

142. Under the Brazilian Customer Protection Code, in effect since 1990, product labelling must provide the consumer with correct, clear, precise, and easily readable information about the product's quality, quantity, composition, price, guarantee, shelf life, origin, and risks to the consumer's health and safety. Imported products must bear this information in Portuguese, and indicate the country of origin. In addition, all labels must contain the brand or name of the manufacturer. Medicines, textiles, pharmaceutical specialties, and certain foodstuffs are subject to specific labelling regulations. The labels for a group of processed food products, including all products of animal origin, require approval by the Ministry of Agriculture.

143. New regulations on marking, labelling and packaging have been introduced since 2000. Goods affected include domestic gas stoves and ovens, textile products, cosmetics and other personal care items, highly acidic or alkaline chemical products, agri-toxins, and food.⁸⁵

144. Importers, exporters or manufactures of pharmaceuticals, cosmetics, and foodstuffs must be authorized by, and registered with ANVISA.⁸⁶

(b) Standardization and rule-making

145. The responsibility for the development of standards has been vested by SINMETRO in the ABNT, a non-Governmental body that receives financial support from the Federal Government, and which has the authority to accredit sectoral standardization bodies (ONSs) related to specific industrial and economic sectors. ONSs include graphic technology (ONS-27), Brazilian Petroleum Institute (ONS-34), packaging and plastic packing (ONS-51), standardization body for non-destructive testing (ONS-58). CONMETRO Resolution No. 6 of 2 December 2002 established directives for a Brazilian System of Standardization (SBN), and created the Brazilian Committee of Standardization within CONMETRO to replace the National Committee of Standardization. The Resolution confirms the ABNT as the national forum of normalization, responsible for issuing Brazilian Standards.

146. The ABNT represents Brazil in the ISO/IEC and in regional normalization fora. The ABNT also participates in several technical committees, such as ISO TC 176 (quality), ISO TC 207 (environment) and ISO/CASCO (conformity assessment). The ABNT has a cooperation agreement with its counterparts in other countries. The authorities note that the development of national standards by the ABNT is carried out in accordance with internationally accepted criteria. The ABNT signed the WTO/TBT Code of Good Practice in 1995 and follows its Annex 3. The ABNT also adopts international standards. Standards are adopted through a process of consensus in which both the public and the private sector participate. Once standards have been approved, they are adopted by the ABNT, which also notifies them to ISO.

147. Since its previous Review in 2000, Brazil has developed approximately 1,700 standards, of which 19% were adoptions of ISO or IEC standards without any change. The remaining standards were either purely domestic initiatives or adaptations of international standards. The reason for adopting international standards are generally that they cannot be adopted without change due to climatic or geographical factors, levels of protection assessed as insufficient, or technological problems. International standards have been adopted for: hospital equipment, electrical equipment,

⁸⁵ These requirements are contained in: Ministerial Act (Portaria) MDIC No. 73 of 5 April 2002; CONMETRO Resolution No. 2 of 13 December 2001, RDC/ANVS Resolution No. 79 of 28 August 2000, No. 92 of 23 October 2000 and No. 3 of 8 January 2002; RDC/ANVS Resolution No. 163 of 11 September 2001; Ministerial Act (Portaria) MAPA No. 297 of 13 June 2001; Decree No. 4,680 of 24 April 2003 and RDC Resolution No. 259 of 10 September 2002 and No. 8 of 24 September 2001, respectively.

⁸⁶ Registration requirements are contained in ANVISA Resolution No. 79, of 28 August 2000.

machines, automobiles, road machines and tools, and other areas in which standards are used for the development of technical regulations.

148. A large number of technical regulations have been issued and notified to the WTO during the period under review. Notifications cover various sorts of regulations by different agencies and include MERCOSUR regulations. In 2001, 29 technical regulations were notified; in 2002, the number rose to 34, and in 2003 to 71. As highlighted by the authorities, Decree No. 3,961, of 10 October 2001 modified the technical regulations with respect to cosmetics.⁸⁷ Regulations with respect to medicines were also modified during the period under review; most of them were introduced in 2003 and notified to the WTO as part of the 71 notifications made during the year under the TBT Agreement. The modified regulations involved: allergenic products registry (Resolution RDC No. 324 of 10 November 2003); probiotic medicines registry (Resolution RDC No. 323 of 10 November 2003); homeopathic medicines registry (Resolution RDC No. 139 of 29 May 2003); new medicines registry (Resolution RDC No. 136 of 29 May 2003); and generic medicines registry (Resolution RDC No. 135 of 29 May 2003), among others.

(c) Accreditation

149. Accreditation and conformity assessment activities in SINMETRO are based on ABNT/ISO/IEC guidelines and rules. INMETRO is the national accreditation body vested by SINMETRO. Accreditation guidelines for laboratories are based on ISO Guide 58 and for certification bodies on ISO Guide 61. INMETRO is advised by CONMETRO's technical committees in its accreditation activities, and gives accreditation to bodies engaging in certification, inspection, training, calibration, and testing. INMETRO also gives accreditation to agri-toxic laboratories and clinical analysis laboratories.

150. A formal request must be made for accreditation, followed by supporting documentation and in situ inspection. If accreditation is granted, it is made official through a contract and a certificate of accreditation. To maintain accreditation, a body is subject to periodic evaluations.

151. INMETRO has signed the following multilateral recognition agreements: the International Accreditation Forum (IAF); the Interamerican Accreditation Cooperation (IAAC); the International Laboratory Accreditation Cooperation (ILAC); the International Organization of Legal Metrology (OILM); the International Auditor and Training Certification Association (IATCA); and the International Bureau of Weights and Measures (BIPM). INMETRO has signed cooperation agreements with the United Kingdom Accreditation Service, the U.S. National Institute of Standards and Technology, and the Physikalisch-Technische Bundesanstalt (PTB, Germany).

(d) Testing and conformity assessment

152. Testing and calibration activities are executed by laboratories under the Brazilian Calibration Network (RBC) and the Brazilian Laboratory Network (RBLE). These laboratories must be accredited by INMETRO; they may be private or public. The bases for accreditation are ABNT, Copant, MERCOSUR and ISO/IEC guidelines.

153. In 2001, INMETRO signed a Mutual Recognition Arrangement on Calibration and Testing Laboratory Accreditation Procedures with several foreign counterparts.⁸⁸ The agreement entered into

⁸⁷ Available online at: http://www.anvisa.gov.br/legis/decretos/3961_01.htm.

⁸⁸ Counterparts in: Australia; Belgium; Canada; China; the Czech Republic; Denmark; Finland; France; Germany; Hong Kong, China; India; Ireland; Japan; Korea; the Netherlands; New Zealand;

force on 31 January 2001.⁸⁹ Brazil also has a mutual recognition agreement with a number of European bodies for the mutual acceptance of test reports and calibration certificates, which came into force in 2001.⁹⁰

154. No national treatment limitations apply to foreign certification bodies. There are 35 certification bodies accredited for quality systems, of which 27 are Brazilian and eight foreign (from Argentina, Italy, the United States, Uruguay, and Venezuela); 32 bodies are accredited for product certification (of which only two foreign, from Argentina and Uruguay); and there are 24 environmental systems management accreditation bodies, of which eight are foreign (from Argentina, Italy, the United States, and Uruguay).⁹¹

155. Certification is generally voluntary in Brazil. Products and services subject to mandatory certification are those that may affect consumer health, safety or the environment. As at January 2004, 35 products were subject to mandatory certification, including buses, steel bars; fuses and cables; baby bottles; PVC hoses for gas; parts for vehicles; tyres; plastic containers; preservatives; some types of electrical equipment; some kinds of electro-medical equipment; oil filters; glass panes for vehicles; and matches.⁹² Certification is also mandatory for six types of services mostly linked to motor-vehicle engine configuration, fire-equipment inspection, and gas distribution. There are three products subject to mandatory verification of performance (advance signal registration equipment, liquefiers, and hair dryers).

156. Brazil recognizes product and system certification from foreign certification agencies that have a memorandum of understanding with a Brazilian certification body. Brazil participates in a plurilateral mutual recognition arrangement in the field of quality management systems.⁹³ In 2002, Brazil, through INMETRO, signed a Multilateral Recognition Arrangement for Accreditation Bodies of Quality Management Systems Certification Bodies with Canada and Mexico, which entered into force on 24 October of that year. Under the arrangement, each signatory recognizes the operation of the other signatories' quality management systems within the programmes defined as equivalent to its own.⁹⁴ Prior to those arrangements, Brazil had signed five mutual recognition agreement with respect to conformity assessment.⁹⁵

Norway; Singapore; South Africa; Sweden; Switzerland; Chinese Taipei; the United Kingdom; the United States; and Viet Nam.

⁸⁹ Notified to the WTO by Brazil in WTO document G/TBT/10.7/N/41, 12 December 2002.

⁹⁰ Agreement on Mutual Acceptance of Test Reports and Calibration Certificates between the Signatories to the European Cooperation for Accreditation Multilateral Agreement and the INMETRO. Parties to the agreement include bodies from Austria; Belgium; the Czech Republic; Denmark; Finland; France; Germany; Iceland; Ireland; Italy; Latvia; Lithuania; the Netherlands; Portugal; Slovakia; Spain; Sweden; Switzerland; and the United Kingdom. Notified in WTO document G/TBT/10.7/N/39, 12 December 2002.

⁹¹ Information available online at: <http://www.inmetro.gov.br/organismos>.

⁹² The complete list of products subject to compulsory certification, as well as the agencies responsible and the legal documents supporting the requirements are available online at INMETRO'S website: <http://www.inmetro.gov.br/qualidade/prodCompulsorios.asp#10>.

⁹³ Notified to the WTO in document G/TBT/10.7/N/40, 12 December 2002. Bodies from Argentina; Australia and New Zealand (joint); Austria; Belgium; Canada; China; the Czech Republic; Denmark; Korea; Finland; France; Germany; Hong Kong, China; India; Indonesia; Ireland; Italy; Japan; Malaysia; Mexico; the Netherlands; Norway; the Philippines; Poland; Romania; Singapore; Slovakia; Slovenia; and South Africa, are parties to the agreement.

⁹⁴ Notified to the WTO in WTO document G/TBT/10.7/N/43, 8 January 2003.

⁹⁵ Two were with Argentina; one with other Metrology Convention Members, one with the IAF-International Accreditation Forum; and one in the framework of LAIA.

157. To prove compliance with Brazilian technical regulations, users may use a Suppliers Declaration. However, the supplier must have a legal representative in Brazil responsible for the issuance of the document.⁹⁶

158. The Government intends to improve the use of conformity assessment beyond certification. In this respect, the Action Programme of the Brazilian System of Conformity Assessment (SBAC), approved by CONMETRO for 2000-03, identified 30 potential conformity assessment programmes for products and services; ten were for models other than certification.

(ix) Sanitary and phytosanitary measures

(a) Institutional and legal framework

159. The administration of regulations on animal and plant health for domestic goods, imports, and exports are the responsibility of the Ministry of Agriculture and Supply (MAPA), through the Secretariat of Agricultural Protection (SDA). The SDA is responsible for controlling the sanitary and phytosanitary aspects of all livestock, vegetable and grain production, including food export safety certification, as well as inspection of the manufacture, import, and storage of these products and their inputs, with a view to ensuring food safety conditions. The SDA is responsible for the administration and application of sanitary and phytosanitary regulations for: (a) animal and plant protection; (b) animal products, beverages, wine, vinegar, and grape wine products; (c) the control of the production and trade of veterinary drugs, pesticides, and their components; (d) laboratory and diagnostic tests for livestock, vegetable and grain products; and (e) the implementation of actions agreed upon with international agencies and foreign governments. The SDA's Division of Technical Cooperation and International Sanitary Agreements coordinates its international activities under the SPS Agreement.

160. The Ministry of Health, through the Brazilian Sanitary Surveillance Agency (ANVISA), is responsible for administering regulations concerning sanitary measures to protect human health, applied to imported and locally produced foodstuffs; and sanitary measures designed to avoid or reduce the risk of entry, establishment or spread of epidemics of human diseases.⁹⁷

161. Risk analyses, taking into account the place of origin and the product, are carried out to determine sanitary and phytosanitary measures. Pest risk analysis is carried out in conformity with the Regional Standard for Plant Protection 3.1, Directive for Pest Risk Analysis, of the Southern Cone Plant Health Committee (COSAVE), approved by Ministerial Order No. 641, of 3 October 1995, Normative Order No. 59 and No. 60, of 21 November 2002. In this respect, the authorities note that risk analyses take into consideration technical information received from third countries interested in exporting to Brazil and that, therefore, the duration of the risk analysis process depends primarily on how fast this information is exchanged and evaluated. The authorities consider risk analysis as one of the most important points of implementation of the SPS Agreement, and that Brazil is making efforts to ensure that risk analyses are consistent with international norms.

162. ANVISA and the SDA issue directives that list the products subject to sanitary requirements, and non-automatic import licences in their respective area of competence. ANVISA can prohibit the manufacture, import, storage, distribution, and commercialization of products and inputs in cases of violation of legislation, or of imminent health risk. The SDA is responsible for controlling the manufacture, import, storage, distribution, and commercialization of any livestock, vegetable and grain products that may affect the appropriate level of SPS protection.

⁹⁶ Annex 11, CONMETRO Resolution No. 4 of 16 December 1998.

⁹⁷ Information on SPS measures is available from the Ministry of Agriculture, Livestock and Food Supply and ANVISA online information. Available at: <http://www.anvisa.gov.br>.

163. Proposed SPS measures are notified regularly to the WTO and are open for comments from Members. ANVISA and the SDA are the enquiry points under the SPS Agreement. During 2000-03, Brazil made 47 notifications related to the SPS Agreement: two in 2000; nine in 2001; 19 in 2002; and 17 in 2003. The notifications concerning measures for the protection of animal health related primarily to foot and mouth disease and Bovine Spongiform Encephalopathy (BSE); those related to plant health were, for the most part, referred to pest control.

164. During the period under review, Brazil enacted several new laws covering genetically modified foods and the treatment of imported seeds. Several Normative Instructions were also issued, mostly relating to registration requirements for seeds and some plants. Other changes in legislation and regulations touch on the analysis of agri-toxins, measurement of water quality, and evaluation of marine and bovine health, as well as that of birds from temperate climates.

165. Among the laws passed during 2000-03, Law No. 9,972 of 25 May 2000 establishes a new system of classification for plant products, by-products, and residues of economic value; it includes severe penalties in case of infringement. Law No. 9,974 of 6 June 2000 establishes additional regulation for pesticides and pesticide residue research and experimentation, transport, storage, sale, importation and exportation, packaging, registration, and classification. Law 10,711 of 5 August 2003 established the National Registry of Seeds and Shoots (Renasem). A number of specific modifications regarding regulations affecting certain agricultural products, including sugar, fruit, seasonings, and enzymes, were also introduced during the period under review.

(b) Inspection, registration and certification activities

166. Ministerial Act (Portaria) No. 283/SDA of 9 October 1998 remains the main legislation with respect to the sanitary requirements of import. This Act prescribes the conditions of recognition of inspection systems and the certification of foreign establishments. Goods included in NCM/HS Chapters 1, 3, 5, 6, 7, 8, 9, 10, 12, 20, 22, 44 and 45 of the CET are subject to sanitary and phytosanitary inspection before dispatch from customs; goods included in Chapters 2-5, 14-16, 18-19 require an inspection before shipment.

167. Imported goods are inspected at the port of entry. ANVISA publishes the list of these actions.⁹⁸ Onsite inspections are also undertaken for sanitary and phytosanitary evaluation of countries wishing to export to Brazil or for the certification of foreign establishments. Brazilian SPS regulations require all companies exporting products of animal origin to Brazil to be registered with the Animal Origin Products Inspection Department (DIPOA) at the MAPA; all products must also be registered. Importers and domestic manufacturers of foodstuffs must obtain a functioning licence from the state or municipal sanitary authority. This licence is valid throughout the Brazilian territory. Some types of specific food ready for human consumption requires registration with ANVISA (baby food, beverages), valid for five years.⁹⁹ All other products require only notification to ANVISA, according to Resolution RDC No. 23/2000. New inspection, registration, and certification requirements were introduced during the period under review. Import prohibitions for the protection of animal health are in place for a number of products (section (2)(vi)(a)).

168. Brazil is a member of the International Office of Epizootics (OIE), the Commission for Phytosanitary Protection (CIPV), and Codex Alimentarius. At the sub-regional level, Brazil participates in the Southern Cone Phytosanitary Committee (COSAVE). Brazil accepts phyto- and zoosanitary certificates issued by official sanitary services in countries that follow FAO, CIPV, OIE

⁹⁸ ANVISA'S website. Available online at: <http://www.anvisa.gov.br/alimentos/acoets/tabela.pdf>.

⁹⁹ Resolution No. 23, of 15 March 2000. Available online at: http://www.anvisa.gov.br/eng/legis/resol/23_00_e.htm.

and other international scientific organizations guidelines. In the context of FTAs or other agreements (e.g. with the Andean Community, Mexico, and India) Brazil has engagements to enhance cooperation on SPS issues.

(c) Genetically modified organisms

169. Products containing genetically modified organisms (GMOs) can only be imported with prior authorization from the National Technical Commission of Bio Security (CTNBio). Their use is regulated by Law No. 8,974, of 5 January 1995. Decree No. 4,680 of 24 April 2003, makes compulsory the labelling of food products for animal and human consumption containing over 1% of GMOs. Brazil is reportedly the largest exporter of non-GM soy, but GM soybean planting is estimated at some 30% of total production. The 2003 Decree revoked Decree No. 3,871 of 19 July 2001, which made labelling mandatory over a 4% tolerance limit. Decree No. 4,680 of 24 April 2003 does not apply to products made from the 2003 soy crop, which, in accordance with Law No. 10,688 of 13 June 2003, effective from 31 January 2004, was ordered to be destroyed, except if exported or produced in regions where there has verifiably been no GMO. Up to early 2004, legislation allowing the production and importation of GMOs remained provisional; the Brazilian Government is debating a bill for permanent regulation of GMOs.

(d) Pesticides

170. Decree No. 4,074 of 2002 regulates the importation, exportation, and labelling of pesticides. Certificates of preliminary toxicological evaluation are extended for two years, which can be extended. Assessment and approval for new pesticides or for new use to registered pesticides is made by IBAMA, MAPA, and ANVISA together.

171. RDC Resolution No. 57, of 26 February 2002 established criteria to evaluate GMOs to be used as pesticides; these products must also be registered in a Special Temporary Registry.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures and documentation

172. Export procedures are codified in the Consolidation of Ministerial Acts (Portaria) SECEX (Exports), contained in Ministerial Act (Portaria) SECEX No. 12 of 3 September 2003, modified by Ministerial Act (Portaria) SECEX No. 16 of 7 November 2003, Ministerial Act (Portaria) SECEX No. 18 of 18 December 2003, and Ministerial Act (Portaria) SECEX No. 4 of 16 February 2004. Procedures take place electronically through the SISCOMEX (see also section (2)(i)); no major modifications have been made to Brazil's export procedures since its previous last Review. Operations in the SISCOMEX can be made by exporters or their representatives, including banks.¹⁰⁰

173. The registration of exporters in SECEX's Exporters and Importers Registry (REI) takes place automatically at the time of the first export operation. All export operations must be registered, along with details of the transaction, except for exports valued at less than US\$10,000 and shipped by post.¹⁰¹ Export documentation is processed via SISCOMEX before the merchandise is loaded, except for exports of fuel and food to airlines and ships, and domestic sales of precious stones and jewellery

¹⁰⁰ Decree No. 4,732, 10 June 2003. Available online at: <http://www.mdic.gov.br/legislacao/decreto/doc/decreto4732de20030610.pdf>.

¹⁰¹ Consolidation of Ministerial Acts (Portaria) SECEX (Exports) Art. 1(4), and Annex A, which contains the complete list of exported goods exempted from registration requirements. Available online at: <http://www.desenvolvimento.gov.br/comext/dececx/consolidacao.html>.

to foreigners in foreign currency.¹⁰² Documents required include a bill of lading, a letter of credit (when required), a foreign currency sale contract¹⁰³, commercial invoice, certificate of export classification¹⁰⁴, and in some instances an export licence (see below) and certificate of origin, as required by the importing country.¹⁰⁵ Exports must be shipped within 60 days of registration.

174. Goods listed in Annex C of the Consolidation of Ministerial Act (Portaria) SECEX are subject to special procedures, which may include the payment of export taxes, and licensing and restrictions. These goods include coffee, chestnuts, lobster, soy (including oil and flour), sugar, palmetto, tobacco, cigars, marble, granite, salt, furs (HS chapter 41), wood (HS 44), paper for cigars, silk, cotton and a number of textile and clothing products, gold and precious stones, and arms and ammunition. Green coffee, soy, sugar and gold must be inscribed in the Registry of Sale, prior to their inscription in the REI. The inscription in the Registry of Sale must stipulate the conditions of the export operation, including pricing.

175. A Simplified Export Registry (RES) exists for exports up to US\$10,000 for immediate shipment. The RES cannot be used for exports under the Automotive Regime, exports subject to export taxes, under any quantitative restriction or under any special proceeding listed in Annex C of Ministerial Act (Portaria) SECEX No 12/2003.

(ii) Export taxes and minimum export prices

176. As at January 2004, export taxes were levied on eight product categories (Table III.7). In some cases, taxes are levied only on exports to certain markets. The authorities note that Brazil applies export tax to ensure domestic market supply (in the cases where taxes are applied to all countries) and to control the regularity of the commercial flow (when they are targeted to specific markets). They also note that the different objectives explain the rationale of this practice and are reflected in the tax level. The use of export taxes is of marginal importance to the tax system and has decreased in the 2000-04 period. Export tax revenue amounted to US\$32.2 million in 2001 and US\$26.6 million in 2002, for exports of US\$58.2 billion and US\$60.4 billion.¹⁰⁶

177. While the law allows for the application of an export tax of 30%, which can be decreased or increased (to up to 150%) by the CAMEX¹⁰⁷, in practice export taxes are all zero-rated except those levied on the products shown in Table III.7. Taxes are assessed on the f.o.b. value or the price of the goods in the international market at the time of exportation.¹⁰⁸ The latter price may not be lower than the cost of production augmented by taxes and other contributions and a mark-up of 15% on the sum

¹⁰² Ministerial Act (Portaria) SECEX No. 12/2003.

¹⁰³ Foreign exchange proceeds from exports (and funds for imports) in Brazil must be obtained in the commercial/financial market for transactions that may require approval. For these transactions, a foreign currency contract involving a financial institution is required. This contract must be registered in the Central Bank's Information System (SISBACEN). Central Bank Consolidation of Exchange Norms (CNC) No. 325 of 19 February 2004). Available online at: <http://www.bcb.gov.br>.

¹⁰⁴ Document released by SECEX (*confêrencia aduaneira*), for the purpose of identifying the exporter, and verifying the merchandise exported and the information on its nature, fiscal classification, quantity, and value. Decree No. 4,543 of 26 December 2002, and Annex F of Ministerial Act (Portaria) SECEX No. 12/2003.

¹⁰⁵ Certificates of origin are required for exports to LAIA and MERCOSUR countries, under the GSP and GSTP schemes, and for textiles exported to the European Union. A certificate of tobacco authenticity, issued by the Banco do Brasil, is required for exports of tobacco to the EU.

¹⁰⁶ Ministry of Finance (2003).

¹⁰⁷ Law No. 9,716, 26 November 1998, and Decree No. 4,543 of 26 December 2002.

¹⁰⁸ Decree No. 1,577 of 1977 and Provisional Measure No. 2,158-35 of 2001.

of the costs and taxes. Exports may be exempt from this tax according to their destination.¹⁰⁹ Exports of coffee, sugar, alcohol and related products are exempt from the tax.

Table III.7
Export taxes

NCM Heading	Products	Destination	Rate	Termination date	Legislation
0801.31.00	Cashew nuts, with shells	Any country	0% up to 10,000 tons; 30% above that quota.	21/10/2005	CAMEX Resolution No. 31, 20/10/03
2401, 2403	Tobacco and its substitutes	Paraguay and Uruguay	150%	Undetermined	Decree No. 3,646, 30/10/00
2402.20.00	Cigars	South and Central America and the Caribbean	150%	Undetermined	Decree No. 2,876, 14/12/98
4104.11, 4104.19	Leathers and skins	Any country	7% 4%	31/12/2004 01/01-31/12/2005	CAMEX Resolution No. 01, 14/01/04
4813	Paper for cigars	South and Central America and the Caribbean ^a	150%	Undetermined	CAMEX Resolution No. 26, 28/08/03
5601.22.91	Cylinders for cigar filters	South and Central America and the Caribbean ^b	150%	Undetermined	CAMEX Resolution No. 26, 28/08/03
Chapter 93	Arms and ammunition ^c	South and Central America and the Caribbean ^b	150%	Undetermined	CAMEX Resolution No. 17, 06/06/01

a Excluding Argentina, Bolivia, Chile, Colombia, Cuba, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Peru, Puerto Rico, Dominican Republic, and Venezuela.

b Excluding Argentina, Chile, and Ecuador.

c Except when destined to authorized consumers and to the military and police forces.

Source: Information provided by the Brazilian authorities.

178. Minimum exports prices are not used, except as a base to calculate export taxes. For products that must be inscribed in the Registry of Sale, a fixed price may be used, but this price must be based in prevailing international market conditions.¹¹⁰

179. All exports are exempt from the IPI and ICMS.

(iii) Export prohibitions, restrictions, and licensing

180. The Inter-ministerial Commission for the Export Control of Sensitive Goods, created by Law No. 9,112 of 10 October 1995 and amended by Decree No. 4,214 of 30 April 2002 is in charge of preparing the regulations, criteria, proceedings and control mechanism for the exportation of sensitive goods and their related services. The Commission is in charge of preparing a list of sensitive goods and analysing the provisions of the main international conventions and treaties affecting or involving the exportation of sensitive goods. Exports of goods considered sensitive (as listed Law No. 9,112 of 10 October 1995), must be approved by the Ministry of Science and Technology, which presides the Commission.¹¹¹

(a) Export prohibitions

181. Exports of some organic chemicals included in HS Chapter 29 are prohibited to non-signatories of the Montreal Protocol. Exports of jacaranda from Bahia (HS 4407.29.90) are prohibited because this wood is becoming extinct. Exports of wood in the rough (HS 4403) have been

¹⁰⁹ Law No. 9,716, of 26 November 1998.

¹¹⁰ Chapter VII and Annex C of Consolidation of Ministerial Acts (Portaria) SECEX (Exports).

¹¹¹ The other participating ministries are: Defence, External Relations, Justice, Finance, and the MDIC.

suspended, except if certain conditions are met, and subject to prior approval of the IBAMA. Brazil also restricts exports to comply with United Nations resolutions: exports of weapons and military equipment to Iraq, Liberia, Sierra Leone, and Somalia are forbidden.

(b) Export quotas

182. Exports of certain woods (pine, imbuia, and virola), classified under HS headings 4407.10.00, 4407.24.10, 4407.24.20, and 4407.24.90, are subject to quotas.

183. Brazilian exports of textiles and clothing listed in Annex C of Consolidation of Ministerial Acts (Portaria) SECEX (Exports), are subject to quotas in the Canadian, and U.S. markets.

184. Under the agreement between the governments of Brazil and the United States suspending the U.S. countervailing duty investigation on hot-rolled flat-rolled carbon quality steel from Brazil, the latter agreed to a quantitative export limit of 295,000 tonnes, effective from October 1999 until September 2004.

(c) Export licensing

185. Export licences are required only for textile and clothing products to Canada and the European Union (section (2)(vi)(c)). Export licences are issued by the Banco do Brasil, by delegation of the SECEX. Exports of textiles to the United States and Puerto Rico require the commercial invoice to be certified and stamped with a Visa; as determined in the Brazil-U.S. Bilateral Agreement on Textiles. The stamp is granted by the SECEX through the Banco do Brasil.

186. Exports of a relatively large number of products are subject to prior authorization from different agencies, generally for safety, health, security or environmental reasons, or when they are subject to export quotas (Table III.8). The list includes: live animals; live plants; some oils and resins; hides and skins from wild animals; some types of wood; a range of chemical products, in particular those in HS Chapter 29; a group of medicines; uranium and some other metals; weapons; and some vehicles and aircraft.¹¹² They represent some 10.7% of all tariff headings at the eight-digit level.

Table III.8
Products subject to prior authorization, 2004

HS section	Description	No. of tariff lines in the section	No. of lines subject to authorization	Agency responsible for issuing the licence
01	Live animals & prod.	342	26	IBAMA
02	Vegetable products	362	15	IBAMA/DECEX/ANVISA
03	Fats & oils	71	1	ANVISA
04	Prepared food etc.	269	4	DECEX/DPF
05	Minerals	212	54	ANP/DPF/CNEN/MCT
06	Chemical & prod.	2,928	711	DPF, ANVISA/MEX/MCT/CNEN
07	Plastics & rubber	406	9	IBAMA/MEX
08	Hides & skins	121	43	IBAMA
09	Wood & articles	107	15	DECEX
10	Pulp, paper etc.	230	0	DECEX

Table III.8 (cont'd)

¹¹² The complete list is available online at: <http://www.desenvolvimento.gov.br/arquivo/secex/conporexportacao/exigeanuencia.pdf>.

HS section	Description	No. of tariff lines in the section	No. of lines subject to authorization	Agency responsible for issuing the licence
11	Textile & articles	975	4	MEX
12	Footwear, headgear	62	17	IBAMA/MEX
13	Articles of stone	210	4	MEX
14	Precious stones, etc.	64	8	DECEX/DNPM/BACEN
15	Base metals & prod.	739	23	DECEX/MCT/MEX/DPF/CNEN
16	Machinery	1759	14	COTAC/MEX/CNEN
17	Transport equipment	210	45	MEX/COTAC
18	Precision equipment	475	21	MCT/MEX/CNEN
19	Arms and ammunition	21	21	MEX
20	Miscellaneous manuf.	160	1	DECEX
21	Works of art, etc.	7	7	DECEX/MEX/IBAMA
Total		9,730	1,043	

Note: The number of lines is based on the MFN tariff schedule at 8 digits. For products specified at the 10-digit level, the calculations are based on the corresponding 8-digit code.

ANP = National Petroleum Agency; ANVISA = Brazilian Health Surveillance Agency; BACEN = Central Bank of Brazil; CNEN = National Commission of Nuclear Energy; COTAC = Commission of Civil Air Transport Coordination, DECEX = Foreign Trade Operations Department; DPF = Federal Police Department; IBAMA = Brazilian Institute of the Environment and Renewable Natural Resources; MCT = Ministry of Science and Technology; MEX = Ministry of Defence, and the Army Command.

Source: WTO Secretariat calculation, based on data from Ministry of Development, Industry and Foreign Trade online information. Available at: <http://www.desenvolvimento.gov.br/arquivo/secex/comporexportacao/exigeanuancia.pdf>.

(iv) Export support and related tax concessions

(a) Export subsidies

187. In 2001, Brazil notified as subsidies for the period 1996-99 under the SCM the Brazilian Special Export Programme (BEFIEEX) and the Export Financing Programme (PROEX).¹¹³ In an updating notification in 2003, the two programmes were excluded (section (4)(iv)).¹¹⁴

188. As notified to the WTO, the BEFIEEX programme was discontinued on 31 December 2002, when all existing contracts were terminated. No new programmes had been approved since 1990. The BEFIEEX was aimed at increasing exports of manufactured products and net foreign exchange earnings, through the exemption or reduction of import duties and of the IPI on imports of machinery, equipment and accessories, as well as of raw materials, intermediate products, and inputs. Imports were also exempt from the AFRMM ((section (2)(v)). BEFIEEX incentives were granted to firms that exported industrial goods, subject to export performance targets that determined the extent of fiscal benefits. Fiscal incentives granted over BEFIEEX last decade of existence (1992-02) totalled some US\$1.1 billion.

189. The PROEX programme was redefined as a consequence of a WTO DSB ruling that found it to be an export subsidy (section(v)(a) below).

¹¹³ WTO document G/SCM/N/25/BRA, G/SCM/N/38/BRA, G/SCM/N/48/BRA, G/SCM/N/60/BRA, 8 January 2001.

¹¹⁴ WTO document G/SCM/N/71/BRA, G/SCM/N/95/BRA, 30 July 2003.

190. Brazil has notified to WTO Members that during 1999-01 it did not grant export subsidies to agricultural products.¹¹⁵ In prior notifications, Brazil had stated that no exports subsidies to agricultural products were granted for the 1995-98 period.¹¹⁶

(b) Drawback

191. The Brazilian drawback system provides for the suspension, exemption or restitution of import taxes, the IPI, ICMS, AFRMM, and other taxes, when the imported goods, inputs or parts, are used to produce exportable goods or to package them.¹¹⁷ Beneficiaries are industrial or commercial enterprises engaging in foreign trade. As a guideline, to receive those benefits, the f.o.b. value of exports is expected to be at least 40% higher than the imported inputs. The drawback regime is considered an export incentive in Brazilian legislation.¹¹⁸

192. The drawback system is governed by Decree-Law No. 37 of 18 November 1966, as modified; Ministerial Act (Portaria) SECEX No. 4 of 11 June 1997; Ministerial Act (Portaria) SECEX No. 14 of 17 October 2001; and Decree No. 4,543 of 26 December 2002. The procedures for the concession of the drawback are contained in DECEX Communiqué No. 21 of 11 July 1997, and DECEX Communiqué No. 5 of 1 November 2001.

193. The drawback regime has three modalities: suspension, exemption and restitution. In the first two cases, the benefit is granted by the SECEX; in the third, by the Ministry of Finance's Secretariat of Federal Revenue (SRF). In the suspension modality, the payment of import duties and other taxes is suspended for goods to be exported after transformation or assembly. The SECEX grants this benefit electronically for the minimum period required for importation, manufacture and exportation, maximum two years; if the imported goods are destined to produce capital goods with a long production cycle, the benefit may be granted for a maximum of five years.¹¹⁹ Extensions to the benefits may be requested.

194. The exemption modality allows the importation, free of import duties, the IPI, and the AFRMM, of inputs in a quantity equivalent to those already imported with complete tax payment, and already used for the production of exported industrial goods. Procedures and conditions are the same as for suspension, except that interested companies must also present a request to benefit from the regime to the Banco do Brasil's office corresponding to their jurisdiction, as well as proof of the imports and exports made. The restitution modality consists in a devolution of taxes already paid, through a fiscal credit to be utilized in any subsequent import operation, as specified in Normative Instructions SRF No. 81/1998 and 98/1997.

195. As part of the strategy to reduce administration costs and make foreign trade procedures more responsive, a new electronic drawback system was put in place on 1 November 2001. The electronic drawback system is available only for the suspension modality. The system operates through the

¹¹⁵ WTO document G/AG/N/BRA/21, 6 June 2003.

¹¹⁶ WTO documents G/AG/N/BRA/5, 23 August 1996; G/AG/N/BRA/9, 1 August 1997; G/AG/N/BRA/12, 3 August 1998; and G/AG/N/BRA/15, 19 October 1999.

¹¹⁷ DECEX Communiqué No. 21 of 11 July 1997, and Decree No. 4,543 of 26 December 2002.

¹¹⁸ Decree No. 4,543 of 26 December 2002, Art. 335.

¹¹⁹ The benefits of the drawback regime, under its suspension modality, may be granted for the importation of inputs and components for the production of machinery and equipment to be sold in Brazil under international tendering, in foreign currency, and with resources from an international financial institution, a foreign government agency or obtained abroad by the Banco Nacional de Desenvolvimento Econômico e Social (BNDES). Law No. 8,032 of 1990, and Law No. 10,184 of 12 February 2001. Information available at the MDIC's website.

SISCOMEX and integrates export and import operations. To benefit from the electronic drawback system for their imports, exporters must obtain an import licence, processed and granted automatically through the SISCOMEX.¹²⁰ In its first year of operation, the electronic drawback system processed some 5,000 operations and approved over 4,000 for a total of some US\$4 billion.¹²¹

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

196. The Special System of Industrial Depots subject to Standardized Control (RECOF), created by Decree No. 2,412 of 12 March 1997, suspends the payment of import taxes and the IPI on merchandise imported for purposes of industrialization and production of goods for export.¹²² The suspension period is one year, with the possibility of an extension for one additional year. The main difference between the RECOF and the drawback suspension is the type of beneficiary (see below). Also, approval of concessions in the case of the drawback is done by import operation, while approval of benefits under the RECOF is by importer.

197. In 2001, the conditions governing the use of the RECOF were redefined.¹²³ Beneficiaries must have capital equal to or above R\$2 million (some US\$700,000), and must commit to export a minimum of US\$10 million per year in the first three years of use of the regime, and an average of US\$20 million as from the fourth year. Beneficiaries must also commit to cap sales to the domestic market at a maximum of 20% of the goods imported under the regime. Authorization to benefit from the RECOF must be obtained from the SRF.

(d) Export-processing zones

198. The main legislation regulating export-processing zones (EPZs) is in Decree Law No. 2,452 of 29 July 1988, Law No. 8,396 of 2 January 1992, and Decree No. 846 of 25 July 1993. Firms operating in EPZs must export 100% of their production. Benefits for companies established in EPZs include import duty and IPI and ICSM exemptions. Companies are also exempt from the AFRMM and the tax on financial operation (IOF). Brazilian legislation distinguishes between EPZs and free-trade zones (FTZs): enterprises in the latter may sell in the domestic market, while all EPZ production must be exported (section (4)(iv)(b)).

199. The administration of EPZs is under the supervision of the National Council of Export Processing Zones (CZPE). The CZPE has not been active since the mid 1990s and its last meeting took place in April 1997. The CPZE is responsible for granting EPZs concessions, which have a validity of 20 years, renewable for another 20. As at 2000, 18 EPZs had been authorized but none was yet in operation.¹²⁴

200. In response legislation was passed in 2000 to allow for the dismantling of EPZs that were not in operation. Decree No. 3,560 of 14 August 2000, established the procedures to declare the expiration of EPZs concessions if authorized EPZs did not provide, within 30 days, a schedule for installation and start the appropriate infrastructure work. The authorities note that there have been no declarations of EPZ concession to date.

¹²⁰ Information available at the MDIC's website. <http://www.mdic.gov.br/comext/secex/drawback.html>.

¹²¹ Information available at the MDIC's website. <http://www.portaldoexportador.gov.br/cimaframe.asp?link=docs/DrawbackPortal.doc>.

¹²² Normative Instruction SRF No. 35 of 2 April 1998, and Decree No. 4,543 of 26 December 2002.

¹²³ Normative Instruction SRF No. 80 of 11 October 2001.

¹²⁴ The list of authorized EPZs is available online at: <http://www.desenvolvimento.gov.br/orgvinc/czpe.html>.

(e) Other export-related tax concessions

201. Remittances abroad for the promotion of exports, including for market research, promotion of products, rent of stands, and participation in fairs are zero rated for income tax; in accordance with Decree No. 3,793 of 19 April 2001; rates generally applicable are 15% or 25%. Requests must be submitted to the DECEX, as specified in Ministerial Act (Portaria) SECEX No. 7 of 21 May 2001.

202. Exporters may obtain tax credit as compensation for the social contributions (PIS/PASEP and COFINS, see below) paid for the acquisition of inputs and packaging material used for export.¹²⁵ The amount of credit is calculated by multiplying the ratio of export earnings to total earnings by 5.37%, in accordance with Ministerial Act (Portaria) MF No. 64 of 24 March 2003. The tax credit obtained is used against IPI payments due on sales in the domestic market. Unused credit may be transferred to other companies.

203. The Special Regime for the Exportation and Importation of Goods Destined to the Exploration of Petroleum and Natural Gas (REPETRO), created by Law No. 9,478 of 6 August 1997, allows for the "fictitious exportation" and subsequent importation, under the suspension modality of the drawback regime, of goods produced in Brazil sold in foreign currency to a person domiciled abroad for use in the exploration of petroleum and natural gas in Brazil. In this way, the application of federal and state taxes on these goods is suspended. The regime is granted with the suspension of all import taxes until 31 December 2005.¹²⁶

(v) **Export finance, insurance, and guarantees**

(a) Export Financing Programme (PROEX)

204. The Export Financing Programme (PROEX), a federal government programme managed by the Banco do Brasil, is an important source of funding for small and medium-sized companies involved in international trade; its goal is to finance Brazilian exports of goods and services at conditions similar to those obtainable in international markets. The PROEX, in its two modalities, supported exports of approximately US\$5.5 billion in 2002, or 9.1% of total Brazilian exports, benefiting 1,986 transactions of 460 exporters.¹²⁷ This was below the 2000 and 2001 figures of US\$8.2 billion and US\$8.7 billion. In 2002, under PROEX Financing, small and medium-sized companies represented 69% of beneficiary companies and 70.3% of disbursed transactions of up to US\$100,000.

205. The PROEX was established in 1991 and was reviewed in 1999 and 2000 and its criteria redefined, under Central Bank Resolution CMN No. 2,799 of 6 December 2000, to implement the determinations of the DSB panel Brazil-Export Financing Programme for Aircraft (WT/DS46).¹²⁸ The PROEX can be used for exports of goods, services, software, and cinematographic works. The list of goods that may benefit from the programme is contained in Ministerial Act (Portaria) MDIC No. 58 of 10 April 2002. The PROEX allows for exports to be grouped in a "package" containing ineligible goods with a value of up to 20% of the value of eligible goods.¹²⁹ In accordance with

¹²⁵ Law No. 9,363 of 13 December 1996 and Law No. 10,637 of 30 December 2002.

¹²⁶ Decree No. 4,543 of 26 December 2002.

¹²⁷ Banco do Brasil (2002).

¹²⁸ As notified to the WTO in WTO document G/SCM/N/71/BRA, G/SCM/N/95/BRA, 30 July 2003.

¹²⁹ Information available online at the website of the Banco do Brasil. Available at: <http://www.bb.com.br/appbb/portal/gov/ep/srv/fed/AdmRecPROEXProd.jsp>.

Resolution CMN No. 2,799/2000, the Banco do Brasil may decide on credits dealing with exports of goods and software.¹³⁰

206. The PROEX has two modalities: direct financing (PROEX Financing), and interest rate equalization payments (PROEX Equalization). The PROEX Financing is granted by the Banco do Brasil with resources from the Treasury directly to the exporter or to the importer for payment to the exporter. Credits are for up to ten years, depending on the value added of the product or of the complexity of the service rendered. Credit duration periods are defined in Ministerial Act (Portaria) MDIC No. 58 of 10 April 2002. The programme does not have an expiry date. Exports with a domestic content of 60% or more are eligible for direct financing of 85% of their value if the credit granted exceeds two years; for goods with a domestic content of less than 60%, the percentage eligible for financing is reduced according to the percentage below that threshold. International market interest rates are applied; credits are in U.S. dollars or other convertible currencies. Up to 2001, resources used in the equalization modality exceeded those used under PROEX Financing, but the situation was reversed in 2002 (Table III.9). The authorities note that the difference between the amount available and the amount used in some years, is due to operations that were taken into consideration at the time of the elaboration of the Budget, but did not materialize.

Table III.9
Resources assigned to and used by the PROEX, by modality
(R\$ million)

Year	PROEX FINANCING			PROEX EQUALIZATION		
	Allocation	Utilization	% Utilized	Allocation	Utilization	% Utilized
1994	55.3	34.2	61.9	488.6	4.8	1.0
1995	142.2	28.8	20.2	840.0	32.9	3.9
1996	184.7	23.6	12.8	212.6	80.5	37.8
1997	205.5	106.7	51.9	625.2	227.3	36.4
1998	469.7	210.7	44.9	903.7	565.1	62.5
1999	803.4	318.9	39.7	749.0	749.0	100.0
2000	803.0	660.9	82.3	813.5	813.4	100.0
2001	1,138.2	874.3	76.8	1,239.9	1,144.2	92.3
2002	1,138.2	965.5	84.8	1,139.9	383.7	33.7
2003	1,218.5	722.6	59.3	1,056.2	882.5	8.6

Source: Banco do Brasil.

207. The PROEX Equalization Programme assumes part of the financial cost of export credit provided by Brazilian and foreign banks (commercial and development); PROEX pays part of the financial costs, so as to make them equivalent to those of the international market. However, the authorities note that the equalization conditions are always limited to the financing conditions. The percentage financed can be up to 100%; however, the percentage that can be subject to credit equalization is limited to 85% of the value of exports. The period of equalization may vary in accordance with the value added generated, or the complexity of the service rendered. Equalization is paid to the bank granting the credit to the exporter through the issue of Brazilian National Treasury Notes (NTN-I), which may be converted to currency on the dates when the credit's interest payments are made (on a semi-annual basis), or may be discounted for a lump-sum in the market. The bonds are issued in the name of the lending bank, and may only be redeemed in Brazil and in domestic currency, at the exchange rate prevailing at the time of payment. If the lending bank is located outside Brazil, it may appoint a Brazilian bank as its agent to receive the semi-annual payments on its

¹³⁰ Resolution CMN No. 2,799 of 6 December 2000. Available online at: <http://www5.bcb.gov.br>.

behalf. The authorities note that PROEX III resembles a series of zero-coupon bonds that mature at six-month intervals over the course of the financing period. The Programme was modified twice, in 1999 and 2000 (see below).

208. PROEX equalization payments applied to export financing of regional aircraft were the subject of a dispute under the WTO dispute settlement mechanism. A Panel found that payments on exports of regional aircraft under the PROEX interest rate equalization scheme were export subsidies inconsistent with Article 3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The Panel recommended that Brazil withdraw the subsidies within 90 days.¹³¹ In May 1999, Brazil appealed certain issues of law and certain legal interpretations developed by the Panel.¹³² The Appellate Body upheld the Panel's recommendation.¹³³

209. As a result of the DSB recommendations, Brazil issued CMN (National Monetary Council) No. 2,667 of 19 November 1999 (PROEX II) to redefine the criteria applicable to PROEX's Equalization Programme. PROEX II stipulated that the financing of commuter aeroplanes regarding equalization would be established operation by operation, at levels that could be differentiated preferentially, using as a reference the ten-year U.S. Treasury Bond, with a spread of 0.2% per year.¹³⁴ In addition, the Central Bank modified the maximum percentages applicable to interest equalization in the PROEX, which ranged from 1 to 3.8 percentage points in early 1999, to a range of 0.5 (for a term of up to six months) to 2.5 percentage points (for a term of over nine and up to ten years).¹³⁵

210. Canada claimed that Brazil did not phase out the subsidy by the scheduled date, and requested that the matter be referred to the original Panel.¹³⁶ The Panel noted that the ten-year US Treasury Bond plus 20 basis points established by Brazil as the benchmark in respect of export credits supported by PROEX payments was below the relevant Commercial Interest Reference Rate (CIRR). The Panel found that PROEX payments in respect of regional aircraft pursuant to the PROEX II were subsidies contingent upon export performance, and thus prohibited under the SCM Agreement. The Panel concluded that therefore, in this respect Brazil had failed to implement the recommendation of the DSB.¹³⁷ Brazil appealed this decision.¹³⁸ The Appellate Body upheld the Panel's conclusion.¹³⁹ Canada also requested arbitration for the determination of possible withdrawal of concessions. The Arbitrators decided that compensation covering trade in a maximum amount of C\$344.2 million per year would constitute appropriate countermeasures within the meaning of Article 4.10 of the SCM Agreement.¹⁴⁰

211. To address the DSB recommendations with respect to PROEX II, Brazil introduced new reforms to the PROEX. Resolution CMN No. 2,799 of 6 December 2000, redefined once again the criteria for the PROEX Equalization Programme (PROEX III). Article 1 specifies that financial equalization operations involving exports of aircraft for regional aviation must not result in net interest rates that are lower than the CIRR, as published monthly by the OECD.

¹³¹ WTO document WT/DS46/R, 14 April 1999.

¹³² WTO document WT/DS46/8, 3 May 1999.

¹³³ WTO document WT/DS46/AB/R, 2 August 1999.

¹³⁴ Resolution CMN No. 2,667 of 19 November 1999.

¹³⁵ Central Bank Circular Letter Nos. 2,843, 25 March 1999, and 2,881, 19 November 1999.

¹³⁶ WTO document WT/DS46/13, 26 November 1999.

¹³⁷ WTO document WT/DS46/RW, 9 May 2000.

¹³⁸ WTO document WT/DS46/17, 22 May 2000.

¹³⁹ WTO document WT/DS46/AB/RW, 21 July 2000.

¹⁴⁰ WTO document WT/DS46/ARB, 28 August 2000.

212. In January 2001, Canada asked for permission to apply the countermeasures approved by the DSB and requested a new DSB proceeding for PROEX III.¹⁴¹ The Panel concluded that PROEX III, as such, was not inconsistent with the SCM Agreement, since it was legally possible for Brazil to operate the programme in such a way that: (a) would not result in a benefit being conferred on producers of regional aircraft and hence not constitute a subsidy; or (b) would result in a benefit being conferred, but conform to the interest rates provisions of the Arrangement on Guidelines for Officially Supported Export Credits, which would not constitute a prohibited export subsidy. The Panel noted, however, that it did not necessarily follow from their previous conclusion that future application of the PROEX III programme would be likewise consistent with the SCM Agreement.¹⁴²

(b) BNDES EXIM

213. The BNDES-EXIM programme, operated by the BNDES, provides export credits for products listed in Circular-Letter BNDES No. 53 of 19 November 2003.¹⁴³ They must have a domestic content, in value terms, of at least 60%. Operations are conducted through accredited financial institutions. Their total financial cost is the relevant interest rate plus the BNDES' remuneration plus the financial institution's remuneration. All exporting companies, regardless of the origin of the capital, are eligible to use the programme. The list of eligible goods covers over 80% of the list of goods exported by Brazil.

214. There are four modalities of financing: preshipment, short-term preshipment, special preshipment, and post-shipment. Financing granted in 2003 totalled US\$4 billion, or 5.5% of total exports, of which US\$1.41 billion as preshipment credit, US\$90 million as short-term preshipment, US\$399 million as special preshipment, and US\$2,108 million as post-shipment refinancing.¹⁴⁴

215. The preshipment modality finances the production of goods to be exported. The beneficiary exporting company must be located in Brazil. Interest rates are: (a) for micro, small or medium enterprises: the long-term interest rate (TJLP) or the 6-month LIBOR adjusted by the depreciation of the U.S. dollar¹⁴⁵; (b) for large enterprises regardless the origin of the capital: the TJLP plus at least 40% of financing costs (market rates) in foreign currency. The BNDES charges, in addition, a remuneration rate of 1% to micro, small and medium enterprises, and of 2.5% or 3.5% to large enterprises, depending on whether the goods financed are included in Group I, or Groups II or III of the list of products that may be financed. Credit is granted for up to 18 months; in some cases the BNDES can extend the period to 24 or 30 months, in accordance with the good's production cycle. The amount financed is up to 100% of the exported value.

216. The short-term preshipment modality grants export credits for up to 180 days, at conditions similar to those granted for preshipment credits. The special preshipment modality, created in 1997, can be used only if there is an increase in the value of exports. The value to be financed under this

¹⁴¹ WTO document WT/DS46/26, 22 January 2001.

¹⁴² WTO document WT/DS46/RW2, 26 July 2001.

¹⁴³ Products that may be financed include items from all NCM chapters, except chapters 01, 11, 12, 14, 26 and 27. In most cases, whole chapters are included in the list's three groups; in some cases, products are disaggregated at a four- or eight-digit level. See Circular-Letter BNDES No. 53 of 19 November 2003. Available online at: http://www.bndes.gov.br/produtos/download/Rel_prod.pdf.

¹⁴⁴ BNDES's website information. Available online at: <http://www.bndes.gov.br/exportacao/default.asp>.

¹⁴⁵ The TJLP is calculated using two parameters: an inflation target based on the National Monetary Council's annual forecast for the next 12 months following the month in which the credit is granted, and a risk premium. The TJLP is published quarterly by the Central Bank. The TJLP for the first quarter of 2004 was 10%. Available online at: http://www.finep.gov.br/informacoes_financeiras/tjlp.asp.

modality is limited to the difference between the value of the exports to be made in the following 12 months, compared with those made in the previous 12 months. The interest rate charged is the same as for the regular preshipment modality. The BNDES remuneration, however, varies inversely with the actual increase in exports as a percentage of the expected increase. The financing period is 12 months, which can be extended to 30 months, and credits are limited to US\$50 million per year per group, as classified in the list of products that may be financed.

217. Post-shipment financing takes the form of refinancing to clients abroad, through promissory notes or letters of credit, for the purchase of Brazilian goods in the list of products that may be financed. The cost of refinancing is the LIBOR corresponding to the financing period plus a 2% BNDES' remuneration plus the financial institution's remuneration. An administrative commission of up to 1% and a compromise commission of 0.5% are also applied. The refinancing is for up to 12 years, for up to 100% of the value f.o.b. exported, and may include services rendered in association with the goods exported, for up to 30% of the value exported (65% for engineering and construction projects or for projects to foster integration in the Americas, as approved by the BNDES).

(c) Export insurance and guarantees

218. The Export Credit Insurance (SCE) scheme guarantees and covers losses incurred by exporters from the non-receipt of foreign payments for their exports. Any exporter financing or refinancing his/her exports may be covered. Since 2004, three specialized institutions are authorized to operate the SCE for goods and services against commercial, political, and extraordinary risks in short-term transactions. These are: the Brazilian Export Credit Insurance Company S.A. (SBCE), SECRESB, and EULER HERMES. The SBCE is the only institution authorized to operate the SCE for medium and long-term operations. The SBCE is currently a full member of the Berne Union and Alasece (Latin American Association of Export Credit Insurance Organisms), and is regulated by Decree No. 3,937 of 25 September 2001. The value of exports covered by the SBCE totalled US\$738.9 million in 2003 (Table III.10). Only government-owned banks (BNDES, Banco do Brasil) use the SBCE. Including short-term operations, total export credit insurance reached US\$1.04 billion in 2003 (2.4% of total exports), down from US\$1.59 billion in 2002 (4.3% of total exports) but up from US\$862 million in 2001. The main users of export insurance credit have been the civil construction and capital-goods sectors.

Table III.10
Value of the exports covered by the SBCE, 1998-02
(US\$ million)

Year	Banco do Brasil covered value	BNDES covered value	Total covered value
1998	0.0	90.0	90.0
1999	5.2	157.3	162.5
2000	14.7	52.5	67.2
2001	10.2	181.2	191.4
2002	2.1	1,159.2	1,161.3
2002	1.1	737.9	738.9
Total value	33.3	2,368.1	2,400.3

Source: SBCE.

219. Short-term operations (up to two years) generally take the form of an annual global policy by the exporter, usually applied to products with shipment periods of up to 180 days. Export credit insurance coverage is limited to a maximum of 90% in the case of insurance against commercial risk, or a maximum of 95% in the case of insurance for political and extraordinary risk. Reinsurance coverage is provided by the Brazilian Institute of Reinsurance (IRB-Brasil Resseguros S.A, or IRB-Brasil Re.).

220. For long-term commercial operations (over two years), and for political and extraordinary risks of any term, cover is through the Export Guarantee Fund (FGE), created by Law No. 9,818 of 1999, represented by IRB-Brasil Re and operationalized by the SBCE. Export credit coverage granted by the Government varies in relation to risks involved, to a maximum of 90% in the case of insurance against commercial risk, or 95% in the case of insurance for political and extraordinary risk.

221. The Competitiveness Promotion Guarantee Fund (FGPC) was created in 1997 to guarantee the risk of financial operations undertaken by the BNDES and FINAME micro, small, and medium-enterprises that export, produce inputs to manufacture, assemble or package exports, or engage in projects to increase their competitiveness.¹⁴⁶ Each financing operation can be guaranteed, using FGPC funds, for 70% or 80% of its value, depending on the size of the enterprise, its location, and the type of credit received.¹⁴⁷

(vi) Export promotion and marketing assistance

222. The Export Promotion Agency (APEX) was created in 1997 as a department of the Brazilian Service of Support to Micro Businesses (SEBRAE). The APEX is in charge of export promotion in Brazil, with a focus on small and medium-size enterprises. Law No. 10,668 of 14 May 2003 authorized the Brazilian Government to establish a trade promotion agency to follow the rules governing the private sector, which resulted in the APEX-Brasil, an autonomous social service charged with executing export promotion policies, in coordination with public entities and in accordance with national development policies, particularly those related to industry, commerce, services, and technology. APEX-Brasil's main goals are both to increase and diversify Brazilian exports. APEX-Brasil is mandated to focus particularly on export activities that may favour small enterprises and the creation of jobs.

223. The Deliberative Council is APEX-Brasil's top managing body. This Council has representatives from both the public sector (MDIC, Ministry of External Relations, CAMEX, and BNDES), and the private sector (the National Confederation of Industry (CNI), the Brazilian Foreign Trade Association (AEB) and SEBRAE). There is also a Fiscal Board, responsible for financial activities and internal control, with members from the MDIC, CAMEX and SEBRAE. APEX-Brasil is currently linked to the MDIC.

224. APEX-Brasil supports integrated sectoral projects; multisectoral projects; consortia formation projects (association of enterprises with an export objective); isolated projects; and develops its own projects (APEX-Brasil projects). Proposals can be presented to APEX-Brasil by the SEBRAE, public institutions, non-profit private entities, sectoral or regional associations, and cooperatives. Support is mainly granted to activities and actions that contribute to enhance Brazil's exports, including seminars and workshops, market research, training, marketing and advertising, standards qualification, and participation in fairs abroad. APEX-Brasil's support is through the co-financing of projects, generally limited to 50% of the total value, but up to 75% for projects considered of special social interest.

225. Between May 1998, when APEX started operations under SEBRAE, and late August 2004, 431 projects were approved, of which 297 had already been concluded and 134 were ongoing. Projects areas include: food and beverages; furniture; textiles and clothing; construction, machinery and equipment; audiovisual; and penetration of international markets.¹⁴⁸ In the same

¹⁴⁶ Law No. 9,531 of 10 September 1997 regulated by Decree No. 2,509 of 9 March 1998.

¹⁴⁷ Details are available from BNDES online information at: <http://www.bndes.gov.br/produtos/instituicoes/fgpc2.asp>.

¹⁴⁸ Available online at: <http://www.apexbrasil.com.br/>.

period APEX invested US\$152.9 million (an average of US\$350,000 per project), while its co-financing partners contributed US\$191.3 million.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Legal framework for production and investment

226. Companies need to be registered in one of two public registries: commercial or civil. If a company's activities are mainly commercial, then it must be registered in one of the 27 state commercial registries in the State where the company is headquartered. Companies not performing commercial activities are registered in the civil registry. Commercial companies are usually constituted as limited liability (limitadas) according to the Civil Code or as corporations, according to the Brazilian Corporation Law (Law No. 6,404/76). This law distinguishes between closed and open, or publicly held companies. Only the latter are permitted to raise funds through public offerings of securities. These companies are subject to the regulations set by the Brazilian Securities Commission (CVM), which include periodic filing and other specific requirements. Under CVM rules, purchases of shares that lead to a stake of 5% or more in a public company require disclosure of information regarding the purchaser and the transaction, including the reasons for acquiring the shares. If certain conditions are met, such as acquiring the controlling block or more than a third of the shares of a specific class (free float), the acquirer must undertake a public tender offering for the remaining shares of the same class. Private companies are not regulated by the CVM and may only place their securities privately.

227. Foreign enterprises may operate through a subsidiary, a branch, or a representative office. Foreign investment may also be directed at the establishment of an independent company. The distribution and remittance of profits abroad are, as of 1 January 1996, exempt from withholding tax. Foreign capital must be registered through the Central Bank's Electronic Declaratory Registry-Foreign Direct Investment (RDE-IED). Profit remittances must also be registered in the RDE-IED. Reinvested earnings are also registered, in the currency of the country to which the remittance was due. Foreign capital registered with the Central Bank may be repatriated without approval requirements.

228. Foreign trade, income, and capital gains taxes, as well as some other taxes such as the Industrial Production Tax (Chapter III(2)(v)), the tax on credit and exchange transactions, and on insurance and securities, may only be levied at the federal level. Income tax is assessed at 15% and 25%. For corporations, income tax is assessed on profits and capital gains generated by operations within Brazil or abroad.¹⁴⁹ Corporate income is taxed on net profits minus deduction at 15%; net profits exceeding R\$20,000 per month are subject to an additional 10% tax. Dividends on profits as of 1 January 1996 are not subject to income tax. Income paid, credited or remitted to non-residents is subject to a withholding tax (IRF), of 15% or 25%. Since 2001, an adjustment fee of 10% is charged on royalties, when the IRF is 15%.

229. Social contributions are levied at the federal level. They include the contribution for the social integration programme (PIS), levied monthly on the gross operational revenue of corporations at the rate of 0.65%; the social contribution on profits (CSL), levied at 8%; the social security contribution (COFINS), levied monthly on gross income from sales of goods and services at a rate of 3%; and the social security contribution on payroll (CINSS), at 8-10% (employees), and 20% (self-

¹⁴⁹ Legal Guide for the Foreign Investor in Brazil, 2001. Available online at: <http://www.braziltradenet.gov.br>.

employed and employers). A provisional contribution on financial operations (CPMF), at a rate of 0.3%, was levied between January 1997 and June 2002.

230. States apply the services and merchandise circulation tax (ICMS) at different rates; the ICMS is not a value-added tax and is applied cumulatively, including taxes at the federal level (see Chapter III(2)(v)).

231. Law No. 10,165 of 27 December 2000 instituted an environmental tax (TCFA) to be administered in accordance with the policies of the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA). The tax is annual and applies to entities categorized in Annex VIII of Law No. 10,165. Variable rates are based on the size of the entity; rural owners pay reduced rates. Failure to pay draws a fine of an additional 20% of the amount of the tax.

(ii) Pricing and competition policy

(a) Pricing arrangements

232. Brazil has introduced no new price controls since 2000; there is no legislation empowering the Government to introduce price controls in general, with the exception of medicines, which are still under price control. Prices are generally determined in accordance with market movements; however, minimum prices are used for a few agricultural products (Chapter IV(2)). Utilities' tariffs are generally regulated by the corresponding supervisory body; this intervention is generally limited to the fixing of maximum tariffs, especially for smaller consumers.

(b) Competition policy

233. Brazil's competition policy legislation is contained in Law No. 8,884 of 11 June 1994 and Law No. 10,149 of 21 December 2000. The latter contains the major legislative changes since Brazil's previous Review. The administration of competition policy in Brazil is the responsibility of the three agencies that constitute the Brazilian System for Protection of Competition (SBDC): the Administrative Council for Economic Defence (CADE), the Secretariat for Economic Law (SDE), and the Secretariat for Economic Monitoring (SEAE).

234. The SDE, a decentralized body in the Ministry of Justice, was created by Law No. 8,158 of 1991, which also introduced regulations to impose sanctions on situations of abuse of market power. The SDE has authority to investigate any irregularities in an economic sector and to open administrative proceedings accordingly. The SEAE, under the Ministry of Finance, may also start investigations ex officio or by request of any third party. Both bodies prepare reports that are used by the CADE when judging cases.

235. The CADE, currently an autonomous agency linked to the Ministry of Justice, has been functioning since 1962, and acts as an administrative tribunal.¹⁵⁰ Its main functions are to undertake on administrative proceedings and consultations. Administrative proceedings include administrative processes, voluntary recourse, reconsideration requests, ascertainties and representations. Preventive measures may be applied at any stage of the administrative process, when there is evidence that the practice investigated may cause irreparable damage to the market. The decision to apply a preventive measure may give rise to a voluntary remedy, with an offsetting effect of the damage caused. Ascertainties are kept confidential and may be initiated by the SDE through ex officio recourse to the CADE when evidence to begin an administrative process is not considered sufficient.

¹⁵⁰ CADE's website information. Available online at: <http://www.cade.gov.br/>.

The CADE has a President and six members, named by the President of the Republic and approved by Congress. Decisions are taken by absolute majority of at least five members.¹⁵¹

236. Law No 8,884 of 11 June 1994 prohibits any practice aimed at restricting, limiting, or prejudicing free competition; dominating the relevant market of goods or services; arbitrarily increasing profits; or abusing dominant market position. In this respect, the Law lists a range of prohibited horizontal and vertical practices that result in competition restraints. Practices are not prohibited *per se*, but due to their effect; they are considered illegal only if they have anti-competitive effects or the potential for causing them. For this reason, anti-competitive practices are examined on a case-by-case basis.

237. Anti-trust legislation applies to all sectors; no immunities are listed in Law No. 8,884 of 1994. Some sectors, however, considered by the Government to require a specialized approach, are subject to specific legislation and are supervised by specialized regulatory agencies. These sectors are: energy, for which the regulator is the National Electric Energy Agency (ANEEL); telecommunications, regulated by the National Telecommunications Agency (ANATEL); gas and petroleum, regulated by the National Petroleum Agency (ANP); and water, supervised by the National Water Agency (ANA) (Chapter IV(7) for details).

238. Special provisions also apply for medicines (pricing issues) under Law No. 9,782 of 1999, for which the Brazilian Sanitary Surveillance Agency (ANVISA) is the enforcement body, and for health care, under Law No. 9,961 of 2000, supervised by the National Health Agency (ANS). ANVISA, the Ministry of Health, the Ministry of Development, Industry and Foreign Trade, the Ministry of Finance, the Ministry of Justice, and the Public Ministry, comprise the Drugs Market Regulation Chamber, known as CMED, created under Law No. 10,742/2003, and responsible for setting prices. The authorities note that some 90% of medicine prices are fixed. Competition policy matters with respect to medicine pricing are dealt with by the CADE.

239. Brazilian legislation provides for the monitoring of all acts and contracts that may limit or in any way harm competition or result in the dominance of relevant markets of goods or services, including those expressly aimed at any type of economic concentration. As a result, CADE's approval is required for any act resulting in the control of 20% of a relevant market or in which any two participants have gross annual sales of R\$400 million or more. Brazilian law does not define the concept of relevant market; in most cases the annual sales criterion is used. The approval of mergers and acquisitions may be subject to conditions. Acts of economic concentration leading to a reduction in competition may be approved if they are in the public interest, but the authorities note that no such cases have been approved since 2000.

240. Law No. 10,149 of 21 December 2000 enhanced the SDE's enforcement power by encouraging the use of ascertainties, *ex officio* or at the request of an interested party, and giving the SDE the same powers to conduct these investigations as for regular administrative cases, where the evidence clearly shows anti-competitive behaviour. Impeding or obstructing an inspection authorized by the SDE or SEAE in the course of an ascertainment, or an administrative process is subject to fines ranging from R\$21,200 (some US\$7,200 at early April 2004 exchange rates) to R\$425,700 (some US\$144,300). The authorities note that the techniques established by Law No. 10,149/00 for cartel investigations were implemented by the Brazilian authorities, for the first time, during 2003. The SDE established, together with the federal police and public prosecution offices, an intelligence centre for cartel investigation. The authorities also note that an increased number of conduct investigations were concluded and decided upon by the CADE, and that, through

¹⁵¹ Resolution CADE No. 34, 22 January 2003.

the new investigative techniques, the increasing condemnations, the closer co-operation between the SBDC and the criminal authorities, and the wider publicity, the SBDC has shown that engaging in anti-competitive behaviour is becoming more of a risk.

241. The MERCOSUR Competition Protocol was approved in December 1996, and was ratified by the Brazilian Congress in September 2000.

242. In the period under review, Brazil ratified a competition policy cooperation agreement with the United States, signed in 1999 (Agreement between the Governments of Brazil and the United States of America with respect to the cooperation between their competition policy authorities and the application of their competition laws). The agreement was promulgated through Decree No. 4,702, of 21 May 2003, and covers all anti-competitive behaviour, defined as "any conduct or transaction which could be subject to penalties or other sanctions under the laws of one of the parties". The cooperating authorities are the CADE, SDE, and SEAE for Brazil, and the Department of Justice and the Federal Trade Commission for the United States. Under the agreement, the parties engage to notify each other of practices investigated involving firms of the other country, that take place in the territory of the other country, that may have an effect on the application of its laws, or that may entail legal measures demanding or prohibiting certain practices in the other country. If one of the parties becomes aware of anti-competitive conduct that may harm its interests in the other, it may request the authorities of the other party to initiate an investigation. The agreement also envisages the possibility of coordinated activities. In October 2003, the Brazilian antitrust authorities entered into a cooperation agreement with their Argentinean counterparts; through which the parties will be able to share information on mergers and conduct cases with regional impact. As at August 2004, the agreement was awaiting approval by the Brazilian Congress.

243. The number of mergers and acquisitions reviewed by the CADE and the number of anti-competitive practice complaints have been increasing in the last few years. The total number of cases reviewed rose from 134 in 1996 to a peak of 711 in 2001, before declining to 602 in 2002. In 2003, the CADE judged 526 cases of mergers and acquisitions, a slight increase from 2002 (518): 484 were approved without any conditions although fines were imposed in 17 cases, because the firms submitted notifications after the legal limit for filing; eight cases were approved with conditions; and of the rest, 32 were closed and archived due to lapses or appeals.

244. The CADE analysed 23 cases of possible anti-competitive actions during 2003. The main accusations related to collusion; of the 11 cases, two resulted in a condemnation for formation of a cartel. The remaining 12 cases encompassed various other forms of anti-competitive conduct. Allegations of anti-competitive practices were most frequent and most often cited in: health insurance plans and medical services associations (nine); civil construction (two); gas stations (two); transport (two); the metallurgy (one); the food industry (one); cattle breeding (one); the pharmaceutical industry (one); printing and publishing (one); retail commerce (one); and others (two). From the 23 cases analysed, ten resulted in the imposition of fines and others sanctions; the others were found to be not guilty, and were closed.

245. A number of the mergers and acquisitions examined, involved the purchase of Brazilian interests by foreign enterprises; others involved mergers between Brazilian companies; and mergers between foreign companies established overseas with an impact in the Brazilian market (e.g., the merger between the U.S. pharmaceutical companies Pfizer and Warner-Lambert, and the acquisition by United Parcel Service Co. of Challenge Air Cargo, Inc.)¹⁵² In one of the most debated cases in

¹⁵² CADE, *Relatório Anual 2002*, and *Relatório Anual 2001*, available online at: <http://www.cade.gov.br/>.

Brazil, regarding the acquisition of 100% of the shares of the Brazilian chocolate factory Garoto by Nestlé, the CADE decided in February 2004 that the acquisition was counter to Brazil's competition laws. Nestlé was requested to divest from Garoto and sell all assets acquired to a third party, so as to constitute an independent business, with a market share of less than 20%. Nestlé was also requested to divest from all intellectual property elements; that is, registries, formulas, and trade marks related to the chocolate brands owned by Garoto. Nestlé was given 90 days for the divestment; any delays were to be subject to a daily fine of R\$30,000, in accordance with Law No. 8,884/94. Nestlé asked for a re-examination by CADE and the case is currently under review (August 2004).

246. Brazil's efforts at applying competition policy legislation more extensively have been recognized internationally. A recent OECD study points out that, since the enactment of the Law of 1994, Brazil has made more assertive use of competition policy, putting into place a sound analytical basis for the application of the law to business conduct in the country, and beginning to bring important cases under the law. The report notes, however, that Brazil faces several challenges, including: prosecuting cartel conduct more vigorously; simplifying the investigation and decision making process; moving toward a pre-merger notification process; enhancing the independence of the CADE; and augmenting the resources at the competition agencies.¹⁵³

(iii) State-owned enterprises, privatization, and state trading

247. The Brazilian Privatization Programme (PND) was put in place by Law 8,031/90, and privatization became part of the government structural reform programme. Law 8,031/90 was later revoked by Law No. 9,491 of 9 September 1997. The National Privatization Council (CND), created in 1995, is in charge of implementing the privatization process, while the Brazilian Development Bank (BNDES) is in charge of the sales in several sectors; the Central Bank is responsible for the sale of financial institutions; the Ministry of Transport for transportation enterprises; the Ministry of Mining and Energy for energy-sector hydroelectric projects and the National Electric Energy Agency for transmission lines; the Ministry of Communications for the sale of telecommunications companies; and the state governments for state-owned enterprises.

248. Including telecommunications and electricity, proceeds from privatization totalled US\$87.5 billion over 1991-02; in addition US\$18.1 billion of debt were assumed by the acquirers, taking the total to US\$105.6 billion. The main sectors in terms of proceeds were: telecommunications (32% of the total), electricity (30%), iron and steel products (8%), mining (8%), petroleum (7%), financial services (6%), petrochemicals (4%) and transport (2%). There were no privatizations in 2003 or the first half of 2004.

249. Some of the most noteworthy privatization operations between 2000 and 2002 include: the public offer of shares of PETROBRAS, for a total of US\$4.84 billion; and the sale of 60% of Banco do Estado de São Paulo S.A (Banespa) to the Santander Central Hispano Bank (Spain) for US\$3.6 billion (see also Chapter IV(7)(ii)(b)). The third largest operation during the period was the sale of 78 million ordinary shares of the Cia. Vale do Rio Doce (CVRD), for a total of US\$ 1,897 million.

250. Since the general restrictions on foreign investors were lifted in 1995, foreign direct investment has played an important role in the process of privatization (Chapter I). In general terms, there are no legal restrictions on the participation of foreign capital in a privatized enterprise, unless stated in the specific sectoral legislation (Chapter II). In 1991-02, foreign capital invested in

¹⁵³ Note by the Editor to John W. Clark, *Competition Law and Policy Developments in Brazil*, OECD Journal of Competition Law and Policy, October 2000, vol. 2, No. 3.

privatized enterprises represented 59.5% of the total. The major investor was the United States, accounting for 33.3% of all FDI, followed by Spain (30.1%), Portugal (11.6%), and Italy (6.2%).

251. Despite the progress in privatization, the State still controls a number of entities involved in the production of goods and services. In early 2004, there were 128 majority government-owned enterprises covering a wide range of activities: electricity, petroleum and petrochemicals, port services, transportation services, and health services. The authorities note that the Government retains ownership interests in a number of firms because they are involved in the provision of public services, to offset market failures, or because state control of some sectors is considered as strategic.

252. Decree No. 3,735 of 24 January 2001, sets directives for the administration of majority government-owned enterprises. The Decree defines federal state enterprises as public or mixed enterprises and their subsidiaries in which the Federal Government, directly or indirectly, owns the majority of voting-right capital. The Ministry of Planning, Budget and Management's Department of Coordination and Control of State Enterprises (DEST), is in charge of coordinating the expenditure and investment programmes of these enterprises and of monitoring their performance.

253. In its 1996 full notification to WTO Members under Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII, Brazil reported ten state-trading enterprises.¹⁵⁴ In December 1997, Brazil made an updating notification.¹⁵⁵ Brazil has yet to make further notifications under those provisions (as at early 2004), including notifications due in 1998 (full), 1999 (update), 2000 (update), 2001 (full), 2002 (update) and 2003 (update).¹⁵⁶

254. The companies included as state-trading enterprises in Brazil's latest full notification were: Computadores e Sistemas Brasileiros S.A. (COBRA); Petrobrás Química S.A. (PETROQUISA); ITAIPU Binacional (hydroelectric); Industrias Nucleares do Brasil S.A. (INB), Florestas Rio Doce S.A. (forestry); Companhia Vale do Rio Doce (CVRD, exploitation, trade, transport and export of iron-ore from Itabira mines, as well as the operation of the Vitória-Minas Railroad), Companhia Nacional de Abastecimento (CONAB, support of the formulation and execution of agricultural and supply policies); Casa da Moeda do Brasil (CMB); Petrobrás Distribuidora S.A. (BR Distribuidora); Petróleo Brasileiro S.A. (PETROBRÁS). The CMB, BR Distribuidora and PETROBRÁS were removed from the list in the 1997 updating notification. Of the remaining firms, Florestas Rio Doce S.A. and CVRD have been privatized. INB may not be privatized as its monopoly rights are granted by the Constitution.

255. In the context of the present review, the authorities note that state-trading enterprises in Brazil, as at September 2004, were: Computadores e Sistemas Brasileiros S.A. (COBRA); Petrobrás Química S.A. (PETROQUISA); Industrias Nucleares do Brasil S.A. (INB); Casa da Moeda do Brasil (CMB); Petrobrás Distribuidora S.A. (BR Distribuidora); and Petróleo Brasileiro S.A. (PETROBRÁS).

(iv) Incentives and other government assistance

256. Brazil's incentives and government assistance include both federal and state programmes. These can be regional, aimed at developing research, or target specific sectors. In this section, the first two types of assistance will be examined; sectoral assistance (e.g., to agriculture or different manufacturing industries) is discussed in Chapter IV.

¹⁵⁴ WTO document G/STR/N/1/BRA, 21 March 1996.

¹⁵⁵ WTO document G/STR/N/3/BRA, 11 December 1997.

¹⁵⁶ WTO documents G/STR/W/36, 8 October 1999, G/STR/W/37, 16 November 2000, G/STR/W/38, 4 October 2001 and G/STR/W/4, 4 November 2003.

257. In its last subsidies notification to the WTO, Brazil included the SUDAM/ADA and SUDENE/ADENE regional programmes; the FINAM/FINOR programmes for the development of the Amazon and north-east regions; the programme of constitutional funds for the financing of the north-east, the north and the mid-west regions; and the industrial technology development programme (PDTI) and agriculture/cattle breeding technology development programme (PDTA). Three programmes included in the previous notification: the BEFIEX special export programmes; the steel industry IPI tax break programme; and the export financing programme (PROEX) were no longer listed; the first two have been terminated and the third has been reviewed (see above).¹⁵⁷

(a) Regional programmes

258. Brazil has a number of regional programmes consisting mainly of tax benefits for investment in less developed parts of the country, such as the north and north-east regions. These benefits apply equally to foreign and domestic investors; the programmes seem to have had limited success in attracting foreign investment. There are also a number of programmes at the state level, which may be general or targeted to certain industries, and frequently imply ICMS reductions or exemption.

SUDAM/ADA and SUDENE/ADENE

259. Provisional Measure No. 2,156-5 and No. 2,157-5, of August 2001, created the Amazon Region Development Agency (ADA) and the North-East Region Development Agency (ADENE); those Measures also extinguished the Amazon Region Development Authority (SUDAM) and the Northeast Region Development Authority (SUDENE), and the programmes they administered.¹⁵⁸ These programmes are under the responsibility of the Ministry of National Integration until they are completely phased-out, at the latest in 2013. Contractual obligations incurred prior to the provisional measures will be upheld, and disbursements made until 2013 by ADA and ADENE.

260. ADA and ADENE are part of Brazil's efforts since the 1960s to reduce economic and social imbalances among regions by means of compensatory mechanisms for the development of the north and north-east regions. In this context, SUDAM was established by Law No. 5,174 of 27 October 1966, and SUDENE by Law No. 3,692, of 15 December 1959, as autonomous federal entities linked to the Ministry of Planning, Revenue and Administration, to administer regional incentives.

261. The SUDAM/ADA and SUDENE/ADENE programmes grant tax concessions to firms in the region and evaluate and approve projects of interest to the development of the legal Amazon or north-east regions financed with the tax revenue collected after the tax concessions.¹⁵⁹ Law No. 9,532/97 and Provisional Measure No. 2,199/01 regulate the tax exemptions and reductions. The fiscal benefits granted include: (a) a 75% reduction of income tax for industrial or agricultural firms classified as being of interest to regional development, for ten years starting from the year after the enterprise started to operate. As of 2003, the term of the credit (ten years) is being reduced gradually to observe the 2013 deadline¹⁶⁰; (b) after the ten-year period income tax reduction for enterprises meeting the conditions of interest to regional development (50% before 1998, 37.5% between 1998 and 2003, 25% in 2004-08, and 12.5% from 2009 to 2013); and (c) reinvestment of income tax for

¹⁵⁷ WTO document G/SCM/N/71/BRA, G/SCM/N/95/BRA, 30 July 2003.

¹⁵⁸ WTO document G/SCM/N/71/BRA, G/SCM/N/95/BRA, 30 July 2003.

¹⁵⁹ States of Amazonas, Roraima, Amapá, Pará, Tocantins, Rondonia, Mato Grosso, and part of Maranhão. The north-east area includes Maranhão, Piauí, Ceará, Rio Grande do Norte, Paraíba, Pernambuco, Alagoas, Sergipe, and Bahia, and an area of Minas Gerais included in the so-called "draught polygon".

¹⁶⁰ WTO documents G/SCM/N/25/BRA, G/SCM/N/38/BRA, G/SCM/N/48/BRA, G/SCM/N/60/BRA, 8 January 2001.

activities of interest for regional development, requiring firms to deposit 30% of the income tax due, plus 50% of their own resources, on an annual basis, ending in 2013, in the Banco da Amazônia (BASA) or in the Banco do Nordeste do Brasil (BNB), to be used in the legal Amazon or north-east regions in activities linked to capacity modernization or expansion.¹⁶¹

262. Tax exemptions/reductions for both programmes totalled R\$786.9 (some US\$270 million) in 2002 (Table III.11); the accumulated benefits for the 1998-2002 period were R\$3.36 billion (some US\$1.16 billion). The authorities note that statistical data for the assessment of the trade effects of the subsidy are not available.¹⁶²

Table III.11
Tax exemption/reduction under the SUDAM/ADA and SUDENE/ADENE programmes, 1998-02
(R\$ million)

Year	SUDAM/ADA	SUDENE/ADENE	Total
1998	487.1	567.6	1,054.7
1999	266.7	174.1	440.8
2000	281.5	206.4	487.9
2001	299.6	292.0	591.6
2002	394.8	392.1	786.9
1998-02	1,729.7	1,632.2	3,361.9

Source: Information provided by the Ministry of Finance.

FINAM/FINOR

263. Through the FINAM/FINOR programme, regulated by Law No. 8,167 of 16 January 1991, Law No. 9,532 of 10 December 1997, and Law No. 9,808 of 20 July 1999, businesses were entitled to deduct 18% of their income tax to be invested in the Amazon or north-east regions. The funds are channelled through the Amazon Investment Fund (FINAM) or the Northeast Investment Fund (FINOR) for investment in projects by any enterprise located in the legal Amazon or north-east regions that can generate jobs and income and promote regional development. The programme, previously administered by the SUDAM and the SUDENE, is under the responsibility of the Ministry of National Integration since 2001.¹⁶³ However, since no new projects are being financed it is currently aimed at providing credit disbursements for some 700 pending SUDAM/SUDENE projects.

264. Projects financed by FINAM or FINOR included: construction; acquisition of machinery, equipment, and devices; acquisition of know-how; furniture and utensils; preparation of area and soil for plantation; acquisition of seeds and seedlings for transplant; installation of nurseries and clone gardens; plantation, agricultural and cattle installations; and acquisition of animals. Private sector projects directed towards agriculture and cattle breeding, agri-industry, tourism, fishing, forestation/reforestation, energy, transportation and communications were given priority.

265. In addition to fiscal support, the programme provides financial support in the form of risk capital investment operated by BASA or BNB, with funding drawn from the FINAM and the FINOR, respectively. The investments made are matched with primary debenture issues. Subscription was originally distributed at a ratio of 70% to 30% in convertible and non-convertible debentures. To promote the capitalization of the funds from the programme, Provisional Measure No. 2,058/2000 eliminated non-convertible debentures. Conversion of debentures into stock occurs only after the project is implemented; the shares are non-voting. The financial benefits have been granted since

¹⁶¹ WTO document G/SCM/N/3/BRA, 13 March 1996.

¹⁶² WTO document G/SCM/N/25/BRA, G/SCM/N/38/BRA, G/SCM/N/48/BRA, G/SCM/N/60/BRA, 8 January 2001.

¹⁶³ WTO document G/SCM/N/71/BRA, G/SCM/N/95/BRA, 30 July 2003.

1975; their expiry is scheduled for December 2013 at the latest. Benefits totalled R\$2.9 billion in the 1998-02 period (Table III.12).

Table III.12
FINOR/FINAM, Benefits (in lending)
(in R\$ million)

Years	1998	1999	2000	2001	2002	1998-02
FINAM	345.9	401.9	549.7	106.9	75.0	1,479.4
FINOR	410.5	329.6	428.7	119.5	174.3	1,462.6
Total	756.4	731.5	978.4	226.4	249.3	2,942.0

Source: Information provided by the Brazilian authorities; and WTO documents G/SCM/N/25/BRA, G/SCM/N/38/BRA, G/SCM/N/48/BRA, G/SCM/N/60/BRA, 8 January 2001, and G/SCM/N/71/BRA, G/SCM/N/95/BRA, 30 July 2003.

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

266. The constitutional funds for financing productive sectors in the north, north-east and mid-west regions (FNE/FNO/FCO) were created by Law No. 7,827 of 27 September 1989, as amended by Law No. 10,177 of 12 January 2001, to contribute to the social and economic development of these regions by financing programmes for the productive sectors through federal financial institutions for regional development. The administration of each fund is autonomous and held by a Deliberative Council in each region. The deliberative councils have authority to approve the financing programmes of each fund, define measures to ensure the compatibility of these investments with the activities of other regional development entities, and evaluate the results obtained. The Ministry of National Integration is in charge of defining the guidelines and priorities for investments, and of monitoring and evaluating the financing programmes. The financing agents of the constitutional financing funds are: the Banco da Amazônia S.A. for the FNO; the Banco do Nordeste do Brasil S.A. for the FNE; and the Banco do Brasil S.A. for the FCO.

267. The FCO, FNE and FNO, are financed with 3% of IPI and income tax revenue (IR), of which 0.6% for the FCO, 1.8% for the FNE, and 0.6% for the FNO. Credit operations based on resources of the constitutional financing funds are, since 2000, subject to the charges defined in Law No. 10,177 of 2001, with annual interest rates between 6% and 10.75% for rural operations and between 8.75% and 14% for other operations. This replaced the previous system of variable interest rates (TJLP, IGP-DI), to which a fixed rate was added.¹⁶⁴ Loans backed by constitutional fund resources are granted to producers and companies engaged in productive activities in the crop/livestock, mineral, industrial and agri-industrial sectors of the benefited regions.

268. From 1989 to end 2003, the constitutional funds granted loans for an estimated R\$24.8 billion (over US\$8 billion), of which R\$9.1 billion in the 2000-03 period. Over 88% of beneficiaries were micro and mini producers.

Other programmes

269. Law No. 9,440 of 14 March 1997 established a programme granting fiscal incentives to any enterprise in the automotive sector located in the north, north-east and central-west regions of Brazil. The fiscal incentives included: exemption from import duties and the IPI for capital goods and parts; 90% reduction of import duties and 45% reduction of the IPI for inputs; up to 50% tariff reduction for

¹⁶⁴ Information available online at the Ministry of Integration's website; http://www.integracao.gov.br/fundos/fundos_constitucionais/index.asp.

imports of vehicles; exemption from the AFRMM; 50% reduction on income tax; credit on IPI payments. These benefits were granted from 14 March 1997 until 31 December 1999. Article 11 of law 9,440/97 allows benefits to continue between 1 January 2000 and 31 December 2010, at reduced rates: 50% import duty reduction on capital goods and parts; up to 50% reduction of import duties and up to 25% reduction of the IPI for inputs and parts and components. Benefits under the programme totalled US\$43.9 million for the 1997-99 period; and were granted to only three enterprises. No benefits were granted in 2000 and 2001. Since 2002, benefits have been limited to credits on IPI payments, and were to the three enterprises that were beneficiaries in the 1997-99 period. Cumulated benefits for 2002 and 2003 totalled US\$9.2 million.

270. In 1999, a new programme to promote regional development and support the automotive industry was established by Law No. 9,826 of 23 August 1999. Industries established in the north, north-east and central-west regions of the country (with the exception of the Federal District), that produce automotive vehicles (HS 8702-HS 8704), benefit from a reduction of the IPI. The measure will be in place until 2010.

271. In addition to the programmes described above, the BNDES administers four regional programmes: the Northeast Competitive Programme (PNC); the Integrated Amazon Basin Programme (PAI); the Midwest Programme (PCO); and the Programme for the Readjustment of the South (RECONVERSUL Programme). Their objective is to increase investments in the least developed areas of the country. Credits under these programmes are offered at more favourable financial conditions than those generally practiced by the BNDES.¹⁶⁵ These programmes were scheduled to be phased out by 26 July 2004.

(b) Free-trade zones

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

273. Eight free-trade zones have been created (Manaus and Tabatinga, in Amazonas; Macapa/Santana in Amapá, Brasília and Cruzeiro do Sul, in Acre; Pacaraima and Bonfim, in Roraima; and Guajará-Mirim, in Rondônia).¹⁶⁶ However, as at early 2004, only the Manaus Free Trade Zone (ZFM) was engaged in production operations; the others are engaged only in commerce operations. The ZFM was established with the goal of creating a development pole in the Amazon region through the formation of an industrial park. It is administered by the Superintendence for the Manaus Free Zone (SUFRAMA), an autonomous agency created in 1967 and linked to the MDIC. SUFRAMA also manages Brazil's seven other free-trade zones¹⁶⁷

274. The ZFM has existed since 1967 with the goal of promoting in Manaus an industrial, commercial and agriculture centre with economic conditions to promote the development of the region, by offsetting the difficult local environment and distance from consumer markets. Incentives to the companies established in the ZFM are in the form of tax exemptions granted by the federal and state governments. The main requirement for the concession of benefits is the observance of the basic

¹⁶⁵ Available online at the BNDES' website: <http://www.bndes.gov.br/programas/regionais/regional.asp>.

¹⁶⁶ Available online at the Manaus Free Zone's (SUFRAMA) website: http://www.suframa.gov.br/eng/ing_legis_federal.cfm.

¹⁶⁷ Available online at the Manaus Free Zone's (SUFRAMA) website: <http://www.suframa.gov.br/>.

productive process (PPB) criteria, which require firms to undertake agreed local manufacturing steps for specific products, and provide a detailed description of the various stages of assembly, preparation, and transformation of inputs used for manufactured products. All imports to the ZFM require a licence, authorized both by the SECEX and by SUFRAMA. The incentives will be in force until 2023, in accordance with Constitutional Amendment No. 42 of 19 December 2003.

275. Federal tax incentives include: (i) exemption from import duties 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 Portaria No. 300 of 20 December 1996¹⁶⁸, 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 for material used in the fabrication of informatics goods and motor vehicles, with the percentage of reduction depending on the share of domestic inputs and labour in total production (the coefficient of reduction is increased by 5% for motor vehicles); (iv) exemption from the IPI for goods produced in the ZFM, for imports used or consumed in the zone, and for goods listed in Inter-Ministerial Portaria No. 300 destined for consumption in the western Amazon region; (v) exemption from the IPI 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) exemption from export taxes for goods produced in the ZFM, when applicable.

276. State fiscal incentives, granted by the state of Amazonas, include: (i) exemption from the ICMS on industrial inputs, parts and pieces sent from other Brazilian states to be used in the ZFM; (ii) ICMS credit on industrial product purchases of domestic origin, other than inputs; (iii) ICMS devolution: 45% for final consumption goods; 55% to 100% for capital goods, food, clothing, and vehicles; up to 100% for inputs, basic agricultural products, medicines and other products using regional raw materials, and fish products, as well as for purchases by micro and small enterprises, and for goods produced in the state of Amazonas. There is also the possibility of deferring the ICMS for imports of goods, and of reducing the ICMS rate to 7%. On average, some 80% of the ICMS is returned. ICMS collection from the ZFM in 2003 totalled some US\$81.2 million, while returned ICMS was US\$398 million.¹⁶⁹

277. Importers are allowed to supply foreign goods from their stock in the ZFM to other parts of the country, without quantitative limits. These goods are subject to all import duties and taxes normally assessed, in accordance with Decree Law No. 1,455 of 1976; however, as stated above, duties on inputs are subject to a reduction of up to 88%.¹⁷⁰ Exceptions to this are informatics products and vehicles, for which the whole duty is applied. Products manufactured in the ZFM solely with imported inputs, goods sold to free-trade zones, and obsolete machinery and equipment are not subject to the payment of duties.

278. The main activity in the ZFM is industrial and 88.4% of production is destined for the domestic market. The main activities are: electronics, information technology and telecommunication goods (including mobile phones), two-wheel vehicles, chemicals, thermoplastics, lighters, pens, disposable shavers, mechanical machinery, metallurgical products, and watches. Since 1998, production has fluctuated in U.S. dollar terms, totalling US\$12.5 billion in 2003 (Table III.13).

¹⁶⁸ Information available online at the Manaus Free Zone's (SUFRAMA) website: <http://www.suframa.gov.br/download/legislacao/ppb/1996/pi-300-96.pdf>.

¹⁶⁹ SUFRAMA, *Dados de Faturamento e Aquisição de Insumos de Produção*, 2004.

¹⁷⁰ The methodology to assess final duty is described in Article 460 of Decree No. 4,543 of 26 December 2002.

Table III.13
Manaus Free Trade Zone production, 1998-03
(US\$ million)

Year	Domestic markets			Foreign market			Final balance
	Exports	Imports	Balance	Exports	Imports	Balance	
1998	9,710	2,626	7,085	228	2,303	2,076	5,009
1999	6,839	1,750	5,089	376	2,141	1,765	3,323
2000	9,646	2,470	7,176	742	3,025	2,284	4,892
2001	8,302	2,257	6,044	829	2,702	1,873	4,172
2002	8,079	2,363	5,716	1,026	2,584	1,558	4,158
2003	9,305	2,853	6,451	1,225	3,223	1,998	4,453

Source: Information provided by the Brazilian authorities.

(c) R&D and other programmes

279. Law No. 8,661 of 2 June 1993 establishes Brazilian policy for technological training in industry and agriculture, and fiscal incentives for promoting research and development (R&D) programmes in Brazilian enterprises. The programmes and fiscal incentives under this law are regulated by Decree No. 949 of 5 October 1993; the Ministry of Science and Technology (MCT) is responsible for their administration.

280. The Industrial Technology Development Programme (PDTI), the Agriculture/Cattle Breeding Technology Development Programme (PTDA), the Financing of Studies and Projects - Technological Development of Enterprises Institution (FINEP) programmes, and the National Fund for Scientific and Technological Development (FNDCT) have been notified by Brazil as subsidies since 1996 pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures.¹⁷¹

281. The PDTI and PTDA provide incentives for R&D in their respective areas, to foster technological improvement, improve processes and promote industrial and agricultural training. The amount of the subsidy is contingent upon the value of R&D expenses. The assistance takes the form of deductions of up to 4% of income tax on the sum of the expenses in technological research and development activities; 50% reduction from the IPI on equipment, machinery, and devices destined for research and technological development; accelerated depreciation and amortization for purposes of calculating income tax; a 50% income tax credit; and a 50% reduction of the financial operations tax charged on values paid, sent, or credited to beneficiaries that reside abroad. Industrial and agricultural/cattle breeding enterprises, and companies that develop integrated circuits or produce software, may benefit from the incentives, as long as they are developing a PDTI or a PTDA project. The duration of the fiscal incentives is five years. Total incentives granted under the PDTI and PTDA programmes amounted to R\$13.8 million in 2000, R\$10.1 million in 2001, and R\$88 million in 2002.

282. The FNDCT, created in 1969, is aimed at facilitating the development and improvement of products, processes, and services, as well as the incorporation of technology. The FNDCT is administered by the FINEP, a public enterprise under the MCT since 1985. The FINEP acts as the FNDCT's executive secretariat, is financed by up to 2% of the budget allocated to the fund, and has as its main task the financing of R&D activities in businesses, universities, research centres, and the Government. The FINEP mobilizes resources to this end, including from abroad, and directs them to beneficiaries of the FNDCT. The FNDCT was notified to the WTO by Brazil in 1996 as an R&D subsidy; it has subsequently been removed from further subsidies notifications.¹⁷² The authorities note that this is because the terms and conditions of these loans cover the costs of the funds employed.

¹⁷¹ WTO document G/SCM/N/16/BRA, 5 July 1996.

¹⁷² WTO document G/SCM/N/3/BRA, 13 March 1996.

They also note that the fund concentrates on non-profit organizations, and that only some 20% of the funds are directed to the private sector; private firms must be associated with universities or research institutes.

283. Since 1999, the scientific and technological development support funds comprise the main R&D financing mechanism in Brazil. There are 14 such funds, each corresponding to a specific area and with its own resources, which stem from direct contributions to the different funds, or from other revenues from the different sectors, such as royalties, taxes, licences, and authorizations (Table III.14). The resources allocated to the funds are deposited with the FNDCT (with the exception of the Telecommunications Fund) and managed by the FINEP. The Government follows a regional policy for the allocation of the funds: at least 30% of their resources must be invested in the north, north-east and mid-west regions. Resources may not be transferred between funds.

Table III.14
Scientific and technological development support funds

Fund/Law	Resources
Petroleum and Natural Gas Fund (CT-PETRO), Law No. 9,478 of 6 August 1997.	25% of the share of the value of royalties exceeding 5% of the production of petroleum and natural gas.
Energy Fund (CT-ENERG), Law No. 9,991 of 24 July 2000.	0.4% of the net value of the bills issued by concessionaries for the generation and transmission of electricity; 0.3% for distribution..
Hydric Resources Fund (CT-HIDRO), Law No. 9,993 of 24 July 2000.	4% of the financial compensation of electricity generation companies.
Land Transport Fund (CT-TRANSPORTES), Law No. 9,992 of 24 July 2000.	10% of the receipts obtained by the National Transportation Infrastructure Department stemming from contracts for the use of the road infrastructure by communications and telecommunications systems.
Mining Fund (CT-MINERAL), Law No. 9,993 of 24 July 2000.	2% of the financial compensation of the mining sector.
Spatial Fund (CT-ESPACIAL), Law No. 9,994 of 24 July 2000.	25% of revenues of spatial operations.
Telecommunications Technology Development Fund (FUNTTEL), Law No. 10,052 of 28 November 2000.	0.5% on telecommunications providers bills and 1% on bills for services provided through telephone links.
Information Technology Fund (CT- INFO), Law No. 10,176 of 11 January 2001.	0.5% on informatics enterprises' bills.
University and Enterprise Fund (CT-VERDE AMARELO), Laws Nos. 10,168 and 10,332 of 29 December 2000 and 19 December 2001.	50% of the Contribution of Intervention in the Economic Domain (CIDE) of remittances abroad of royalties plus 43% of the IPI on informatics products.
Infrastructure Fund (CT-INFRA), Law No. 10,197 of 14 February 2001.	20% of other funds.
Biotechnology Fund (CT-Biotecnologia); Agri-business Fund (CT-AGRONEGÓCIO); Aeronautical Fund (CT-AERONÁUTICO), Health Fund (CT SAÚDE), Law No. 10,332 of 29 December 2001.	17.5% of proceeds collected by the Contribution of Intervention in the Economic Domain (section (2)(v)) to be devoted to the agri-business fund; 17.5% to the Health Fund; 7.5% to the Biotechnology Fund; and 7.5% to the Aeronautical Fund.

Source: FINEP.

284. The FINEP provides reimbursable (loans) and non-reimbursable (grants) financing; grants are financed with FNDCT resources, mostly from the 14 sectoral funds and are directed to public and private non-profit institutions.¹⁷³ Loans are funded with FINEP's own resources or resources from third parties and are open to businesses; they can be used to purchase capital or inputs or to contract services geared at fostering R&D. Reimbursable projects contracted in 2002 totalled R\$181 million; non-reimbursable projects R\$87 million.¹⁷⁴ Total disbursements by the FINEP were some R\$320 million (some US\$107 million) in 2002; in the first half of 2003, credits granted totalled R\$230 million (US\$77 million), for over 700 projects of some 250 institutions.

¹⁷³ Available online at the FINEP's website: http://www.finep.gov.br/politica_de_fomento/formas_de_atuacao_FINEP.pdf.

¹⁷⁴ Available online at the FINEP's website: http://www.finep.gov.br/empresa/relatorios/relatorio_de_gestao/2002/RG%2020023.pdf.

285. Financing conditions involve an amortization term of up to seven years, three years of grace and a preferential interest rate equivalent to the long-term interest rate (TJLP) plus a spread of between 2% and 6% and a 1% credit opening tax. Loans with reduced interest rates (50% of the TJLP plus 2-6% spread and 1% tax) are also available, for projects promoting R&D development plus one or more additional criteria, such as: export growth or a substitution of imports; adherence to industrial and technological policy; regional development; technological progress; industrial efficiency; and partnership with universities.¹⁷⁵

(d) Other credit facilitation schemes

286. The BNDES also maintains a number of schemes that facilitate access to credit.; operations under these credit lines may be carried out directly by the BNDES, or through accredited financial institutions. Projects eligible for credit include: implementation, expansion, and modernization of fixed assets; new machinery and equipment produced in Brazil and accredited by the BNDES, with domestic content equal or greater than 60%; production of certain goods for export¹⁷⁶; offering or development of services for export; foreign commercialization of eligible goods; and working capital associated to a fixed investment. A number of items are eligible for credit, under certain conditions, including: importation of equipment, through specific lines and/or guarantees; expenses incurred from the importation of equipment, and implementation and/or expansion of foreign activities.

287. Among the credit lines operated by the BNDES through financial institutions, the Automatic BNDES offers financing of up to R\$10 million for the execution of implementation, expansion, modernization or company relocation projects, including the acquisition of new machinery and equipment of domestic manufacture, accredited by the BNDES, and associated working capital. The FINAME provides financing, without a limit in value, for individual acquisitions of new machinery and equipment of domestic manufacture, accredited by the BNDES. Conditions in both cases include an interest rate equal to the financial cost (generally the TJLP) plus the BNDES remuneration (between 1% and 4% per year) and the accredited financial institution's remuneration (negotiated). The level of participation in the case of the Automatic BNDES is 50% of the fixed investment, which may rise to 90% depending on sector/purpose, control of capital, size of enterprise and location considerations. Financing is limited to 90% for the public administration, Brazilian citizens, and micro, small and medium-sized, domestically controlled enterprises, and to 80% to large domestically controlled enterprises and companies with foreign-controlled capital. In the case of the FINAME, these percentages apply to the domestic content of the goods, which must be in any case greater than 60%.¹⁷⁷

(v) Government procurement

288. In 2003, government procurement expenditure for programming, executing and implementing the activities of the Federal Government (excluding hospital, medical services, pharmacological, and laboratory material) totalled R\$10.4 billion (some US\$3.5 billion, or 0.7% of GDP). In the same year, total tendering by the Federal Government was R\$13.1 billion (US\$4.4 billion, or some 0.9% of GDP). The Ministry of Health had the highest expenditure, followed by the Ministry of Education, and the Ministry of Finance.¹⁷⁸

¹⁷⁵ Information available online at the FINEP's website: <http://www.finep.gov.br>.

¹⁷⁶ This includes most manufactured products; the list is available in the BNDES online information: http://www.bndes.gov.br/english/bndes/financeable_products.pdf.

¹⁷⁷ The BNDES online information. Available at: <http://www.bndes.gov.br/english/finame.asp>.

¹⁷⁸ *ComprasNet Bulletin*, December 2003. Available at <http://www.comprasnet.gov.br/publicacoes/boletins/12-2003.pdf>.

289. Brazil is not a party to the WTO Plurilateral Agreement on Government Procurement (GPA). However, it participates in the Working Group on Transparency in Government Procurement and took part in the WTO Symposium on Transparency in Government Procurement in October 2002.

290. Government procurement in Brazil is decentralized. All administrative units and state enterprises can conduct purchasing activities independently and are audited by the Federal Accounts Tribunal (TCU). However, the Ministry of Planning, Budget and Management establishes general norms regarding tenders and administrative contracts (for goods and services) to be followed at the federal level by entities directly and indirectly administered by the Federal Government.

291. Law No. 8,666 of 12 June 1993 (Tendering Law), as amended by Law No. 8,883/94, Law No. 9,648 of 27 May 1998, and Law No. 9,854 of 7 October 1999, contains the main legislation regulating government procurement. Purchases of telecommunications equipment, digital electronics products, computers, computer software and related services are exempt from Law No. 8,666; they are governed by Law No. 8,248 of 1991 and by Law No. 10,176 of 11 January 2001. No major legislative changes have taken place since 2000 but a draft public administration procurement general law was under debate in early 2004.

292. Under Law No. 8,666 all procurement of goods, works, and services must be tendered, except in cases listed in Article 24 of the Law. Advertisement and other transparency issues regarding tenders and related procedures are governed by Articles 20 and 21 of Law 8,666 and Article 4 of Law No. 10,520 of 2002. All federal tenders must be published in the *Official Journal*; tenders are also currently published on the agencies' respective websites and on Comprasnet (see below).¹⁷⁹

293. The determining factors in selecting suppliers are the lowest price, best technical offer, and the best technical and price offer.¹⁸⁰ Although the law originally allowed for consideration of non-price factors, preference for domestic suppliers or firms was revoked by Constitutional Amendment No. 06/95, which establishes that no discrimination between companies incorporated under Brazilian law is allowed on the basis of the degree of foreign participation in their capital, except in the case of the information technology sector. Currently, preference may be given to goods and related services produced in Brazil in two cases: as a criterion for deciding between identical offers in the procurement processes; and in the information technology sector, including telecommunication and informatics products.

294. In order to qualify for government contracts, suppliers must be legally established or represented in Brazil. Foreign firms without operations in Brazil and involved in international tenders need legal representation in the country or to be associated with a Brazilian firm (at least 51% Brazilian capital participation and operational control). Under Law No. 10,176 of 2001, the Federal Public Administration should give preference to information technology goods and related services developed within Brazil. Procurement funded by international financial institutions is open to international bidding and subject to the rules of the financing institution.

295. Article 3 of the Tendering Law requires that all bidders be previously informed of the terms of the contract and of the relevant bidding procedures. It allows for appeals based on different administrative activities, such as disqualification of a bidder, modification of a registration request, contract termination or fines. Hearings may be requested during any phase of the bidding process. Once the means of administrative recourse are exhausted, there is the possibility of a judicial recourse.

¹⁷⁹ In the case of tendering at the state or municipal level, tender notices must be published in the state's *Official Gazette*, and in a large newspaper of the state or municipality.

¹⁸⁰ Law No. 8,666 of 21 June 1993.

296. The modalities for tendering are: competition or open tendering (*concorrência*); selective tendering, involving price quotes or price enquiry from officially registered firms (*tomada de preços*, generally for small purchases); invitation by the administration to suppliers that meet specific requirements (*convite*); contest (*concurso*), for technical and artistic works; auction, in which the best-priced goods meeting minimum evaluation requirements are selected; public auction (*leilão*) for specific goods; and inverse auction or bid (*pregão*) for common goods and services irrespective of value.¹⁸¹

297. Provisional Measure No. 2,026 of 21 December 2000 introduced the procurement modality known as inverse auction, and Decree No. 3,697 of 21 December 2000, established modalities for the use of information technology in this type of procurement. In this method, suppliers bid lower than the lowest initial proposal until the auction is stopped and the contract is awarded; they remain anonymous until the end of the bid.¹⁸² Law 10,520 of 17 July 2002 allows states, the Federal District, and municipalities to use Internet-based inverse auctions or bids for "common goods and services" such as office supplies, fuel, janitorial services, transportation, and health insurance.¹⁸³ Information technology products purchased using this method must be developed domestically and must contain significant domestic value added.¹⁸⁴ In order to participate in the online bidding, suppliers must be represented by an authorized broker.¹⁸⁵

298. The Tendering Law specifies the value limits for each type of procurement. The Ministry of Planning, Budget and Management reviews and revises these thresholds periodically. The last revision is contained in Law No. 9,648 of 27 May 1998. The thresholds for limited tendering (invitation) are R\$80,000 for purchases of goods and services, and R\$150,000 for construction. The thresholds for selective tendering are R\$650,000, for goods and services, and R\$1.5 million for construction; open tendering must be used for above the thresholds.

299. The time allowed for preparation and receipt of proposals varies by modality: 45 days for contest and competition; 30 days for competition and price inquiries where the lowest price is not the only criterion; 15 days for price quotes for selection on lowest price; eight days for reverse auctions; and five days for invitations.¹⁸⁶

300. In 2003, 51% of federal administration procurement did not require bidding (*Dispensa e Inexigibilidade*), such as emergency purchases, value ineligibility and recognized expertise; 27% of government contracts were awarded using competition; and 13% using inverse auction. Price quotes or price enquiries accounted for 5% of the value of contracts; and invitations and public auction

¹⁸¹ Government of Brazil (2001), *Legal Guide for the Foreign Investor in Brazil*. Available online at: http://www.brasilemb.org/trade_investment/guide.

¹⁸² Ozorio de Almeida, Marcos, Ministry of Planning Budget and Management, presentation to the WTO, 9 October 2002, *Electronic Procurement, the Experience of the Brazilian Federal Government*.

¹⁸³ Common goods and services are listed in Decree No. 3,784 of 6 April 2001, which expands Annex II of Decree No. 3,555 of 8 August 2000. Available online at: http://www.comprasnet.gov.br/legislacao/decretos/de3555_2000.htm.

¹⁸⁴ Decree No. 3,693 of 20 December 2000. Decree No. 1,070 of 2 March 1994 defines technology products developed domestically.

¹⁸⁵ ComprasNet, "Government Economizes on Internet Bidding", *Noticias Comprasnet*, 27 October 2003. Available online at: <http://www.comprasnet.gov.br>. States using online inverse auction systems include Alagoas, Bahia, Distrito Federal, Espírito Santo, Goiás, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Paraíba, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Norte, Santa Catarina, and São Paulo.

¹⁸⁶ FTAA Working Group on Government Procurement, "National Legislation, Regulations and Procedure Regarding Government Procurement in the Americas". Document FTAA/WG8/TD/IDB/02/98, 16 April 2003.

represented 3% and 1% respectively. Contest (*consulta e concurso*) was not used for procurement during the year.

301. Brazilian ministries increasingly use electronic procurement systems. Some states, such as São Paulo, are also moving towards electronic procurement for contracts of all values. The General Services System (SIASG), a computerized system under the responsibility of the Ministry of Planning Budget and Management, is used for procurement by all government entities except the Public Ministry and the Ministry of Defence. The authorities note that, although sub-federal government entities use the SIASG, it is only mandatory for federal government entities. The SIASG has a unified system for pre-registration of suppliers (SICAF); registration allows participation in any tendering procedure.¹⁸⁷ Suppliers register online and are checked for fiscal compliance.

302. Transparency has been enhanced in the past few years: general information on tendering procedures is available through the Ministry of Planning, Budget and Management and on its Comprasnet website, established in 1998.¹⁸⁸ All tenders are advertised in Comprasnet, which is the federal government procurement portal. Information available at Comprasnet includes the publication of offers and awards, submissions from suppliers, signed contracts, monthly bulletins of procurement activities, and information on other areas of the procurement process. Apart from the SICAF, the Comprasnet system includes subsystems that allow, among other things, purchases and contracts to be posted online, electronic forwarding of documents, searching by public sector managers of prices previously paid by the Federal Government, and the provision of information on specifications for supplies.

303. The Government aims to promote participation in government purchases by micro and small enterprises, estimated at the end of 2003 at some 13% of the total. To this end, some 6,000 telecentres with Internet access will be installed across the country.¹⁸⁹

304. No duties are levied on imports for government consumption.

(vi) Intellectual property rights

(a) Introduction

305. Brazil is a member of the World Intellectual Property Organization (WIPO) and a signatory to several intellectual property rights (IPRs) agreements.¹⁹⁰ Brazil is also a signatory of the Patent Law Treaty, not yet in force. It has also made IPR commitments under bilateral or regional agreements entered into as a part of MERCOSUR. These commitments are modelled on intellectual property

¹⁸⁷ Information on the SICAF is available in ComprasNet online information at: http://www.comprasnet.gov.br/ajuda/siasg/faq_sicaf.pdf.

¹⁸⁸ Information available online at ComprasNet's website: : <http://www.comprasnet.gov.br/>.

¹⁸⁹ "Micro and Small Enterprises will have more participation in government procurement", *Comprasnet News* 27 October 2003. Available online at: <http://www.comprasnet.gov.br>.

¹⁹⁰ The Berne Convention for the Protection of Literary and Artistic Works; the Paris Convention for the Protection of Industrial Property; the Patent Cooperation Treaty (PCT); the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; the Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms; the International Convention for the Protection of New Varieties of Plants (UPOV); the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods; the Nairobi Treaty on the Protection of the Olympic Symbol; and the Strasbourg Agreement Concerning the International Patent Classification.

rights agreements that Brazil has ratified, e.g. the WTO TRIPS Agreement and the Convention on Biological Diversity.¹⁹¹

306. The TRIPS Agreement was incorporated into Brazilian legislation in December 1994, together with the other Agreements resulting from the Uruguay Round.¹⁹² Brazil notified its main intellectual property laws and regulations to the TRIPS Council in 2000. Between March 2000 and July 2002, Brazil made 11 notifications to the WTO, ten of which pertain to Article 63.2 TRIPS (transparency and notifications) and the other to Article 69 TRIPS (international cooperation).¹⁹³ Since 2000, Brazil has passed, revised or adopted new copyright, patents, compulsory licensing, information disclosure, and trade mark legislation (Table III.15).¹⁹⁴

Table III.15
Main dedicated intellectual property rights laws and regulations

Statute	Coverage	Remarks
Industrial Property Law (Law No. 9,279 of 14 May 1996)	Inventions, utility models, certificate of addition of an invention, industrial designs, trade marks, geographical indications	Protection for IPRs, taking into account the country's social interest and technological and economic development
Law No. 10, 603 of 17 December 2002	Undisclosed information related to pharmaceutical products for veterinary use, fertilizers, pesticides, their components and related products	Protects against unfair commercial use, information and data presented to the authorities for commercial approval
Decree No. 4,830 of 4 September 2003	Patents	Amends Decree No. 3,201 of 6 October 1999, which provides for the grant of compulsory licences in cases of national emergency or in the public interest
Law No. 9,610 of 19 February 1998	Copyrights and neighbouring rights	Protects the work of the author and of foreigners resident outside Brazil
Plant Variety Protection Law of 25 April 1997 (Law No. 9,456 of 25 April 1997)	New plant varieties and essentially derived plant varieties	Guarantees the property right to any natural or legal person obtaining a new plant variety or essentially derived variety
Law No. 9609 of 19 February 1998	Computer software	Grants the same level of protection to software as is guaranteed to literary works under the copyright legislation
Law No. 10,695 of July 2003	Copyright	Amends the Criminal Code and the Criminal Procedure Code to include stiffer sanctions for copyright violations and to improve criminal procedures
Resolution No. 076 of 2000.	Industrial designs	Makes provision for the adoption of the international classification system, despite Brazil not being a party to the Locarno Agreement
Law No. 10,196 of 2001	Pharmaceutical patents	Specifies prior approval from the National Sanitary Surveillance Agency (ANVISA) to support the Governmental decision for the granting of patents for medicines and its processes
Act No. 159 of 2001	Trade marks	Provides for registration forms in accordance with the goods and services international classification system, despite Brazil not being a party to the Nice and Vienna Agreements
Act No. 160 of 2001	Trade marks	Provides a trade mark user's guide
Act No. 161 of 2002	Industrial designs	Establishes rules of procedure on the application of the Industrial Property Law regarding industrial designs Act No. 129 of 1997
Act No. 083 of 2001	Trade marks	Establishes the processing for the application of trade marks
Act No. 075 of 2000	Geographical Indications	Establishes conditions for the registration of geographic indications
Act No. 110 of 2004	Renowned/famous trade marks	Establishes rules for the recognition of famous marks

Source: Information provided by the Brazilian authorities.

¹⁹¹ Available online at the Organization of American State's Foreign Trade Information System (SICE): <http://www.sice.org/Trade/mrcsrac/>.

¹⁹² WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

¹⁹³ WTO documents IP/N/6/BRA/1, 24 March 2000; IP/N/1/BRA/2, 10 April 2000; IP/N/1/BRA/C/1, IP/N/1/BRA/C/2, IP/N/1/BRA/I/1, IP/N/1/BRA/P/1, IP/N/1/BRA/P/3, and IP/N/1/BRA/P/4, 19 September 2000; IP/N/1/BRA/I/1/Add.1, 4 October 2001; and IP/N/REV.6/ADD.1, 24 July 2002.

¹⁹⁴ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

307. The National Industrial Property Institute (INPI), a autonomous federal agency under MDIC, was set up in 1970 to implement, at the national level, rules regulating industrial property, taking into account its social, economic, legal and technical role, and to offer comments regarding the advisability of signing, ratifying, and terminating conventions, treaties, accords, and agreements on industrial property. It is responsible for granting or registering patents (inventions and utility models), industrial designs, marks, geographical indications, computer programs, and technology transfer or franchise contracts.¹⁹⁵

308. The Industrial Property Law (Law No. 9,279 of 14 May 1996), covers the grant of patents for inventions and utility models, certificates of addition of an invention, registration of industrial designs and trade marks, and the repression of false geographic indications. The Industrial Property Law covers applications for patents or for registration made abroad and filed in Brazil by a party protected under a treaty or convention in force in Brazil, granting national treatment, and also grants national treatment to foreign nationals or persons domiciled in a foreign country, based on reciprocity.

309. The number of patents invention registered increased between 1996 and 2000, then decreased annually between 2000 and 2003. In 2003 4,244 patents were granted, down from 6,017 in 2000; over 90% were to non-residents. The number of patent applications filed has followed a similar but less pronounced pattern. Industrial designs registrations increased substantially from 2,815 in 2000, to 5,452 in 2003; some three-quarters of registrations have been granted to residents. Trade marks registrations also increased substantially between 2000 and 2003, from 18,132 to 23,838.¹⁹⁶ The processing of patent applications in a reasonable time-period seems to remain a challenge. The average pendency time for patents is five years.

310. The INPI's view is that IPR protection, particularly protection of inventions, fosters the development of new goods and services, when granted a patent for a limited period of time, the right holder commits to divulging the content of the invention, enriching a country's technological knowledge.¹⁹⁷ To foster the dissemination of knowledge, Brazil maintains an archive of international patents (*Banco de Patentes do INPI*), in which some 24 million patent documents are kept, on paper, microfiche and CD-ROM. The documents contain complete technical descriptions and a uniform structure, generally following the International Patent Classification system, and are open for consultation. The INPI considers this a valuable source of technological information and technology transfer for domestic companies.¹⁹⁸

311. As a rule, Parallel imports of goods embodying IPRs covered by the Industrial Property Law are not allowed, in accordance with that Law. The Copyright Law does not contain provisions with respect to the international exhaustion or rights; decisions are taken on a case-by-case basis.

(b) Patents and industrial designs

312. Patent protection is granted for 20 years from the date of filing and utility models are protected for 15 years from the date of filing (Table III.16). An invention is considered patentable if it satisfies the requirements of novelty, inventive step, and industrial application. Articles 10 and 18 of the Industrial Property Law refer respectively to subject matter that is not considered an invention

¹⁹⁵ Information on the National Industrial Property Institute (INPI) is available at: http://www.inpi.gov.br/inpi/conheca_inpi.htm.

¹⁹⁶ Information provided by the INPI.

¹⁹⁷ INPI (2000). Statement by the President of the INPI, José Graça Aranha, at the WIPO International Conference on Intellectual Property, Trade, Technological Innovation and Competitiveness, Rio de Janeiro, 19 and 21 June 2000. Available online at: http://www.inpi.gov.br/mapa/mapa_frameset.htm.

¹⁹⁸ Information available online at: <http://www.inpi.gov.br/informacao/conteudo/ced-hp23.htm#topicoaa>.

and to exclusions from patentability. An industrial design is defined as the ornamental plastic form of an object or an ornamental arrangement of lines and colours which may be applied to a product, providing a new and original visual result in its external configuration and that may serve as a model for industrial manufacture. An industrial design is considered to be original and therefore registrable if it possesses a distinctive visual configuration in relation to other objects. Industrial designs are protected for ten years from the date of filing, which can be extended for three successive five-year periods.

313. Filings are accepted after applications have undergone a preliminary formal examination; a filing receipt is then issued. Applications are kept secret for 18 months, and then officially published. The inventor has 36 months from filing to request a formal examination of the application. Failure to request this substantive examination causes the application to be considered dismissed. Patents may lapse due to renunciation, forfeiture, failure to pay annuities to the INPI, and failure of a foreigner to appoint an attorney duly qualified and domiciled in Brazil. A patent will be forfeited, ex officio or at the request of any party having a legitimate interest, if, after two years since the granting of the first compulsory license, abuse or disuse has not been remedied, unless there are justifiable reasons. Industrial design applications are examined only in case of challenges.¹⁹⁹

314. Compulsory licences for patents may be granted for national emergencies, to meet the public interest, in cases of abuse of rights or of economic power, for non-commercial use in Brazil, and for failure to meet the needs of the market. No compulsory licences have been granted since 2000. Decree No. 4,830 of 4 September 2003 amended Decree No. 3,201 of 26 October 1999, which regulates the granting of compulsory licences in cases of national emergency and public interest. If a compulsory license is granted in the public interest, it must be for non-commercial public use. Once granted, the right-holder may be required to provide clarification concerning the effective disclosure of the invention in a manner sufficiently clear and complete for the invention to be carried out; failure to comply may result in the nullification of the patent.²⁰⁰ Compulsory licensing of patents may also be used as a remedy for anti-competitive conduct, as determined by the CADE. There is no compulsory licensing of industrial designs.²⁰¹

315. Resolution No. 076 of 2000, effective as 2 January 2001, made provision for the adoption of the international classification of industrial designs, and revoked Act No. 104 of 1989 and its amendments. The Resolution introduced a requirement for all registered industrial drawings to display one of the symbols used in the international classification system, and established a Permanent Commission within the INPI's Directorate of Patents to oversee the classification process.²⁰² Act No. 161 of 2002, which revoked Act No. 129 of 1997, established the rules and procedures in the application and registration of industrial designs.²⁰³

¹⁹⁹ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

²⁰⁰ Available online at: <http://www.inpi.gov.br/legislacao/conteudo/dec4830.htm>.

²⁰¹ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

²⁰² Information available online at: <http://www.inpi.gov.br/legislacao/conteudo/res076.htm>.

²⁰³ Information available online at: http://www.inpi.gov.br/legislacao/conteudo/an161_02.htm.

Table III.16
Overview of IPR protection in Brazil, 2003

Subject	Coverage	Duration	Exclusions and limitations
Patents	Any invention which is new and involves an inventive step, which is capable of industrial application and which is capable of industrial application.	20 years from the date of filing.	Substances, matter, mixtures and processes for their modification, biological processes and natural living material. Compulsory licenses may be granted in cases of national emergency or in public interest.
Industrial designs	New ornamental plastic 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, which can be extended for 3 successive 5-years periods.	
Utility models	New invention in a new shape or arrangement, capable of industrial application.	15 years from date of filing.	Substances, matter, mixtures and processes for their modification, biological processes and natural living material.
Trade marks	Visually perspective sign which distinguishes or certifies a good or service.	10 years renewable for equal successive periods.	Crests, armorial bearings, emblems, flags, national and international monuments
Geographic indications	Name of a country or region used to designate a service or good whose characteristics or reputation are derived from the country or region.		Use of the geographical indication is restricted to the goods or service providers from the locality.
Copyright and related rights	Text of literary, scientific or artistic works; musical compositions, audiovisual works, drawings, paintings, photographic works. No registration necessary.	Life of the author plus 70 years as the general term of protection; term of protection 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 copier uses for educational purposes without intent for financial gain.
Computer software	Information in natural language or encoded, used in automatic machines for the manipulation of data.	50 years from 1 January of the year following its publication or, if this is unavailable, its creation.	
New plant varieties	New plant varieties and derived plant varieties of any genus or species.	15 years from the grant of certificate except for vines, fruit trees, forest trees and ornamental trees, including, the mother graft thereof, for which the term is 18 years.	May be subject to compulsory licenses for three-year periods, subject to renewal.

Source: Information provided by the INPI and WTO Secretariat.

316. Law 10,196 of 16 February 2001 amended Law No. 9,279 of 1996, *inter alia*, with respect to the procedures for the patentability of pharmaceutical products.²⁰⁴ Article 229-C of the statute specifies that the grant of patents for pharmaceutical products or processes must receive the prior approval of the Brazilian Sanitary Surveillance Agency (ANVISA). The authorities note that ANVISA's approval is to support the Government decision for the granting of patents for medicines and its processes and does not constitute an additional requirement for patentability. They also note that ANVISA cooperates with the INPI for the technical analysis, using the criteria laid down in the Industrial Property Law. Some 477 patent applications for medicines and processes were submitted to ANVISA between March 2001 and April 2004; 339 were granted prior approval (71.1% of the total), 16 (3.4% of the total) were denied, and the remainder were either under analysis or required additional information.

317. Law No. 10,603 of 17 December 2002 amended Brazilian legislation to regulate the protection against unfair commercial use of information. The Law covers test results or other undisclosed data submitted to the competent authorities as a condition for approval or maintenance of registration for commercialization of pharmaceutical products for veterinary use, fertilizers, pesticides, their components, and related products.

²⁰⁴ Notified to the TRIPS Council in WTO document IP/N/1/BRA/I/1/Add.1, 4 October 2001.

(c) Trade marks

318. Legislation on trade marks is contained in the Industrial Property Law, which incorporates special protection to well-known trade marks and service marks, regardless of whether already filed or registered in Brazil. Under the Industrial Property Law, a mark is described as "any visually perceptible, distinctive sign, not prohibited by law".²⁰⁵ Resolution INPI No. 083/2001 regulates the process of mark registration applications.²⁰⁶

319. In December 2001, Brazil introduced Normative Acts Nos. 159 and 160 of 2001²⁰⁷, which allow for the use of the revised international classification system in applications and forms for the registration of marks. The new legislation implemented a directory system for the registration of trade and service marks to accord with the international classification system. In January 2004, the INPI introduced Resolution No. 110/04 to regulate the special protection granted by Article 125 of the Industrial Property Law to renowned trade marks.

320. The property and protection of a mark is acquired by means of registration, which ensures exclusive use by the titleholder throughout the Brazilian territory. An application for registration of a mark filed in a country that maintains an agreement with Brazil or in an international organization of which Brazil is a member is assured priority rights. The titleholder of a mark may assign his registration to a third person, license its use, and safeguard its material integrity or reputation. Registration of a mark remains in force for ten years from the date of granting; this may be extended for equal, successive periods. Registration of the mark is extinguished on expiry of the term; on renunciation, which may be full or partial regarding the products or services indicated by the mark; on forfeiture; or if a person domiciled abroad does not have an attorney representing them in Brazil.²⁰⁸

(d) Copyright

321. Copyright in Brazil is regulated by Law No. 9,610 of 19 February 1998 (Copyright Law), which adopts its principles from the Berne Convention. The law covers all creative works of inspiration, however expressed; it protects, *inter alia*, literary, artistic and scientific works that have been published. The author of the work is treated by Brazilian law as owner of the copyright. Both individuals and corporations may own a copyright. In addition, total or partial assignment of the copyright to third parties is permitted; any duly authorized person who adapts, translates, arranges or edits a work may claim copyright to the work. Protection of a copyrighted work extends to its title, provided that it is original and not liable to be confused with that of a work of the same nature disclosed earlier by another author.

322. The provisions of the Copyright Law offer foreigners resident outside Brazil the level of protection provided for in the international agreements and treaties in force in Brazil. This protection may also be extended to residents of foreign countries assuring Brazilian residents reciprocity.²⁰⁹

323. Registration in Brazil is not required for copyright protection. However, to secure copyright the author may register his/her work with the Brazilian National Library; the School of Music or the

²⁰⁵ Information available at the website of the INPI: http://www.inpi.gov.br/legislacao/legislacao_frameset.htm.

²⁰⁶ Information available at the website of the INPI: http://www.inpi.gov.br/legislacao/legislacao_frameset.htm.

²⁰⁷ Information available at the website of the INPI: <http://www.inpi.gov.br/legislacao>.

²⁰⁸ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

²⁰⁹ Copyright Law No. 9,610 of 1998, Article 2.

School of Fine Arts of the Federal University of Rio de Janeiro; or the Federal Council of Engineering, Architecture and Agronomy.

324. Copyright protection is for the life of the author, plus 70 years from 1 January of the year after death. Where a literary, artistic or scientific work of joint authorship is indivisible, calculation is from the death of the last surviving joint author. Protection of rights in anonymous or pseudonymous works is also 70 years from 1 January of the year following first publication. Photographic and audio-visual works are protected for 70 years from 1 January of the year the work became known. Authors' rights may be wholly or partly transferred to third parties. The provisions on authors' rights apply in a similar way to the rights of performers, producers of phonograms, and broadcasting organizations. Protection for neighbouring rights is 70 years from 1 January of the year following fixation for phonograms, transmission for the broadcasts of broadcasting organization, and public performance in other cases. The Law considers that an infringement, *inter alia*, is committed when there is a reproduction of a copyrighted work without the express permission of the copyright holder.

(e) Protection of software

325. Software protection is regulated by Law No. 9.609 of 19 February 1998 (Computer Programs Law), and Decree No. 2,556 of 20 April 1998 (Decree Regulating the Computer Program Register). These regulations provide for the protection of software as literary works, and include rules for marketing software, as well as penalties of a criminal nature for infringement. Protection does not depend on registration; registration is voluntary and can be made at the INPI. If registration takes place, the computer program itself or its portions are kept confidential, except upon a court order or at the discretion of its titleholder.²¹⁰

326. Computer software is protected for 50 years from 1 January of the year subsequent to its publication or, if this is unavailable, its creation. Exclusive rental rights are recognized. Foreigners that reside outside Brazil are granted the same level of protection provided for in the international agreements and treaties in force for Brazil. The legislation also extends protection to foreigners domiciled abroad, provided that the country of origin of the software, assures equivalent protection to Brazilians or to foreigners in Brazil.

(f) Geographical indications

327. The Industrial Property Law of 1996 introduced geographical indications as a specific industrial property right. Resolution INPI No. 75 of 2000 lays out the conditions for registration of a geographical indication: a geographical indication may be an indication of source or a denomination of origin. An indication of source, in the scope of the geographical indication, should be shown to have become known as a centre of extraction, production or manufacture of a given product or of provision of a given service. A denomination of origin, on the other hand, should be shown to designate a product or service whose qualities or characteristics are due exclusively or essentially to the geographical environment, including natural and human factors. Furthermore, the geographical area must be clearly delineated and there must be a controlled structure or authority that has the exclusive right over the products or services.²¹¹

²¹⁰ WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

²¹¹ Available online at the INPI's website: http://www.inpi.gov.br/legislacao/conteudo/resolu_075.htm.

328. The INPI has established a division to cover the protection of geographical indications and has already approved protection to some geographical indications, such as French *Cognac* and *região dos vinhos verdes* (green wine) of Portugal.²¹²

(g) Plant variety protection

329. Law No. 9,456 of 25 April 1997 established protection of intellectual property rights for cultivated plant varieties. This protection extends to new varieties of plants and essentially derived plant varieties, and is supported by a Plant Variety Protection Certificate. Protection is for 15 years, except for grapevines, fruit trees, forest trees, and ornamental trees, for which it is 18 years. The variety must be registered at the Brazilian Cultivated Plant Variety Protection Service (SNPC), under the Ministry of Agriculture, Livestock and Food Supply.²¹³ The legislation assures protection to both natural and legal persons in possession of a new plant variety or an essentially derived plant variety obtained within Brazil, but protection can also be extended to foreigners from countries where protection is ensured by a treaty effective in Brazil as that ensures equal or equivalent rights. In this respect, natural persons and legal entities that file for protection of plant varieties in countries with which Brazil has an agreement, or in an international organization to which Brazil is a party are assured priority rights for up to 12 months. The plant variety protected may be the object of a compulsory license. Brazil adheres to the Convention on the Protection of New Varieties of Plants (UPOV).²¹⁴

(h) Layout designs of integrated circuits

330. Layout designs of integrated circuits are not protected by specific legislation in Brazil. A draft law was under discussion in Congress in mid 2004. Unfair competition provisions may be applied.

(i) Enforcement

331. The Industrial Property Law establishes civil and criminal offences and procedures for violation of patents, trade marks, industrial designs, geographical indications, and unfair competition. Patent law violation may constitute civil and criminal offences; penalties of imprisonment generally vary from three months to a year, but may be increased according to the infringement and the infringer. The Copyright Law establishes which acts are considered civil offences, while crimes are described in the Criminal Code. Penalties vary from three months to four years of imprisonment and/or a fine. Infringement of software copyright is a civil and criminal offence, punishable with detention from six months to four years, plus a fine depending on the infringement, and possible seizure of the copies produced or commercialized in violation of copyright.

332. In 2001, as part of its campaign to combat piracy and other copyright violations, Brazil established the Inter-Ministerial Committee Against Piracy (IMC), mandated to coordinate anti-piracy strategies throughout Brazil. Brazil has made its enforcement regime more robust, through the enactment of Law No. 10,695 of July 2003. This law modifies the existing Criminal Code by increasing the types of copyright infringement considered as felonies. Harsher penalties are now incurred: for the main felonies, the minimum penalty is two years and the maximum four years; the possibility of suspension of the sentence is no longer available. The new legislation amplifies the media through which the counterfeit material can be distributed; there can be a finding of violation where the illegal material has been accessed via the Internet, cable or satellite. There are also rules of

²¹² WTO document IP/Q/BRA/1, IP/Q2/BRA/1, IP/Q3/BRA/1, IP/Q4/BRA/1, 24 February 2004.

²¹³ Decree No. 2,366 of 5 November 1997.

²¹⁴ WTO document IP/C/M/25, 22 December 1999.

procedure, which help to make the legislation more effective, *inter alia*, by giving the judge the power to order, at the request of the affected party, the destruction of the production or reproduction seized in certain circumstances.

333. The authorities note that action to combat piracy has been stepped up in recent years and that despite the difficulties in coping with limited resources, the number of seizures of pirated goods has increased, as well as the degree of coordination among Government agencies. As a result of the increased number of seizures in pirated goods, the value of the merchandise in violation of copyright destroyed by the Brazilian Federal Revenue Secretariat in the first six months of 2004 was almost five times greater than the value of seized goods destroyed over the same period in 2003. In the case of goods seized due to violations of the Industrial Property Law, there was a 16-fold increase in the value of destroyed goods in the first half of 2004 compared to the same period the previous year. Between July 2003 and end August 2004, the Brazilian Federal Police initiated 6,910 police investigations under Article 334 (contraband or embezzlement) and Article 184 (violation of copyright, etc.) of the Brazilian Criminal Code.