

BRAZIL¹

V. MEASURES AFFECTING PRODUCTION AND TRADE

(1) Arrangements Affecting Market Structure and Competition

(v) Government procurement

31. Brazil was not a signatory to the GATT Government Procurement Code and does not plan to sign the Plurilateral Agreement on Government Procurement.

32. Article 37 of the Constitution provides that, in general, public works, purchases and services should be contracted through a public tendering process. The relevant regulations are established in Law No. 8666 of 21 June 1993, as amended by Law No. 8883 of 8 June 1994; Presidential vetoes affecting the latter were still pending in Congress in early 1996. The Federal Government was preparing in mid-1996 a draft bill modifying the provisions in Law No. 8666; no decision had been taken on whether the bill would amend or replace such law.

33. The authorities pointed out a number of important changes in Law No. 8666 vis-à-vis Decree-Law No. 2300 of 21 December 1986, that previously regulated government procurement. The criteria for the awarding of bids have been modified to avoid irregular tender offers, with the lowest price being the core criterion (Box V.1). Contracts with government-owned firms are open to both national and foreign suppliers. The similarity test for imports no longer applies. Law No. 8666 maintains preferences for goods and services produced in Brazil when bids are equivalent in terms of price, quality and delivery time; however, the authorities noted that such preferences lost much of their practical significance after the elimination of the concept of "national companies of Brazilian capital" (Chapter II, Box II.1). In cases involving international bidding, successful bidders are required to have local representatives.

Box V.1: Government procurement regulations

Law 8666 of 21 June 1993 applies to government procurement at the federal, State and municipal levels as well as in public agencies. The law forbids, in general, the granting of preferences based on the domicile of bidders or differential treatment between Brazilian and foreign firms. However, when all other factors are equal, suppliers may be selected according to whether a service or good is, in descending order of priority, produced or supplied by a Brazilian firm of national capital, domestically produced, and produced or supplied by Brazilian firms.

Public tendering may take five forms: competition among any interested parties; acceptance of prices from officially registered firms; invitation by the administrative authorities; competition among parties for technical scientific or artistic projects; and public auctions of goods. Minimum or maximum values are established for each form of tendering depending on whether engineering products or services are involved. Specific tendering procedures apply to airline concessions. Tendering is not required when the Federal Government must intervene in the economy to regulate prices or restore normal supply.

Interested parties must provide evidence of their technical and financial positions, fiscal standing as well as legal status; for foreign firms, the latter involve official registration or authorization to operate in Brazil. Foreign firms without operations in Brazil and involved in an international tender must have legal representation there; requirement (and others) do not apply when funds from multilateral financing organizations are involved. International tenders must comply with guidelines on monetary and foreign trade policy.

Contracts may be awarded using various criteria: best offer, lowest price, best technology, or combination

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of price and technology. The combination of price technology must be used for informatics products, to which other special requirements also apply. Best technology or a combination of price and technology are used for "intellectual" services, such as project design or administration. In all cases, domestic charges and taxes paid by domestic firms are added to bids by foreign companies in order to decide on awards.

Contracts for specialized technical projects may be awarded only if the author transfers the related property rights and they can be employed as provided in the tendering conditions. For intellectual works not susceptible to registration, the transfer of rights must include the supply of information concerning their conception and development.

Tendering processes may be contested by any Brazilian citizen.

34. Government procurement of telecommunications and informatics goods and services is exempt from the general procurement rules; instead, such procurement is governed by Decree No. 1070 of 2 March 1994, regulating Law No. 8248 of 23 October 1991. The Decree reflects a procurement policy that seeks to use the Government's purchasing power to promote domestic products and services. The policy applies to procurement by the Federal Government and related agencies, such as State enterprises (e.g., PETROBRAS, ELECTROBRAS, the TELEBRAS System) and federal universities; products covered include computers, peripheral units, telecommunications equipment, micro-electronics, software and related services. Procurement procedures for such items involve a three-stage screening process to select proposals according to the following sequence: (i) the best combinations of price and technology; (ii) the lowest prices; and (iii) criteria defined in Decree 1070. Such criteria give priority to products and services developed in Brazil, containing significant local value added.

35. Purchases by the national oil company (PETROBRAS) involve a system of pre-qualification which could restrict participation in public biddings; criteria for the award of contracts include the local/import component of biddings, and a margin of preference is afforded to local suppliers.²

36. The authorities indicated that there is no official "buy national" policy, a recent constitutional amendment having suppressed the difference between nationally-owned and foreign-owned companies incorporated in Brazil. However, as described in the previous paragraphs, a number of regulations still in place give a margin of preference to Brazilian products and services.

37. Decree-Law No. 666 of July 1969 requires transporting in Brazilian flagged vessels all goods imported by government agencies, imports benefiting from fiscal incentives (e.g., duty exemptions) and imports involving official credit. However, such requirement does not apply to imports covered by GATT tariff concessions (bindings), which would appear, in practice, to exempt all goods, given the 100 per cent binding coverage in the Uruguay Round. A draft bill revoking Decree-Law No.666 was under consideration by the Congress in mid-1996.

38. There is no central procurement agency in Brazil. Procurement is the responsibility of each individual government body, including State enterprises, although some control is exercised through their budgets. Data on the value of goods purchased by public sector agencies were not available, nor were data on the split of purchases and contracts between foreign and domestic suppliers.

²Randall (1993), pp. 226-227.