mar.%208%202016.pdf).

³²⁸ Between 2012 and 2015 the online population increased from 75.4 million to 101.5 million, and the number of e-shoppers jumped from 24.3 million to 38.1 million. Ecommerce foundation (2016), *Global B2C E-*

revenue was R\$18.7 billion in 2011, R\$22.5 billion in 2012, R\$28.8 billion in 2013, R\$35.8 billion in 2014 (accounting for about 1% of GDP), R\$41.3 billion in 2015, and R\$44.4 billion in 2016. 329 Despite the real's devaluation, 54% of Brazilian consumers purchased on foreign websites, thus enhancing cross-border e-commerce. 330 Brazil ranks 3rd in South America and 51st (out of 137 countries) on UNCTAD's B2C (business to consumer) E-commerce Index (2016), inter alia, due to its wealth factor. 331 In 2015, the most popular Brazilian online retail websites included MercadoLibre, B2W Digital, Nova Pontocom, Buscape Company, Magazineluiza, and WalMart, whereas among foreign websites Chinese websites accounted for 55% of total international purchases. 332 The top five most used cross-border e-commerce platforms were Alibaba, Amazon.com, eBay, DealExtreme and Apple Store. Of the 20 most frequently used websites, 12 are Chinese. In 2016, the market's largest segment was fashion (US\$5.6 million), followed by electronics and media (US\$4 million); food and personal care (US\$4 million); and, furniture and appliances (US\$1.8 million). User penetration stood at 38.2% in 2016 and is predicted to reach 55.7% in 2021; the average revenue per user was estimated at US\$273.8 in 2016.

4.203. The main e-commerce regulatory framework was last changed in 2014.³³⁴ It involves e-commerce requirements such as: full identification of the supplier on the site; provision of the physical and electronic address on the site; clear and precise information; the delivery of a summary and a full agreement; purchase confirmation; rules for online customer service; information security; the right of cancellation; rules for requested chargebacks; and, rules for collective purchases.³³⁵ Furthermore, principles, guarantees, rights and duties for the use of the Internet in Brazil were established under the 2014 digital marketing law. The Law, *inter alia*, protects privacy and personal data and exempts online content providers of various types from liability in relation to copyright infringement by means of a set of "safe harbours" while indicating that copyright violations will be dealt with by a future law (Section 3.3.7).³³⁶ It also stipulates that public initiatives shall promote digital inclusion, seek to reduce regional gaps regarding the access and use of information technology and communication, and promote the production and dissemination of national content. The individual federal states are in charge of regulating the implementation of these requirements (e.g. delivery terms).

4.204. Brazil has no *de minimis* rule whereby goods below a certain value are exempt from customs duties and taxes. Virtually all international e-purchases are subject to a 60% flat/single equalization tax on the purchase price covering/compensating customs duty and other internal taxes/charges on imports. Certain medicines (upon submission of specific documentation) and printed books or periodicals are the only exceptions to these tax requirements. An exemption (excluding the ICMS tax) for packages valued at US\$50 or less applies only to remittances issued by an person to another person for personal use or gifts of lower value but not for commercial operations. A Simplified Taxation Regime applies to goods not exceeding US\$3,000.

commerce Report 2016. Viewed at:

https://www.ecommercewiki.org/wikis/www.ecommercewiki.org/images/5/56/Global_B2C_Ecommerce_Report_2016.pdf

 $\underline{\text{https://www.publicknowledge.org/assets/uploads/documents/APPROVED-MARCO-CIVIL-MAY-2014.pdf.}$

³²⁹ Online Webshopper Report data. E-bit/Buscapé (2017), *Webshoppers - 35th edition 2017*. Viewed at: http://www.ebit.com.br/webshoppers.

³³⁰ FECOMÉRCIO (2016), WEBSHOPPERS, 33ª Edição. Viewed at:

http://img.ebit.com.br/webshoppers/pdf/33_webshoppers.pdf.

³³¹ The index is based on four indicators: internet users; secure servers; credit card penetration; and, postal reliability score. UNCTAD (2016), *UNCTAD B2C E-COMMERCE INDEX 2016*, UNCTAD Technical Notes on ICT for Development No. 7, April. Viewed at

http://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d07_en.pdf.

³³² U.S. Department of Commerce (2015), *Doing Business in Brazil: 2015 Country Commercial Guide for U.S. Companies.* Viewed at: http://www.iberglobal.com/files/2015/brazil_ccg.pdf.

^{333'} Digital Market Outlook online information. Viewed at https://www.statista.com/outlook/243/115/e-commerce/brazil#.

³³⁴ It consists of the 1990 Consumer Defence Code (CDC), Decree No. 7.962 15 March 2013, which regulates the CDC in order to adapt it to Brazil's e-commerce reality, and Law No. 12.965 (*Marco Civil da Internet*) of 23 April 2014.

³³⁵ Decree No. 7,962 of 15 March 2013.

³³⁶ Law No. 12,965 of 23 April 2014. Viewed at:

4.4.7 Tourism

4.205. Tourism's contribution to the economy of Brazil, which ranked 10th and 8th in the world in 2015 in terms of the industry's contribution to GDP and employment, is significant.³³⁷ In 2014, it directly contributed 3.7% to GDP or 9.6% when related activities are taken into consideration. In the same year, it also accounted for 8.7 million direct, indirect and induced jobs, which represented 8.6% of Brazil's employment.³³⁸ In 2015, its direct contribution to GDP stood at 3.3%, and despite a fall of 0.9% in 2016, it is expected to rise by 2.9% per year to attain 3.7% of GDP in 2026. During the review period, Brazil hosted six mega events, i.e. the United Nations Conference on Environment and Development (Rio+20), World Youth Day, Confederations Cup, 2014 FIFA World Cup, and 2016 Olympic and Paralympic Games, which required a major investment in tourism, infrastructure, and security. Total revenue from international tourists amounted to US\$6.8 billion in 2014, an increase of 2% over 2013, which was a new record for the country, but in 2015 it dropped to US\$5.8 billion. In 2015, the main source markets were Argentina (33%), the United States (9.1%), Chile (4.9%), Paraguay (4.8%), Uruguay (4.2%), and France (4.1%).³³⁹ All hotels are privately owned and there is foreign participation in hotel management activities.

4.206. The National Council of Tourism (CNT) remains responsible for bringing together government and non-government stakeholders to jointly establish the strategic direction for tourism in Brazil; its activities are coordinated by the Ministry of Tourism. Horizontal co-ordination at a sub-national level is led by the National Forum of State Tourism Ministers (FORNATUR) and the National Association of Municipal Ministers and Directors of Tourism (ANSEDITUR). The Brazilian Tourist Board (Embratur), a federal state-owned agency reporting to the Ministry of Tourism works exclusively on the promotion, marketing and support of the trading of Brazil's tourism services, products and destinations abroad.

4.207. During the review period, the National Tourism Plan 2013-2016 set four priorities: prepare Brazil tourism for mega events; increase the generation of foreign currency receipts and visits by international tourists; encourage Brazilians to travel within Brazil; and, improve the quality and increase the competitiveness of Brazilian tourism.³⁴¹ Priority actions covered a wide range of topics in the areas of infrastructure, financing and capitalization of the sector, technical and managerial training, fiscal/tax treatment, technological innovation, domestic and international promotion, certification, registration, development of micro and small enterprises in the tourism sector and development of tourist destinations, among others. The objectives set in the 2016-2019 Multi-Year Plan are: to promote Brazilian destinations, products and services in Brazil and abroad; and, to increase the competitiveness of tourism destinations, products and services. Priority action for attaining these objectives includes: the modernization of Embratur's management model; the reallocation of 15.75% of social contribution funds to finance the promotion of tourist destinations; the legalization of resorts' casinos; the unilateral exemption from tourism visas for strategic tourist markets and low-risk migrants; the introduction of incentives for theme parks (such as import tax exemption on equipment with no national substitutes); the reduction of IPI taxes on industrialized products; increasing air connectivity; and resizing the Brazilian Tourism Map.

4.208. The main regulatory framework governing tourism remains virtually unchanged.³⁴² In 2015, a visa waiver for foreign tourists during the Olympics and Paralympics, and some budgetary laws guaranteeing resources for promoting the host cities and the main tourist attractions in the country, were enacted.³⁴³ In the same year, the right to accessibility was extended and, *inter alia*,

³³⁷ World Travel & Tourism Council (2016), *Travel & Tourism - ECONOMIC IMPACT 2016 BRAZIL*. Viewed at: http://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2016/brazil2016.pdf; Ministério do Turismo (2015), *Índice de Competitividade do Turismo Nacional - Relatório Brasil 2015*. Viewed at http://www.turismo.gov.br/sites/default/turismo/o_ministerio/publicacoes/downloads_publicacoes/Relatorio_Brasil_2015_WEB.pdf.

³³⁸ World Travel & Tourism Council online information. Viewed at http://www.wttc.org/-/media/files/reports/benchmark-reports/country-reports-2015/brazil--benchmarking-report-2015.pdf.

339 OECD (2016), OECD Tourism Trends and Policies 2016, 9 March. Viewed at: http://www.oecd-

³³⁹ OECD (2016), *OECD Tourism Trends and Policies 2016*, 9 March. Viewed at: http://www.oecd-ilibrary.org/industry-and-services/oecd-tourism-trends-and-policies-2016 tour-2016-en.

³⁴⁰ OECD (2016), *OECD Tourism Trends and Policies 2016*, 9 March. Viewed at: http://www.oecd-policies-2016, oecd-policies-2016, 9 March. Viewed at: http://www.oecd-policies-2016, 9 March. Viewed at: http

ilibrary.org/industry-and-services/oecd-tourism-trends-and-policies-2016, tour-2016-en.

³⁴¹ OECD (2016), OECD Tourism Trends and Policies 2016, 9 March. Viewed at: http://www.oecd-ilibrary.org/industry-and-services/oecd-tourism-trends-and-policies-2016_tour-2016-en.
³⁴² It mainly consists of the Brazilian Tourism Act (Law No. 11.771 of 17 September 2008) and the Law

³⁴² It mainly consists of the Brazilian Tourism Act (Law No. 11.771 of 17 September 2008) and the Law of Special Areas and Places of Tourist Interest (Law No. 6.513 of 20 December 1997).
³⁴³ Law 13,193/2015.

established a requirement that hotels, inns and similar establishments must offer at least 10% of their rooms as dormitories accessible by handicapped people.³⁴⁴ The revision of the Brazilian Tourism Act is under consideration.

4.209. In addition to tax incentives available to all business activities (Section 3.3.1), Brazil continued to provide ten tourism-specific financing programmes to cope with the high demand from the mega events hosted during the review period.³⁴⁵ These programmes, which provide concessional or administered interest rate loans to investors, are: FUNGETUR – General Tourism Fund; PROGER - Tourism Investment; FNE - Programme for Supporting Regional Tourism; FNO -Financing Programme for the Sustainable Development of the Amazon (Tourism); FCO Entrepreneurship - Credit Line; BNDES Automatic; BNDES FINEM - Enterprise Financing; BNDES -Finame Machinery and Equipment; BNDES Card; and, Proger (as from May 2016).³⁴⁶ FUNGETUR (managed by the Ministry of Tourism) and the constitutional financing funds (FNO, FNE, FCO) have tourism-specific credit lines, whereas the Workers' Assistance Fund (FAT) has two general credit lines (Proger Urban Investment and Proger Urban Working Capital) that cover the activities of the sector. In 2015, concessional and administered interest rate loans supplied by state-owned banks stood at R\$10.9 trillion of which 55.2% were supplied by the Bank of Brazil, 32.6% by the Caixa Econômica Federal Bank, 6% by the Bank of Nordeste, 3.6% by BNDES, and 2.5% by the Bank of Amazônia.³⁴⁷ Between January 2013 and September 2016, the total amount disbursed for tourism project finance stood at R\$44.5 billion. In March 2016, Brazil launched an online platform called "Invest in Brazilian Tourism" to guide investors intending to invest in tourism. 348

4.210. According to the OECD, Brazil's main challenges in this area include market openness (e.g. the visa regime), safety, and business environment issues. 349 To address them, it, inter alia, suggests the introduction of mechanisms to improve stability and reliability with regard to obtaining licences, permits, concessions, and other requirements for the installation and operation of tourism enterprises in Brazil.

4.4.8 Professional services

4.211. Professional services remain a major component in Brazil's trade in services (Section 4.5.1). According to Siscoserv data, in 2014 the second most exported service and fourth most imported service was other professional, technical and management services, accounting for 9.9% and 3.4% of the total services exports and imports respectively. 350 In 2015, management and management consulting services (11.5% of total) were the most exported service followed by other professional, technical and management services (9.9% of the total), and retained their position as the fourth most imported service (3.4% of the total). 351

4.212. Under the Constitution, the Federal Government has exclusive powers to regulate the practice of professions. 352 Registration in professional associations is mandatory for the provision of certain services, such as legal, accounting, architectural, and engineering services, and veterinary, dental and medical care. No professions are reserved for Brazilian nationals, but practice of the legal, medical, health, and other professions requires residence in Brazil. 353 Nationals and foreign professionals with foreign qualifications (graduation diploma) must obtain revalidation of their degrees from a university recognized by the Ministry of Education, and meet

³⁴⁴ Law 13, 146/2015.

³⁴⁵ Ministry of Tourism online information. Viewed at http://investimento.turismo.gov.br/en/2013-10-

³⁴⁶ More information on these programmes is available online at the Ministry of Tourism website. Viewed at: http://investimento.turismo.gov.br/2013-10-27-00-11-8.html.

³⁴⁷ Ministry of Tourism online data. Viewed at:

 $[\]underline{http://www.dadosefatos.turismo.gov.br/dadosefatos/home.html}.$

³⁴⁸ Ministry of Tourism online information. Viewed at: http://investimento.turismo.gov.br/.

OECD (2016), OECD Tourism Trends and Policies 2016, 9 March. Viewed at: http://www.oecdilibrary.org/industry-and-services/oecd-tourism-trends-and-policies-2016 tour-2016-en.

The services are registered on Siscoserv according to the Brazilian Nomenclature of Services and Intangibles (NBS). "Other professional, technical and management services" are code number 1.1409 of NBS. Online data (http://www.mdic.gov.br/comercio-servicos/estatisticas-do-comercio-exterior-de-servicos/416estatisticas-2014).

³⁵¹ MDIC online data. Viewed at: http://www.mdic.gov.br/comercio-servicos/estatisticas-do-comercio-<u>exterior-de-servicos/717-estatisticas-do-comercio-exterior-de-servicos-2015</u>.

352 Article 22 of the Constitution.

³⁵³ Law No. 6.815 of 19 August 1980.

the requirements established by law to practise in Brazil. The National Education Council of the Ministry of Education regulates the revalidation of foreign diploma, titles, and certificates.³⁵⁴

4.213. The request for revalidation must be submitted to a recognized Brazilian university.³⁵⁵ The revalidation process is facilitated if the university has an Equivalence or Reciprocity Cooperation Agreement with the foreign university. In practice, procedures for revalidation of foreign diplomas are complex and time consuming.³⁵⁶ Brazil does not have any agreements for automatic recognition of qualifications other than with Portugal; therefore, the rules are the same for all countries, except Portugal.³⁵⁷ Furthermore, diplomas and transcripts must be legalized in the Brazilian consulates where the studies were conducted. Foreign professionals with a work contract are subject to the same legal labour requirements as locals.

4.214. Under MERCOSUR Decision No. 25/2003, a regulatory framework allows for granting temporary work permits to service providers in member countries.³⁵⁸ During the review period, some Brazilian professional associations issued regulations for granting temporary licences, for instance, for architectural, urban planning, engineering, geology and agronomy professionals.³⁵⁹ However, applicants must have a temporary work contract and a resident visa, either permanent or temporary, enabling them to apply for a temporary professional licence.³⁶⁰

4.4.8.1 Legal services

4.215. The regulatory framework governing legal services remains unchanged. The Brazilian Bar Association (OAB) continues to regulate and set the standards of conduct and qualifications for the legal profession at the federal level, and has exclusive authority to admit and discipline attorneys. Only lawyers registered with the OAB may receive the title of attorney and perform legal activities in Brazilian law. Anyone possessing a foreign law degree may be admitted to practise law in Brazil as an attorney, provided the law degree is validated at a recognized Brazilian law school, and the applicant passes the OAB Bar exam, and registers with the OAB. 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 attorneys are allowed to practice Brazilian law. Brazilian law firms are organized as limited liability entities, with unlimited liability of the partners with respect to losses attributed to the practice of law. The association of lawyers with non-lawyers is prohibited.

4.216. Foreign-qualified lawyers may also practice in Brazil as foreign law consultants. A foreign lawyer may establish a consultancy in foreign law in Brazil.³⁶² In this case, the foreign lawyer is not required to validate the law degree or to pass the Bar exam. However, OAB authorization and registration for legal consultancy services are required and are granted for renewable periods of three years. Requirements for obtaining a licence to practise as a foreign law consultant include proof of a legal instrument granting 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 as 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. Brazil maintains a Registry of Foreign Law Consultants.³⁶³

4.217. A consultancy firm providing foreign law services must be constituted and registered in Brazil, and all its lawyers must be authorized by the OAB. A foreign law consultancy firm cannot

³⁵⁴ Resolution No. 1 of 28 January 2002, as modified by Resolution No. 8 of 4 October 2007.

³⁵⁵ The list of required documents and procedures (in Portuguese) are available at Ministry of Education. Viewed at: http://portal.mec.gov.br/index.php?option=com_content&view=article&id=12405:revalidacao-de-diploma-graducao&temid=317.

³⁵⁶ WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

³⁵⁷ Ministry of Education online information. Viewed at: http://portal.mec.gov.br/revalidacao-de-diplomas-sp-1481178155.

³⁵⁸ The National Education Council Resolution No. 106 of 2007 provides for the implementation of Decision No. 25/2003 in Brazil.

³⁵⁹ Brazilian Regional Council of Engineering and Architecture (CREA) online information. Viewed at: http://www.creasp.org.br/profissionais/procedimentos/registro_temp_profissional_diplomado_exterior_2013.

³⁶⁰ Law No. 6.815 of 19 August 1980.

 $^{^{361}}$ Law No. 8,906 of 4 July $\bar{1}994$ (as amended).

³⁶² Provision No. 91 of 13 March 2000.

 $^{^{363}}$ Provision No. 99 of 2002.

enter into partnership with a Brazilian attorney practising Brazilian law or hire Brazilian lawyers unless employed as foreign law consultants.³⁶⁴

4.4.8.2 Accounting and auditing services

- 4.218. According to the Federal Accounting Council (CFC), there are currently 536,240 accounting professionals registered in the country; no data on foreign accountants operating in Brazil are available.
- 4.219. The regulatory framework governing the accounting and auditing services remains unchanged. The profession remains regulated by the Federal Accounting Council (CFC), a special corporative body of public law, which remains, *inter alia*, responsible for compiling and updating the Brazilian Rules of Accountancy. The CFC comprises one representative from each of the 27 Regional Accounting Councils (CRCs) which are responsible for implementing the CFC Directives and for the registration and supervision of accountants in their respective jurisdictions.
- 4.220. Similar to other professional services, persons holding an accountancy degree from a foreign university are required to revalidate their diploma at a Brazilian public university and attend an accountancy graduation course to become acquainted with Brazilian accountancy standards. After passing a CFC Sufficiency Exam, professional registration with the local CRC is required.

4.4.8.3 Architectural and urban planning services

- 4.221. As of January 2017, there were 143,465 architects and urban planners registered at the Council of Architecture and Urbanism of Brazil (CAU/BR). Since 2013, 34,906 registrations were granted to professionals trained in Brazil and 136 to those from foreign institutions. There are currently 33,195 architecture and urban planning companies in Brazil; company registrations have been on the rise with 3,146 in 2013, 3,517 in 2014, 3,514 in 2015, and 2,522 companies registered in 2016.
- 4.222. The regulatory framework governing architectural and urban planning services remains unchanged. 366 However, since 2012, regulations regarding professional registrations have improved to facilitate the process and data analysis. 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 states remain responsible for overseeing the exercise of these professions. Registration with the relevant CAU/UF is mandatory to exercise the profession of architect and urban planner, and is valid throughout the national territory.
- 4.223. Brazilian citizens and foreigners holding a permanent residence visa who have a university degree in architecture and urban planning from an officially recognized foreign institution may obtain CAU registration provided they meet certain requirements.³⁶⁷ Their degree must be duly legalized by the competent Brazilian consulate and revalidated by an authorized institution in Brazil.³⁶⁸ Professionals must present identification documents valid in Brazil as well as education and experience credentials proving equivalence with the Brazilian curricula.
- 4.224. Fixed-term registration may be granted to Brazilian and foreign architects in possession of a foreign diploma and a fixed-term work contract in Brazil.³⁶⁹ In this case, validation of the foreign diploma is not required, but it must be issued by an officially recognized institution in the country of origin. The fixed-term registration is valid for the contract duration and only for the activities specified therein; proof of residency in Brazil is required.³⁷⁰ Exceptionally, foreign professionals with no permanent residency in Brazil may obtain fixed-term registration, provided they are

 $^{^{364}}$ More information about the relevant procedures is available at WTO document WT/TPR/S/283/Rev.1, 26 July 2013.

³⁶⁵ Decree-Law No. 9,295 of 27 May 1946. CFC online information. Viewed at: http://www.cfc.org.br/conteudo.aspx?codMenu=1.

³⁶⁶ Law No. 12,378 of 31 December 2010.

³⁶⁷ CAU Resolution No. 18 of 2 March 2012.

³⁶⁸ CAU Resolution No. 26 of 6 June 2012.

³⁶⁹ CAU Resolution No. 35 of 6 October 2012.

³⁷⁰ CAU Resolution No. 26 of 6 June 2012.

accompanied in all their professional activities by a registered Brazilian architect or architect association with residence in Brazil. 371

4.225. During the review period, three cooperation agreements entered into force. Since 1 January 2014, a registration facilitation agreement between Brazil and Portugal, which is aimed at promoting the bilateral exchange of knowledge and cooperation, as well as reciprocity in registration conditions, has allowed for registration of Brazilian and Portuguese architects and urban planners in the other country's register (the Brazilian Council of Architecture and Urbanism (CAU/BR) or the Order of Architects (OA/PT) of Portugal) upon fulfilment of the following requirements: holding a definitive registration in their respective country; Brazilian professionals having at least one year of registration at CAU and Portuguese Professionals having completed a year of compulsory internship; and, registration at the Register of Individual Taxpayers (CPF) in Brazil for the members of OA or a Tax Identification Number (TIN) in Portugal for those enrolled in the CAU/BR.372 The agreement applies only to native or naturalized Brazilian and Portuguese persons. For definitive registration, the professional must prove residence in the host country and present the diploma revalidated by the competent authority. According to CAU/BR, at present there are 8 Brazilian architects registered in OA/PT while there are 20 Portuguese professionals in Brazil holding definitive registration and 6 holding a fixed-term registration. A mutual recognition agreement negotiated between the Federal Council of Engineering of Brazil and Portugal's Order of Engineers entered into force in 2015, and a Memorandum of Understanding between CAU/BR and the Conseil National de l'Ordre des Architectes of France was signed in 2016. CAU/BR also maintains MoUs with other foreign architectural councils, i.e. the United States (NCARB and AIA), the United Kingdom, Spain, Costa Rica, Angola, and Cabo Verde. The signing of MoUs with Colombia, Mexico and Peru is to take place in the course of 2017.

4.4.8.4 Medical services

4.226. In response to much-needed capital injection, in 2015, healthcare services were opened to foreign investment (Section 2.7). During the review period, the main regulatory framework governing medical services remained unchanged, although legislation was passed to implement the 2013 More Doctors (*Mais Médicos*) Programme aimed at attracting doctors for the National Public Health Services (SUS) (see below). Concerning doctors operating outside the 2013 Programme, the requirements for all Brazilians or foreigners who obtained the diploma abroad remain unchanged and involve the diploma's revalidation under the simplified National Examination of Revalidation of Medical Diplomas issued by Foreign Higher Education Institutions (Revalida), a permanent visa, enrolment in the Regional Medical Council (CRM), and a certificate of proficiency in Portuguese.

4.227. The 2013 More Doctors Programme has allowed foreign doctors holding a medical school diploma from abroad to work in Brazil without meeting the standard working requirements established by the legislation.³⁷⁵ These doctors do not receive a CRM licence as required for other professionals wishing to pursue a medical career in Brazil; they are only registered with the Ministry of Health without being required to revalidate the diploma and register at CRM. They receive payments in the form of scholarships and allowances and their payment terms are set jointly by the Ministers of State for Education and Health; their monthly payments were increased from R\$10,570 per physician to R\$11,520 in 2017, and the monthly housing and food aid to those located in indigenous areas were subject to a 10% adjustment – from R\$2,500 to R\$2,750 – as of August 2016.³⁷⁶ To facilitate the large-scale participation of Cuban doctors in the More Doctors Programme, in 2013, Brazil signed a three-year South-South cooperation agreement with the Pan-American Health Organization (PAHO) that was renewed for another period of three years.³⁷⁷

³⁷¹ Article 6 of Law No. 12,378 of 31 December 2010.

 $^{^{372}}$ CAU online information. Viewed at: $\underline{\text{http://www.caubr.gov.br/acordo-entre-brasil-e-portugal-permite-que-arquitetos-trabalhem-nos-dois-paises/.}$

³⁷³ Decree No. 44.045 of 19 June 1958 and Law No. 12.871 of 22 October 2013.

 $^{^{\}rm 374}$ The National Institute of Studies and Educational Research Anísio Teixeira (Inep) ensures the implementation of Revalida.

³⁷⁵ Law No. 12.871 of 22 October 2013.

³⁷⁶ Online Ministry of Health information (http://www.brasil.gov.br/saude/2016/09/governo-reajusta-salarios-do-mais-medicos-para-r-11-520).
³⁷⁷ PAHO facilitates the selection, transportation and integration of Cuban doctors into basic healthcare

³⁷⁷ PAHO facilitates the selection, transportation and integration of Cuban doctors into basic healthcare teams and has already designated 11,429 Cuban doctors to specific communities. United Nations Office for South-South Co-operation (2016), *Good Practices in South-South and Triangular Co-operation for Sustainable*

On the other hand, the Ministry of Health strengthened the participation of Brazilian physicians in the Programme; between December 2016 and April 2017, about 2,000 vacancies were planned to be offered to Brazilian professionals. The Programme expanded primary care by bringing doctors to regions with a shortage of professionals; in March 2017, it operated with 18,240 physicians (52.5% Cubans) in 4,058 municipalities and 34 Indigenous Special Health Districts (DSEI), providing assistance to about 63 million people.

5 APPENDIX TABLES

Table A1.1 Merchandise exports, by group of products, 2012-16

	2012	2013	2014	2015	2016
Total exports (US\$ billion)	242.6	242.2	225.1	191.1	185.2
			f total exp		
Total primary products	62.7	61.7	63.4	60.9	59.2
Agriculture	35.6	37.4	39.1	41.9	41.5
Food	31.8	33.9	35.0	37.1	36.7
2222 - Soya beans	7.1	9.4	10.3	11.0	10.4
0611 - Sugars, beet or cane, raw, in solid form, not containing	4.1	3.8	3.3	3.1	4.5
added flavouring or colouring matter					
0123 - Meat and edible offal of the poultry of subgroup 001.4,	2.9	3.0	3.1	3.3	3.3
fresh, chilled or frozen					
0813 - Oilcake and other solid residues (except dregs)	2.7	2.8	3.1	3.0	2.8
0711 - Coffee, not roasted, whether or not decaffeinated; coffee	2.4	1.9	2.7	2.9	2.6
husks and skins					
0449 - Maize (not including sweet corn), unmilled other than seed	2.2	2.6	1.7	2.6	2.0
0112 - Meat of bovine animals, frozen	1.5	1.9	2.2	2.1	1.9
0612 - Other beet or cane sugar and chemically pure sucrose, in	1.2	1.1	0.9	0.9	1.2
solid form	2.0	2.5	4.0	4.7	4.0
Agricultural raw material	3.8	3.5	4.0	4.7	4.8
2515 - Chemical wood pulp, soda or sulphate, other than	1.8	2.0	2.2	2.8	2.8
dissolving grades, semi-bleached or bleached	27.0	24.2	24.4	10.1	177
Mining Orac and other minerals	27.0	24.2	24.4	19.1	17.7
Ores and other minerals	15.1	15.8	14.2	10.7	10.3
2815 - Iron ore and concentrates, not agglomerated 2852 - Alumina (aluminium oxide), other than artificial corundum	9.8	10.7	8.9	5.4	6.2
, , , , , , , , , , , , , , , , , , , ,	0.8	0.7	1.0	1.3	1.2
Non-ferrous metals	1.0	1.1	1.0	1.2	1.1
Fuels 2220 Petroloum ails and ails obtained from hituminous minerals	10.9	7.4	9.2	7.2	6.3
3330 - Petroleum oils and oils obtained from bituminous minerals, crude	8.4	5.4	7.3	6.2	5.4
334 - Petroleum oils and oils obtained from bituminous minerals,	2.2	1.9	1 7	0.0	0.4
,	2.2	1.9	1.7	0.9	0.6
other than crude Manufactures	33.8	35.1	33.3	36.1	37.9
Iron and steel	4.6	33.1	4.8	5.1	4.4
6715 - Other ferro-alloys (excluding radioactive ferro-alloys)	1.1	1.0	1.2	1.2	1.1
Chemicals	6.2	5.9	5.9	6.0	5.9
Other semi-manufactures	5.0	5.1	5.7	6.2	6.2
Machinery and transport equipment	15.8	18.3	14.7	16.4	18.8
Power generating machines	0.9	1.2	1.5	1.8	2.0
7149 - Parts of the engines and motors of heading 714.41 and	0.0	0.3	0.7	1.0	1.3
subgroup 714.8	0.0	0.0	0.7	1.0	1.0
Other non-electrical machinery	4.3	3.6	3.8	3.8	3.9
Agricultural machinery and tractors	0.5	0.5	0.5	0.4	0.4
Office machines & telecommunication equipment	0.6	0.5	0.4	0.5	0.4
Other electrical machines	0.8	0.9	0.9	0.9	0.9
Automotive products	5.4	5.9	4.4	5.2	6.0
7812 - Motor vehicles for the transport of persons, n.e.s.	1.5	2.3	1.4	1.8	2.5
7821 - Motor vehicles for the transport of goods	0.9	0.9	0.7	0.9	1.1
Other transport equipment	3.8	6.1	3.7	4.3	5.6
7935 - Light vessels, fire-floats, dredgers, floating cranes, and	0.6	3.2	0.9	1.0	2.0
other vessels the navigability of which is subsidiary to their main	0.0	0.2	0.7		2.0
function; floating docks; floating or submersible drilling or					
production platforms					
7924 - Aeroplanes and other aircraft, mechanically-propelled	1.5	1.2	1.2	1.6	1.8
(other than helicopters), of an unladen weight exceeding					
15,000 kg					
Textiles	0.4	0.4	0.4	0.5	0.4
Clothing	0.1	0.1	0.1	0.1	0.1
Other consumer goods	1.8	1.7	1.8	1.9	2.0
Other School goods	3.6	3.2	3.3	3.0	2.9
9710 - Gold, non-monetary (excluding gold ores and concentrates)	1.1	1.1	1.0	1.2	1.6
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Source: UNSD, Comtrade database (SITC Rev.3).

Table A1.2 Merchandise imports by group of products, 2012-16

	2012	2013	2014	2015	2016
Total imports (US\$ billion)	223.1	239.6	229.1	171.4	137.6
			total imp		
Total primary products	26.8	27.7	28.4	24.1	22.8
Agriculture	5.9	5.9	5.9	6.2	8.7
Food	4.8	4.9	4.9	5.1	7.4
0412 - Other wheat (including spelt) and meslin, unmilled	0.8	1.0	0.8	0.7	1.0
Agricultural raw material	1.1	1.0	1.0	1.1	1.3
Mining	20.9	21.7	22.5	17.9	14.1
Ores and other minerals	0.9	1.0	1.0	1.3	1.2
Non-ferrous metals	2.0	1.7	1.8	2.1	2.0
Fuels	18.0	19.1	19.7	14.5	11.0
334 - Petroleum oils and oils obtained from bituminous minerals, other than crude	7.3	7.4	7.7	5.0	5.3
3330 - Petroleum oils and oils obtained from bituminous minerals, crude	6.0	6.8	6.8	4.3	2.1
3212 - Other coal	1.3	0.9	0.9	1.1	1.2
3432 - Natural gas, in the gaseous state	1.5	1.6	1.7	1.5	0.9
Manufactures	73.1	72.3	71.6	75.9	77.1
Iron and steel	2.2	2.0	2.0	2.1	1.4
Chemicals	18.9	18.9	19.7	22.1	24.7
5416 - Glycosides; glands or other organs and their extracts; antisera, vaccines and similar products	1.3	1.4	1.5	1.7	2.0
5429 - Medicaments, n.e.s.	1.2	1.2	1.2	1.5	1.9
5157 - Other heterocyclic compounds; nucleic acids	1.1	1.1	1.1	1.4	1.8
5629 - Fertilizers, n.e.s.	1.0	1.1	1.2	1.2	1.5
5623 - Mineral or chemical fertilizers, potassic (other than crude natural potassium salts)	1.6	1.4	1.3	1.5	1.5
5621 - Mineral or chemical fertilizers, nitrogenous	1.0	0.9	1.0	0.9	1.2
5911 - Insecticides put up in forms or packings for retail sale or as preparations or articles	0.5	0.6	0.8	0.8	0.7
Other semi-manufactures	5.1	5.1	4.9	4.8	4.5
Machinery and transport equipment	38.4	38.0	36.4	37.4	37.3
Power generating machines	2.3	2.3	2.1	2.7	3.2
7149 - Parts of the engines and motors of heading 714.41 and subgroup 714.8	0.6	0.6	0.8	1.2	1.6
Other non-electrical machinery	10.2	10.0	9.2	9.3	9.8
7284 - Machinery and mechanical appliances specialized for particular industries, n.e.s.	0.8	0.9	0.8	0.8	0.8
Agricultural machinery and tractors	0.4	0.3	0.3	0.2	0.2
Office machines & telecommunication equipment	9.0	8.8	9.0	8.6	8.7
7649 - Parts and accessories suitable for use solely or principally with the apparatus of division 76	2.5	2.8	3.0	2.9	2.6
7764 - Electronic integrated circuits and micro-assemblies	1.9	2.0	2.0	1.8	2.1
Other electrical machines	4.1	4.1	4.1	4.4	4.5
Automotive products	9.7	9.8	8.9	8.3	7.8
7843 - Other parts and accessories of the motor vehicles of groups 722, 781, 782 and 783	3.0	3.5	3.1	3.1	3.5
7812 - Motor vehicles for the transport of persons, n.e.s.	4.3	3.8	3.4	2.9	2.1
7821 - Motor vehicles for the transport of goods	1.3	1.4	1.3	1.2	1.1
Other transport equipment	3.1	3.0	3.1	4.0	3.3
7929 - Parts, n.e.s. (not including tyres, engines and electrical	0.6	0.6	0.6	0.7	0.9
parts), of the goods of group 792					
Textiles	1.9	1.8	1.9	1.9	2.0
Clothing	1.1	1.2	1.3	1.6	1.1
Other consumer goods	5.4	5.4	5.4	6.0	6.0
Other	0.1	0.0	0.0	0.1	0.1

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

Table A1.3 Merchandise exports by destination, 2012-16

	2012	2013	2014	2015	2016
Total exports (US\$ billion)	242.6	242.2	225.1	191.1	185.2
		%	of total expo	orts	
Americas	33.2	33.6	33.6	34.4	34.0
United States	11.1	10.3	12.1	12.7	12.6
MERCOSUR	11.5	12.2	11.1	11.0	10.6
Argentina	7.4	8.1	6.3	6.7	7.2
Uruguay	0.9	0.9	1.3	1.4	1.5
Paraguay	1.1	1.2	1.4	1.3	1.2
Venezuela, Bolivarian Republic of	2.1	2.0	2.1	1.6	0.7
Other America	10.6	11.1	10.4	10.7	10.8
Chile	1.9	1.9	2.2	2.1	2.2
Mexico	1.7	1.7	1.6	1.9	2.1
Canada	1.3	1.1	1.0	1.2	1.3
Colombia	1.2	1.1	1.1	1.1	1.2
Europe	22.0	21.6	20.8	20.1	20.2
EU-28	20.3	19.7	18.7	17.8	18.0
Netherlands	6.2	7.2	5.8	5.3	5.6
Germany	3.0	2.7	2.9	2.7	2.6
Italy	1.9	1.7	1.8	1.7	1.8
Belgium	1.5	1.5	1.5	1.6	1.7
United Kingdom	1.9	1.7	1.7	1.5	1.5
Spain	1.5	1.5	1.5	1.6	1.4
France	1.7	1.4	1.3	1.2	1.3
EFTA	1.2	1.4	1.5	1.5	1.3
Other Europe	0.5	0.5	0.6	0.8	0.8
Commonwealth of Independent States (CIS)	1.8	1.7	2.0	1.5	1.5
Russian Federation	1.3	1.2	1.7	1.3	1.2
Africa	5.0	4.6	4.3	4.3	4.2
Middle East	4.8	4.5	4.6	5.2	5.5
Saudi Arabia, Kingdom of	1.2	1.2	1.1	1.4	1.3
United Arab Emirates	1.0	1.1	1.3	1.3	1.2
Asia	31.3	32.3	32.9	33.3	33.7
China	17.0	19.0	18.0	18.6	19.0
Japan	3.3	3.3	3.0	2.5	2.5
Other Asia	11.0	10.0	11.9	12.1	12.2
India	2.3	1.3	2.1	1.9	1.7
Korea, Republic of	1.9	1.9	1.7	1.6	1.6
Singapore	1.2	0.8	1.5	1.1	1.5
Hong Kong, China	1.0	1.4	1.5	1.1	1.2
Other	2.0	1.7	1.8	1.3	0.9

Source: UNSD, Comtrade database.

Table A1.4 Merchandise imports by origin, 2012-16

	2012	2013	2014	2015	2016
Total imports (US\$ billion)	223.1	239.6	229.1	171.4	137.6
			f total imp	orts	
Americas	33.3	33.4	33.0	32.9	35.3
United States	14.6	15.1	15.4	15.6	17.5
MERCOSUR	9.1	8.5	8.1	7.6	8.7
Argentina	7.4	6.9	6.2	6.0	6.6
Uruguay	0.8	0.7	0.8	0.7	0.9
Paraguay	0.4	0.4	0.5	0.5	0.9
Venezuela, Bolivarian Republic of	0.4	0.5	0.5	0.4	0.3
Other America	9.7	9.7	9.5	9.7	9.0
Mexico	2.7	2.4	2.3	2.6	2.6
Chile	1.9	1.8	1.8	2.0	2.1
Canada	1.4	1.3	1.2	1.4	1.4
Bolivia, Plurinational State of	1.5	1.6	1.7	1.5	1.0
Europe	23.5	23.3	22.5	23.6	24.7
EU-28	21.4	21.2	20.4	21.4	22.6
Germany	6.4	6.3	6.0	6.1	6.6
Italy	2.8	2.8	2.8	2.7	2.7
France	2.7	2.7	2.5	2.6	2.7
Spain	1.6	1.9	1.7	2.0	1.9
United Kingdom	1.6	1.5	1.4	1.6	1.7
Netherlands	1.4	1.0	1.4	1.4	1.3
Belgium	0.9	0.8	0.8	0.9	1.1
EFTA	1.6	1.6	1.7	1.8	1.8
Switzerland	1.2	1.2	1.2	1.4	1.4
Other Europe	0.5	0.5	0.4	0.4	0.3
Commonwealth of Independent States (CIS)	1.8	1.5	1.7	1.7	1.8
Russian Federation	1.3	1.1	1.3	1.3	1.5
Africa	6.4	7.3	7.4	5.1	3.3
Algeria	1.4	1.3	1.3	1.1	1.2
Middle East	3.3	3.1	3.5	3.1	2.6
Asia	31.5	31.1	31.6	33.2	32.1
China	15.3	15.6	16.3	17.9	17.0
Japan	3.5	3.0	2.6	2.8	2.6
Other Asia	12.7	12.6	12.7	12.4	12.5
Korea, Republic of	4.1	4.0	3.7	3.2	4.0
India	2.3	2.7	2.9	2.5	1.8
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)	1.4	1.2	1.2	1.3	1.2
Viet Nam	0.4	0.5	0.7	1.0	1.2
Thailand	1.1	1.0	1.0	1.0	1.0
Other	0.2	0.3	0.2	0.4	0.2

Source: UNSD, Comtrade database.

Table A1.5 Trade in services, 2012-16

	2012	2013	2014	2015	2016
Total credit (US\$ million)	38,816.3	38,010.5	39,965.3	33,777.5	33,300.3
·		%	of total cred	tit	
Transport	14.0	14.4	14.6	14.7	15.2
Sea transport	11.7	11.8	11.5	11.8	11.3
Air transport	1.8	2.0	2.6	2.3	3.0
Other transport	0.5	0.6	0.6	0.6	0.9
Travel	16.4	17.0	17.1	17.3	18.1
Insurance and pension services	1.4	1.2	1.7	2.9	2.4
Financial services	6.3	7.2	2.9	2.2	2.2
Telecommunications, computer, and information services	1.9	1.9	3.6	4.7	5.4
Charges for the use of intellectual property n.i.e.	0.7	1.0	0.9	1.7	2.0
Operational leasing services	0.2	0.8	0.4	0.6	0.5
Government services	4.5	4.4	2.3	2.3	2.2
Oher business services, including architecture and engineering	46.9	44.9	53.0	51.2	48.8
Personal, cultural, and recreational services	7.6	7.2	1.7	0.9	1.7
Other	0.0	0.0	1.7	1.5	1.6
Total debit (US\$ million)	78,984.4	84,382.7	88,072.1	70,696.2	63,749.6
		. %	of total deb	it	
Transport	17.5	17.6	16.5	15.0	13.8
Sea transport	11.5	11.5	10.5	9.9	8.7
Air transport	5.7	5.7	5.6	4.8	4.8
Other transport	0.4	0.4	0.3	0.3	0.3
Travel	27.9	29.7	29.0	24.6	22.7
Insurance and pension services	1.9	1.8	1.6	1.9	2.1
Financial services	2.1	1.7	1.1	1.4	1.4
Telecommunications, computer, and information services	6.0	6.2	4.2	4.7	5.1
Charges for the use of intellectual property n.i.e.	5.3	5.4	6.7	7.4	8.1
Operational leasing services	23.8	23.0	25.9	30.7	30.9
Government services	4.0	3.9	2.4	2.6	3.6
Oher business services, including architecture and engineering	11.1	10.3	9.7	10.0	10.7
Personal, cultural, and recreational services	0.3	0.4	2.5	1.4	1.3
Other	0.0	0.1	0.3	0.3	0.3

Source: Central Bank of Brazil online information and data provided by the authorities.

Table A2.1 Notifications to the WTO, 1 January 2013-4 April 2017

Agreement	Description	Periodicity	WTO document (last if recurrent)
greement on Agriculture			
rticles 10 and 18.2 - ES:1	Export subsidies commitments	Annual	G/AG/N/BRA/42, 28/10/2016
articles 10 and 18.2 - ES:2			
rticles 10 and 18.2 - ES:3			
Article 18.2 - DS:1	Total aggregate measurement of support	Annual (or longer for developing and least- developed Members)	G/AG/N/BRA/41, 27/10/2016
article 18.2 - MA:2	Market access - volume of imports under tariff and other quotas	Annual	G/AG/N/BRA/43, 28/10/2016
article 18.3 - DS:2	New or modified exempt domestic support measures	Ad hoc	G/AG/N/BRA/34, 26/01/2015
	' ''		G/AG/N/BRA/31, 18/11/2013
eneral Agreement on Trade in S	ervices (GATS)	-	
rticle III:4 and/or Article IV:2	Contact and enquiry points	Once	S/ENQ/78/Rev.15, 04/02/2015
VT/L/847	Preferential treatment to services and service suppliers of LDCs	Once; ad hoc for changes thereafter	S/C/N/839, 05/11/2015
greement on the Implementation	on of Article VI of the GATT 1994		
rticle 16.4	Anti-dumping actions (preliminary and final)	Ad hoc	Multiple notifications; from G/ADP/N/239, 18/02/2013 to G/ADP/N/296, 24/02/2017
	Anti-dumping actions (taken within the preceding 6 months)	Semi-annual	G/ADP/N/294/BRA, 24/02/2017
article 18.5	Laws/regulations (and changes thereto, including changes in the administration of such laws)	Once; ad hoc for changes thereafter	G/ADP/N/1/BRA/3, 20/09/2013
ATT 1994			
article XVII:4(a) - Understanding on he Interpretation of Article XVII	, and the second	Annual (triennial full notification and annual changes)	G/STR/N/16/BRA, 09/08/2016
Article XXVIII:5	Modification of schedules (reserve the right to modify schedules for a 3-year period)	Triennial	G/MA/317, 18/12/2014
Agreement on Import Licensing F	Procedures		
article 1.4(a)	Sources in which rules and information relevant to the Agreement are published and copies of publications	Once; ad hoc for changes thereafter	G/LIC/N/1/BRA/7, 31/08/2016 G/LIC/N/1/BRA/6, 22/10/2014
Article 8.2(b)	Changes in laws/regulations and administrative procedures (first notification: full text of relevant legislation)		
rticles 5.1, 5.2, 5.3	Institution of import licensing procedures or changes thereto	Ad hoc	G/LIC/N/2/BRA/7, 31/08/2016
	γ		G/LIC/N/2/BRA/6, 22/10/2014
rticle 7.3	Replies to Questionnaire on Import Licensing Procedures	Annual	G/LIC/N/3/BRA/11, 31/0872016
greement on Subsidies and Cou			
Article 25.1 and Article XVI:1 of the	Subsidies	Annual (triennial full notification and annual changes)	G/SCM/N/253/BRA, 05/05/2014
rticle 25.11	Countervailing duty actions (preliminary and final)	Ad hoc	G/SCM/N/316, 21/02/2017
	3		G/SCM/N/308, 25/08/2016
			G/SCM/N/287, 16/04/2015
			G/SCM/N/285, 23/02/2015
			G/SCM/N/279, 15/10/2014
			G/SCM/N/271, 10/04/2014
			G/SCM/N/268, 17/01/2014
			G/SCM/N/268, 17/01/2014 G/SCM/N/262, 02/08/2013
	Countervailing duty actions (taken within the preceding 6 months)	Semi-annual	G/SCM/N/313/BRA, 28/02/2017

- 170 -

Agreement	Description	Periodicity	WTO document (last if recurrent)
Article 32.6	Laws/regulations (and changes thereto, including changes in the administration of such laws)	Once (at the date of entry into force of the WTO Agreement for existing laws and regulations); ad hoc (as and when a Member establishes such laws and regulations, or makes changes in existing laws and regulations or in the administration of	G/SCM/N/1/BRA/2/Suppl.11, 18/09/2014 G/SCM/N/1/BRA/2/Suppl.10, 08/05/2014 G/SCM/N/1/BRA/2/Suppl.8, 20/09/2013
		such laws	G/SCM/N/1/BRA/2/Suppl.9, 20/09/2013
Agreement on Safeguards	-		
Article 12.6	Laws/regulations and administrative arrangements (and changes thereto), or absence thereof	Once (promptly after the date of entry into force of the WTO Agreement); ad hoc (promptly after the establishment of such laws, regulations and administrative procedures, with updates as necessary to reflect modifications)	G/SG/N/1/BRA/3/Suppl.2, 18/09/2014
Agreement on the Application	on of Sanitary and Phytosanitary Measures		
Article 7, Annex B	Sanitary/phytosanitary regulations	Ad hoc	Multiple notifications; from G/SPS/N/BRA/856, 03/01/2013 to G/SPS/N/BRA/1237, 23/03/2017
Agreement on Technical Bar	riers to Trade		
Article 10.7	Bilateral and multilateral agreements; conformity assessment procedures; standards; technical regulations	Ad hoc	G/TBT/10.7/N/132, 01/07/2016 G/TBT/10.7/N/131, 01/07/2016 G/TBT/10.7/N/130, 30/06/2016 G/TBT/10.7/N/129, 30/06/2016
Article 2.10	Technical regulations (urgent)	Ad hoc	G/TBT/N/BRA/692, 15/09/2016
Article 2.9	Technical regulations	Ad hoc	Multiple notifications; from G/TBT/N/BRA/521, 11/01/2013 to G/TBT/N/BRA/708, 28/02/2017
Articles 2.9 and 5.6	Technical regulations and conformity assessment procedures	Ad hoc	Multiple notifications; from G/TBT/N/BRA/508/Add.1, 20/03/2013 to G/TBT/N/BRA/678, 14/06/2016
Article 5.6	Conformity assessment procedures	Ad hoc	Multiple notifications; from G/TBT/N/BRA/522, 22/01/2013 to G/TBT/N/BRA/698, 11/11/2016
Unspecified	Technical regulations	Ad hoc	G/TBT/N/BRA/635, 22/04/2015
Trade Facilitation Agreemen			
	Category A commitments	Once	WT/PCTF/N/BRA/1, 29/07/2014
Decision on Notification Prod	cedures for Quantitative Restrictions (G/L/59)	1 =	
	Quantitative restrictions (complete notification)	Biennial	G/MA/QR/N/BRA/1, 30/08/2016

Source: WTO Secretariat.

Table A3.1 BNDES selected export finance programmes, 2017

Activity/products targeted	Conditions	Rates/charges
EXIM Pre-shipment (BNDES Circula	r No. 001/2017 of 6 January 2017)	
Finances production of Brazilian goods and services intended for export. Eligible products listed in Circular No. 006/2016, except NCM 87.03 (motor vehicles for less than 10 persons). EXIM Pre-shipment "anchor" (BNDI Companies that carry out indirect exports (goods and services produced by other companies). List	Financing granted for up to 36 months for capital goods and 24 months for all other products and services; the latter period is extended to 30 months for MSMEs. ^a Covers up to 70% of exports' value. To qualify automatically, goods must either meet an index of nationalization ^b , be accredited under the BNDES FINAME scheme ^c , or meet PPB criteria. ^d ES Circular No. 002/2017 of 6 January 20 Financing period same as EXIM Pre-shipment. Covers up to 70% of exports' value. To qualify automatically,	Interest rates for MSMEs: TJLP ^e or LIBOR. Interest rates for large firms: (30% of TJLP + 30% of TJFPE ^f or SELIC ⁹) or (100% of TJFPE or SELIC), depending on the product group. Plus BNDES spread (2.1% p.a.) and spread of the credit administrator. D17) Interest rates same as for EXIM Pre-shipment.
of eligible products the same as for EXIM Pre-shipment (Circular No. 006/2016).	goods must either meet an index of nationalization ^b , be accredited under the BNDES FINAME scheme ^c , or meet PPB criteria. ^d	
EXIM Pre-shipment "Innovator" (Bl	NDES Circular No. 003/2017 of 6 Januar	y 2017)
Finances Brazilian-based "innovator" MSMEs that export own IT goods and services. "Innovator" status depends on various criteria.	Financing up to 70% of exports' value, granted for up to 36 months. To qualify automatically, goods must either meet an index of nationalization ^b , be accredited under the BNDES FINAME scheme ^c , or meet PPB criteria. ^d	Interest rates: TJLP + BNDES spread (2.1%) + spread of the credit administrator.
EXIM Automatic (BNDES Circular No		
Finances commercialization of Brazilian goods abroad (at the post- shipment phase) through a network of accredited banks in Latin America and Africa. Capital and consumer goods are eligible.	Financing up to 100% of exports' value, with a credit limit of US\$10 million per application. Financing period: up to 5 years.	Interest rates: LIBOR + BNDES spread (0.4% to 1.35% p.a., depending on the importing country's political risk) + spreads of the intermediary financial institutions in Brazil and overseas.
	ar No. 008/2015 of 27 July 2015 and an	
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 EXIM Pre-shipment (Circular No. 006/2016). Eligible services include those associated with the export of qualified goods, as well as construction, engineering and aircraft maintenance and repair services.	Financing for up to 15 years, and 100% of the export value (85% for aircraft and related exports). To qualify automatically, goods must either meet an index of nationalization ^b , be accredited under the BNDES FINAME scheme ^c , or meet PPB criteria. 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. The exporter's administration and headquarters must be based in Brazil.	Interest/discount rates: (LIBOR, US Treasury Bonds, Euro Area Yield Curve, or EURIBOR) + BNDES spread (at least 1.5% p.a.) + a risk premium. BNDES also levies a management fee (up to 1% of disbursed amount) and a commitment fee (up to 0.5% p.a. on the unused credit balance). The intermediary bank levies an administration fee (up to 1% of disbursed amount).

- a As from September 2016, the BNDES defines MSMEs as those whose annual gross operating revenue does not exceed R\$300 million. Previously, the threshold was R\$90 million.
- b 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/wps/wcm/connect/site/2a2750df-1a44-46b7-92b1-17dd83e4aee4/regulamento_credenciamento.pdf?MOD=AJPERES&CVID=Ir.Xpz7
- c In order to be accredited under FINAME, among other criteria, goods must meet a nationalization index of at least 60% in weight or 50% in value (temporary reduction until 30 June 2017) terms.
- d PPB criteria are a set of pre-defined manufacturing steps that must take place in Brazil so that the product can benefit from tax incentives (Section 3.3.1.1).
- e The 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 the second quarter of 2017 was 7% p.a.
- f The pre-shipment fixed interest rate (TJFPE) is set quarterly by the BNDES to be applied to dollar-denominated export credits so as to reflect the BNDES external funding costs. The TJFPE rate between 16 January and 15 April 2017 was 4.544392 % p.a.
- g The SELIC rate is overnight rate set daily by the Central Bank of Brazil.

Source: Information provided by the Brazilian authorities.

Table A3.2 Selected federal incentive schemes, 2017

	Description	Beneficiaries	Total revenue forgone 2013-16
			(R\$ million) ^a
P	rogramme for Technological Development of the		5)
	Zero-rated PIS, COFINS, and IPI on imported or locally purchased machinery, appliances, and equipment to be incorporated into fixed assets. Expiry date: 22 January 2022.	Semiconductor and display manufacturers that invest at least 5% of their gross domestic earnings in R&D.	341.3
P	rogramme for Technological Development of the	Digital TV Equipment Industry (PATVD)
	Zero-rated IPI, PIS, COFINS, and CIDE on sales of transmitters, as well as on overseas payments for capital goods and for the use of technology or software. Expiry date: 22 January 2017.	Companies that invest in R&D and manufacture transmitters.	3.3
S	pecial Regime of Incentives for Infrastructure De		
	Suspends PIS and COFINS on machinery and equipment acquired for incorporation as fixed assets in infrastructure works.	Builders of infrastructure facilities for transportation, energy (electricity and gas), basic sanitation, and irrigation.	9,100.0
S	pecial Tax Regime for the Defence Industry (RET		
	Suspends PIS, COFINS, and IPI on imports by RETID beneficiaries, and on domestic suppliers' sales to RETID beneficiaries. Expiry date: 22 March 2017.	Companies admitted to RETID and their suppliers of inputs and services.	192.0
S	pecial Tax Regime for the Modernization and Exp	· · · · · · · · · · · · · · · · · · ·	
S	Acquisition of machinery and equipment is exempt from IPI, COFINS, PIS, and import duty (in case of goods without domestic equivalent). Expiry date: 31 December 2020. Decial Regime for the Brazilian Aerospace Indust	Port operators, concessioners and users, as well as railroad concessioners and dredging companies.	812.0
	Suspends PIS and IPI on domestic sales and imports of specific goods.	Companies that manufacture inputs or provide technology services to RETAERO beneficiaries in the production, modernization, maintenance or repair of aircraft.	1,265.0
17	Capacity-Building and Competitiveness-Enhanc	ement (<i>Lei da informática</i>)	
	Reduces IPI rates on IT goods manufactured according to a pre-defined PPB.	Computing, automation, telecommunications, microelectronics, software and technical services industries.	54.3
Ir	nnovation Law		
	Halves IPI rates on relevant machinery, equipment, appliances and instruments. Zero-rates income tax (IR) on overseas payments to register/maintain IPRs. Allows various tax base reductions (deductible expenses, same-year depreciation, and accelerated amortization).	Companies investing in technology R&D	
D	igital Inclusion Programme Exempts from PIS and COFINS the sales of digital	Brazilian retailers of specific	19,000
	goods (e.g. computers, tablets, smart phones, routers) produced according to a PPB. Expiry date: 31 December 2018.	digital goods.	17,000

^{..} Not available.

Source: RENAI and the RFB, Annual budget projections (Demonstrativo dos Gastos Tributários, PLOA).

a Annual federal budget projections.

Table A4. 1 Domestic agricultural support notified to the WTO, 2014/15

(US\$ '000)

Product-specific AMS	177,932.7	Below de minimis level of 10%
Cocoa	1.7	Yes
Coffee	21,623.8	Yes
Edible beans	62,716.8	Yes
Grapes	3,850.9	Yes
Maize	68,125.0	Yes
Sugar cane	13,446.5	Yes
Wheat	8,168.0	Yes
Non-product-specific AMS	1,724,558.8	
Non-product-specific production and marketing credit	726,770.0	
Debt rescheduling programmes	941,506.6	
Insurance programmes	56,282.2	
Total AMS	1,902,491.5	
Green box assistance	1,634,416.9	
Research	82,149.4	
Pest and disease control	16,032.5	
Training services	4,700.3	
Extension and advisory services	57,585.3	
Inspection services	149.6	
Marketing and promotion services	3,529.8	
Infrastructural services	30,388.5	
Agrarian organization	32,602.1	
Public stockholding for food security purposes	123,564.3	
Domestic food aid	1,165,817.7	
Government agricultural insurance programme	177,897.6	
S&D assistance	1,312,521.7	
Funds for variable input acquisitions	132,198.8	
Funds for agricultural investments	1,152,817.2	
Debt rescheduling programmes	27,505.7	
Total notified assistance	4,849,430.1	

Source: WTO document G/AG/N/BRA/41, 27 October 2016.

- 174 -

Table A4.2 Brazil's air transport agreements and related action, 2016

		1	Traffi right: eedoi	s	Cooperat multip designa	ple			Pric	ing			Ca	apaci	ty	
Partner (signature)	Entry into force	5 th	7 th	cabotage	Cooperative arrangements	Multiple designation	Dual approval	Dual disapproval	Country of or origin	Zone pricing	Free pricing	Pre- determination	Free determination	Other	Withholding clause	Statistics
Albania (ASA signed on 04.11.2015)		Х			х	х					Х		Х		х	Х
Angola (signed on 16.12.1993, new ASA negotiations initiated on 18.03.2009)	16.12.1983				x	X			Х				^	х	X	X
Argentina (signed on 02.06.1948, new ASA negotiations initiated on 19.10.2006)	30.06.1967	х			х	х			х					х	х	х
Aruba (MoU signed on 23.06.2006, new ASA signed on 16.09.2014)		х			Х	Х					Х		x		х	х
Australia (signed on 21.04.2010, MoU signed on 08.07.2008)		Х			Х	Х			Х					х	х	Х
Austria (signed on 16.07.1993, MoU signed on 15.11.1995)	10.10.1995	х			Х	Х	х							х	х	Х
Azerbaijan (negotiations initiated on 10.12.2012)					Х	Х					Х		Х		х	Х
Bahrain (negotiations initiated on 01.07.2010)		Х			Х	Х					х		Х		Х	Х
Bahamas (signed on 07.12.2016)		Х			X	Х					х		Х		Х	Х
Barbados (signed on 26.04.2010, MoU signed on 19.05.2005)		Х				Х	Х							Х	Х	Х
Belgium (signed on 04.10.2009, MoU signed on 20.05.2008)	22.09.2011	х			x	X			Х					х	Х	х
Benin (ASA negotiations initiated and MoU signed on 07.12.2016)					х	Х					х		х		х	Х
Bolivia, Plurinational State of (signed on 02.06.1951, new MoU signed on 02.09.2004)	18.06.1954	х				Х	х							х	х	Х
Botswana (ASA negotiations initiated and MoU signed on 08.12.2016)		х			х	Х					Х		х		х	х
Burkina Faso (ASA negotiations initiated and MoU signed on 18.04.2012)					х	Х					х		х		х	х
Cameroon (ASA negotiations initiated and MoU signed on 19.01.2006)		х				Х			Х					х	х	х
Canada (signed on 15.05.86, new ASA negotiations initiated and MoU signed on 18.02.2011)	09.03.1990	х			х	х					х		х		х	×
Cabo Verde (signed on 29.07.2004, MoU signed on 05.09.13, new ASA signed on 31/10/2016)	13.03.2008	х			х	X					х		Х		x	Х

- 175 -

		1	Traffi right: eedoi	s	Cooperat multip designa	ole			Pric	ing			Ca	apaci	ty	
Partner (signature)	Entry into force	5 th	7 th	cabotage	Cooperative arrangements	Multiple designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre- determination	Free determination	Other	Withholding clause	Statistics
Chile (signed on 30.07.2009, MoU signed on 13.05.2010)	11.01.2011	х			х	х					х		Х		х	х
China (signed on 11.07.1994, MoU signed on 30.05.2006)	16.02.1998	х			х	х			Х					х	x	Х
Colombia (negotiations initiated on 28.05.2009, new ASA negotiations initiated and MoU signed on 14.11.2011)	02.07.1975	х			х	х			х					×	Х	х
Congo, Dem. Rep. of (ASA negotiations initiated and MoU signed on 10.12.13)		х			Х	Х					х		Х		х	Х
Costa Rica (signed on 22.09.97, new ASA negotiations initiated and MoU signed on 22.02.11)		х			х	х					х		Х		х	х
Cuba (negotiations initiated on 27.05.98, new ASA negotiations initiated and MoU signed on 25.02.2011)	17.05.2000				Х	Х					х			Х	х	х
Curação (negotiations initiated on 01.07.2011, new ASA signed on 03.12.2013, new MoU signed on 20.05.2015)		х			х	Х					х		Х		х	х
Dominican Republic (negotiations initiated on 07.08.2009, updated via exchange of correspondence in June 2011)		х			х	Х					х		Х		X	Х
Ecuador (ASA negotiations initiated and MoU signed on 19.04.2012, ASA signed on 02.05.2013)		х			х	х					х		х		х	х
Egypt (negotiations initiated on 24.06.2005, new MoU signed on 22.10.2015)		Х			Х	Х			Х					Х	х	х
Ethiopia (negotiations initiated on 01.07.2010, ASA signed on 24.05.2013)		Х			Х	х					х			Х	x	х
France (signed on 29.10.1965, new ASA negotiations initiated on 13.03.2008, updated via exchange of correspondence on June 2012)	19.02.1967	х			Х	Х			х					Х	Х	x
Germany (signed on 29.08.57, new ASA negotiations initiated on 23.11.2007)	15.08.1964	х			х	x			х					Х	Х	х
Ghana (ASA signed on 12.04.05, new MoU signed on 29.06.2010)		х			X	Х					Х			Х	Х	Х
Greece (ASA negotiations initiated and MoU signed on 18.03.1997)		Х			Х		Х							Х	Х	Х

- 176 -

Partner (signature)		Traffic rights (freedoms)			Cooperat multip designa			Pric	ing	Capacity						
	Entry into force	5 th	7 th	cabotage	Cooperative arrangements	Multiple designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre- determination	Free determination	Other	Withholding clause	Statistics
Guatemala (ASA negotiations initiated and MoU signed on 08.11.2012)		х			Х	х					х		х		х	х
Guyana (signed on 10.05.1974, new ASA negotiations initiated and MoU signed on 08.12.2016)	04.03.1975	х			х	х					×		Х		х	×
Guinea, Republic of (ASA negotiations initiated and MoU signed on 08.12.2016)					Х	Х					Х		Х		х	Х
Guinea-Bissau (MoU signed on 21.10.2015)					х	х								х	Х	х
Hong Kong, China (signed on 06.09.1991, new ASA negotiations initiated and new MoU signed on 22.10.2015)	04.07.1994	х			х	Х			Х				Х		x	X
Hungary (signed on 03.04.1997)	16.07.1999					Х	х							Х	Х	х
Iceland (ASA negotiations initiated and MoU signed on 01.07.2010)		х			Х	Х					Х		Х		х	Х
India (signed on 10.09.06, new ASA negotiations initiated and MoU signed on 04.05.10)		Х			х	Х					х			х	х	Х
Iraq (signed on 21.01.1977)	12.12.1979						х							Х	Х	x
Israel (signed on 22.07.2009, new ASA negotiations initiated and MoU signed on 22.10.2015)		х			x	Х			Х					х	Х	х
Italy (updated via exchange of correspondence in November 2010)	10.09.1952				х	х					Х			Х	х	Х
Côte d'Ivoire (negotiations initiated on 07.08.1986, new ASA negotiations initiated and MoU signed on 11.12.2013)					X	Х					х		Х		х	X
Jamaica (MoU signed on 12.12.2013, ASA signed on 13.02.2014)		х			х	Х					Х		х		х	Х
Japan (ASA signed on 14.12.1956, MoU signed on 10.04.2014)	28.11.1962	х			х	Х			Х					Х	х	х
Jordan (signed on 05.11.1975, new ASA negotiations initiated and MoU signed on 09.12.2012)	12.08.1976	х			х	Х					х		х		х	х
Lebanon (signed on 04.02.1997, MoU signed on 08.02.1995)	23.04.1998	х				х	х							×	х	х
Kenya (ASA signed on 14.09.2010, new ASA negotiations initiated and MoU signed on 10.09.2010)	06.06.2016	Х			Х	Х					Х		Х		Х	X

- 177 -

Partner (signature)		Traffic rights (freedoms)			Coopera multi designa			Pric	ing	Capacity						
	Entry into force	5 th	7 th	cabotage	Cooperative arrangements	Multiple designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre- determination	Free determination	Other	Withholding clause	Statistics
Korea, Rep. of (signed on 11.08.1992, new ASA negotiations initiated on 24.04.2009)	31.05.1995	х			х	х					Х		х		х	х
Kuwait (ASA negotiations initiated and MoU signed on 22.07.2010)		Х			×	х					х		Х		Х	х
Luxembourg (ASA negotiations initiated and MoU signed on 28.08.2008)		х			х	х			х					х	х	х
Macao (signed on 15.07.1994)	08.02.1996	х			X	Х	Х							х	Х	
Malaysia (signed on 18.12.1995)	05.10.1998	X			X	X	X							X	X	х
Mauritius (MoU signed on 07.12.2016)	3311311773				X	X					Х			X	X	X
Mexico (signed on 26.05.1995, MoU signed on	16.06.1996	х			X	Х			x				Х		X	х
26.01.2011 and new ASA signed on 26.05.2015)																
Morocco (new ASA negotiations initiated and MoU signed on 11.09.2009)	07.03.1979				х	х			Х					Х	x	х
Mozambique (ASA signed on 17.06.2010, MoU signed on 04.06.2009)		х			×	х			х					х	×	х
Namibia (ASA negotiations initiated and MoU signed on 12.12.2013)		х			х	Х					Х		х		x	х
Netherlands (signed on 06.07.1976, updated via exchange of correspondence in July 2011)	12.12.1977	х			х	х	х							х	х	х
New Zealand (signed on 18.06.1996, MoU signed on 12.12.2012 and new ASA signed on 11.03.2013)	29.10.1998	х			Х	Х					Х		х		х	х
Nigeria (signed on 06.09.2005, new MoU signed on 08.12.2016)	25.09.2008				х	х					Х			х	х	х
Oman (ASA negotiations initiated and MoU signed on 01.07.2010)		х			Х	х					Х		Х		Х	х
Panama (ASA signed on 25.05.2007, updated via exchange of correspondence in July 2014)	11.01.2010	х			х	х					х		х		×	х
Paraguay (signed on 20.12.1952, new ASA signed on 08.06.2016)	20.05.1954	х			х	Х					х		х		Х	х
Peru (signed on 11.12.2009, new MoU signed on 15.08.2008)	21.08.1957	х			х	х			х		х		х		х	х
Philippines (ASA negotiations initiated and MoU signed on 20.05.2013)		х			Х	х			х				Х		Х	х
Poland (signed on 13.03.2000, updated by exchange of correspondence in April 2001)	14.11.2007				×	x	х							х	х	х

- 178 -

Partner (signature)		Traffic rights (freedoms)		Cooperat multip designa	ole			Pric	ing	Capacity						
	Entry into force	5 th	7 th	cabotage	Cooperative arrangements	Multiple designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre- determination	Free determination	Other	Withholding clause	Statistics
Portugal (signed on 11.11.2002, updated by exchange of correspondence in June 2012)	08.03.2007	Х			Х		х							Х	х	х
Qatar (negotiations initiated on 04.05.2006, MoU signed on 30.06.2010)		х			х	Х					х		Х		Х	х
Russian Federation (signed on 22.01.1993, MoU signed on 14.02.2008 and new ASA negotiations initiated on 09.02.2011)	07.11.1995				Х	Х					×			Х	Х	X
Saudi Arabia (ASA signed on 14.04.2015)					х	Х					Х			х	х	×
Scandinavia (Denmark, Norway, and Sweden) (signed on 18.03.1969) - Denmark(updated via exchange of correspondence in December 2010) - Norway (MoU signed on 20.10.2015) - Sweden (updated via exchange of correspondence in December 2010)	19.02.1970 08.12.1969	x			x		х							×	×	x
Senegal (ASA signed on 16.05.2007, MoU signed on 28.04.2006)	06.11.2009	х			х	х			х					Х	х	х
Serbia (ASA negotiations initiated and MoU signed on 19.10.2015)					Х	Х					Х		Х		х	х
Seychelles (MoU signed on 12.12.2013, ASA signed on 19.05.2015)		х			х	×					х		Х		×	х
Sierra Leone (ASA negotiations initiated and MoU signed on 12.12.12)		х			Х	Х					х		Х		х	Х
Singapore (signed on 25.11.2008, new ASA negotiations initiated on 27.06.2008, MoU signed on 29.06.2010)	02.09.1999	х			х	х					х		Х		×	х
Saint Maarten (ASA negotiations initiated and MoU signed on 11.12.2013)		х			Х	Х					Х		Х		х	х
South Africa (signed on 26.11.1996, MoU signed on 27.05.2008)	17.10.2001	х			х	х			х					х	х	х
Spain (signed on 28.11.1949, new ASA negotiations initiated on 13.07.2007, updated via exchange of correspondence on July 2010)	11.03.1954	Х			Х	Х			х					Х	Х	X
Sri Lanka (ASA negotiations initiated and MoU signed on 08.08.2014)		Х			х	Х					Х		Х		Х	х

- 179 -

Partner (signature)		Traffic rights (freedoms)			Cooperat multip designa			Pric	ing	Capacity						
	Entry into force	57	7th	cabotage	Cooperative arrangements	Multiple designation	Dual approval	Dual disapproval	Country of or origin	Zone pricing	Free pricing	Pre- determination	Free determination	Other	Withholding clause	Statistics
Sudan (ASA negotiations initiated and MoU signed on 10.12.2013)		х			х	Х					х		х		х	х
Suriname (signed on 28.01.1980, new ASA negotiations initiated and MoU signed on 21.08.2009)	13.07.1983	х			Х	х			х		х		Х		х	х
Switzerland (signed on 29.07.1998, new ASA signed on 08.07.2013)	02.01.2001	х			х	Х					Х		х		×	Х
Tanzania (negotiations initiated on 30.08.1989, new ASA negotiations initiated and MoU signed on 10.12.2013)		х			х	х					х		Х		×	х
Thailand (signed on 21.03.1991)	22.06.1994	х					Х							Х	Х	x
Trinidad and Tobago (signed on 23.07.2008, MoU signed on 01.12.2005)		х				х			х					х	х	х
Togo (ASA negotiations initiated and MoU signed on 12.12.2013)		х			Х	Х					Х		х		х	Х
Turkey (signed on 21.09.1950, new ASA negotiations initiated on 11.05.2006, MoU signed on 19.10.2015)	29.03.1952	х			Х	Х					х			Х	х	Х
Ukraine (ASA signed 13.12.1996, new ASA negotiations initiated and MoU signed on 02.12.2009, MoU signed on 19.02.2008)		x			Х	Х			х					Х	х	X
United Arab Emirates (ASA negotiations initiated on 09.06.2004, MoU signed on 30.06.2010)		х			Х	Х					х		х		х	Х
United Kingdom (signed on 31.10.1946, new ASA negotiations initiated on 22.10.2008, updated via exchange of correspondence in October 2010)	18.08.1950	×			х	Х					х			Х	х	X
United States (New ASA and MoU signed on 19.03.2011)	07.02.1992	х			х	Х					х			х	х	х
Uruguay (signed on 10.03.2009, MoU signed on 11.07.2012)	11.01.2011	х			х	х					х		Х		х	х
Venezuela, Bolivarian Republic of (ASA signed on 30.09.2008, MoU signed on 07.08.2008)	10.10.1991	х			х	х			х					Х	х	х
Viet Nam (ASA negotiations initiated and MoU signed on 22.10.2015)					Х	Х					х		Х		×	Х
Yemen (ASA negotiations initiated and MoU signed on 03.07.2013)		х			Х	Х					Х		Х		Х	Х

Partner (signature)		Traffic rights (freedoms)		Cooperat multip designa			Pric	ing		Capacity						
	Entry into force	5 th	7 th	cabotage	Cooperative arrangements	Multiple designation	Dual approval	Dual disapproval	Country of origin	Zone pricing	Free pricing	Pre- determination	Free determination	Other	Withholding clause	Statistics
Zambia (ASA negotiations initiated and MoU signed on 10.12.2013		х			Х	х					Х		х		х	х
Zimbabwe (ASA negotiations initiated and MoU signed on 11.03.2010)		х			х	х					Х		х		Х	х

One party's airlines may sign code-share and other cooperation agreements with the other party's airlines and with third countries' airlines. 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.