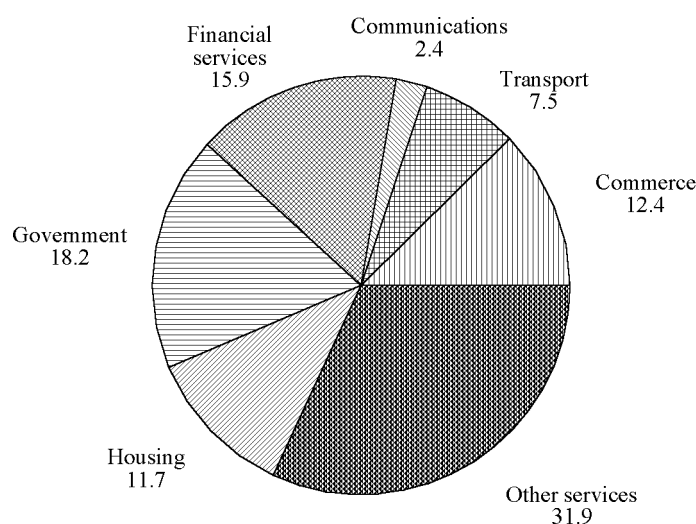


VII. SERVICES(1) General Features

1. In 1994, services accounted for about 53 per cent of Brazil's GDP and generated just over 55 per cent of total employment. The largest single activity was government services, which contributed about 18 per cent of total value added in the sector; other important categories were financial services, commerce and housing (Chart VII.1).

Chart VII.1
Value added in services, 1994

Per cent of total services GDP



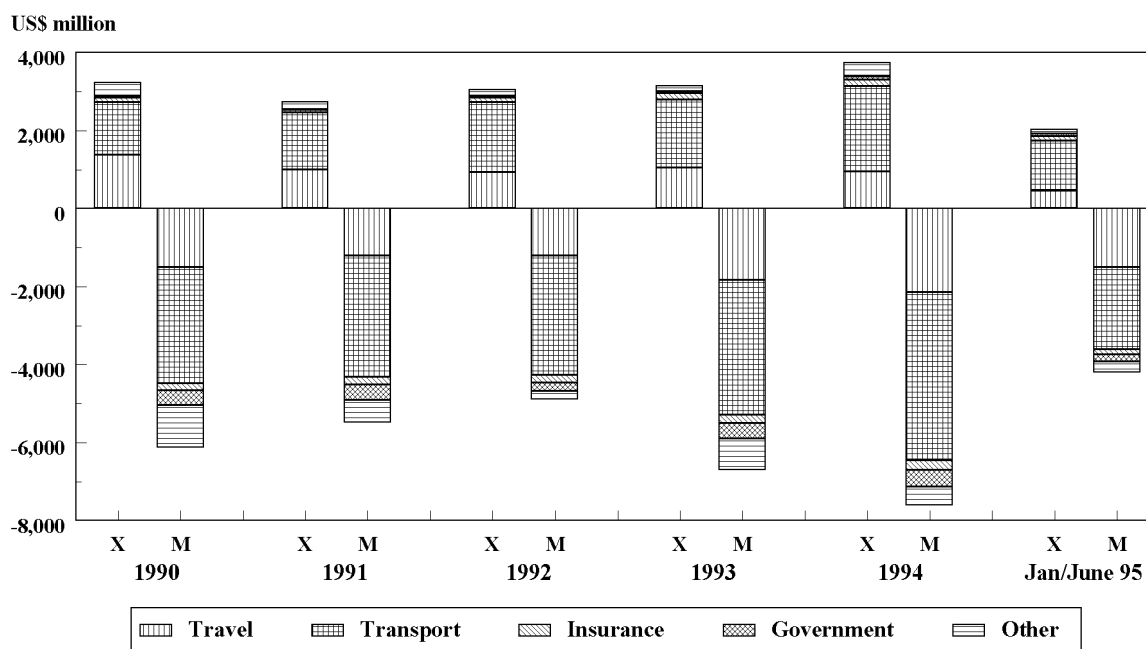
Total services GDP: US\$324 billion

Source: International Monetary Fund.

2. Non-factor services exports (credits) were valued at some US\$3.7 billion in 1994, equivalent to about 8.5 per cent of merchandise exports. Transport receipts were the largest single item, accounting for almost 60 per cent of services exports. At US\$7.6 billion, the value of services imports (debits) was about double that of services exports and equivalent to some 23 per cent of merchandise imports. Transport accounted for 56 per cent of services imports, and travel for a further 28 per cent.

3. Brazil's exports of commercial services fell between 1990 and 1991, but tended to increase thereafter (Chart VII.2). Imports of services followed a similar pattern, declining until 1992 and growing rapidly since then. As a result, there has been a considerable widening of the services trade deficit since 1992.

Chart VII.2
Evolution of non-factor services account, 1990-95



Note X = exports, M = imports.

Source: International Monetary Fund.

4. Inefficiencies in the services sector have at times imposed severe constraints on other sectors of the Brazilian economy (part of the so-called "Brazil cost"). The most serious problems have arisen in relation to financial services, although port handling and telecommunications have also created impediments to greater economic efficiency. However, restructuring during the 1990s has produced considerable gains in some areas, and further progress is expected with the completion of the reforms to the legal framework that began early in the decade.

5. The State is an important supplier of services, including banking, insurance, transport, telecommunications and electricity. Such involvement is decreasing markedly as the current privatization programme moves forward, aided by current efforts to open to foreign investment major industries including services such as banking, insurance and telecommunications.

6. In the context of its ongoing efforts to advance the opening of its economy, attract foreign investment and reduce inefficiencies in its services sector, Brazil participated actively in the Uruguay Round General Agreement on Trade in Services (GATS). A summary of the Brazilian schedule of "horizontal" commitments, i.e., those covering all sectors, is shown in Table VII.1.¹ Brazil has engaged not to apply national treatment limitations in any sector with respect to commercial presence, except for the preference given to the use of Brazilian space satellites; there are no other binding commitments.

¹The schedule of commitments made by countries under the GATS cover the following four modes of delivery: (i) cross-border supply, (ii) consumption abroad of services, (iii) supply of services through commercial presence and (iv) the presence of natural persons in the host country.

Table VII.1
Summary of Brazil's horizontal GATS commitments

Mode of supply (MA: Market Access; NT: National Treatment)				
	Cross-border supply	Consumption abroad	Commercial presence	Presence of natural persons
Movement of natural persons				MA: No binding (1) NT: No binding (2)
Investment			MA: (3)(4) NT: No limitation	
Subsidies	MA: No binding NT: No binding (5)	MA: No binding NT: No binding (5)	MA: No binding NT: No binding (5)	MA: No binding NT: No binding (5)

Notes: The Schedule of Specific Commitments (GATT document GATS/SC/13) is the sole authentic source of information on commitments. No binding means that Brazil made no engagements with respect to the item in question. No limitation means that Brazil agreed to place no constraints on the item in question.

- (1) Except for measures related to the temporary work of specialized technicians, highly qualified professionals, managers and directors.
- (2) Exceptions apply.
- (3) Remittances require compliance with procedures established by the Central Bank.
- (4) Foreign suppliers must be organized as legal entities under Brazilian law. The law does not provide for the "sole proprietorship" and "partnership" forms envisaged in Article XXVIII:1 of the GATS.
- (5) Unbound for research and development subsidies.

Source: WTO Secretariat.

7. Brazil's sector-specific commitments mainly consist of the engagement not to place national treatment limitations on commercial presence (Table AVII.2). For most items, Brazil's schedule of commitments leaves unbound market access with respect to the four modes of supply considered in the GATS. The authorities noted that Brazil's greater willingness to make commitments with respect to national treatment than market access reflected the fact that entry of foreign service providers to certain activities was still subject to legal or constitutional constraints (e.g., banking and telecommunications). With regard to the different modes of supply, the authorities expressed their preference for making bindings on commercial presence because this mode results in greater foreign investment and limits the potential for widening trade deficits in services.

8. Brazil's final list of Article II (m.f.n.) exemptions covered audiovisual production as well as land and maritime transport (Table VII.2). In these three areas, Brazil may maintain measures which would otherwise be inconsistent with the obligation to provide m.f.n. treatment to other countries under the GATS. Such exemptions are of indefinite duration. The authorities indicated that the exemptions are needed to promote cultural exchanges, to develop regional transport in the "Southern Cone" and to ensure Brazilian participation in the liner cargo trade.

9. Brazil maintains a large number of bilateral agreements related to services. In maritime transport, Brazil is a party to 27 agreements, of which seven involve cargo sharing arrangements (with Algeria, Angola, Argentina, Chile, Peru, Romania and Uruguay). In air transport Brazil has concluded agreements with 44 countries under the auspices of the International Civil Aviation Organization (ICAO). In tourism, Brazil maintains bilateral agreements with 11 countries (two with European Union members and the rest with Latin American States).

10. Brazil also participates in a number of regional agreements on services. These include the Agreement on International Land Transport with Argentina, Bolivia, Chile, Paraguay, Peru and Uruguay,

which aims to facilitate road transport in the "Southern Cone" region, as well as agreements within the ALADI framework. The Brazilian authorities indicated that MERCOSUL members were in the process of negotiating a framework agreement in the services area.²

Table VII.2
Summary of Brazil's Article II (m.f.n.) exemptions

Sector	Descriptions of measure indicating its inconsistency with Article II	Countries to which it applies
Audiovisual and motion pictures	National treatment is granted exclusively to companies from countries with which Brazil maintains film co-production agreements	All countries (in 1994 Brazil maintained co-production agreements with Angola, Argentina, Colombia, France, Germany, Italy, Mozambique and Portugal).
International land transport of cargo and passengers	The Agreement on International Land Transport provides national treatment to authorized suppliers from signatory countries.	Signatories are Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay.
Maritime transport	Bilateral agreements on cargo sharing and cargo reservation and measures providing for access to cargo on a reciprocity basis.	All countries (in 1994 Brazil had agreements with some ALADI members, China, certain European Union countries and the United States).

Note: Brazil - List of Article II Exemptions (GATT document GATS/EL/13) is the sole authentic source of exemptions.

Source: WTO Secretariat.

11. Multilateral agreements in which Brazil participates include INMARSAT and INTELSAT, both in the telecommunications field.

(2) Telecommunications

(i) Market structure and performance

12. Brazil has a large telecommunications industry employing some 97,000 persons and contributing about 1.3 per cent to the country's GDP (Table VII.3). The authorities estimate that the industry generates some US\$ 7.9 billion annually in value added, and gross annual sales of telecommunication services of about US\$ 6.7 billion, of which international transactions account for 7.5 per cent. Brazil's telecommunications industry is the world's fourth largest by the number of installed public telephones and the eleventh largest by the number of connected lines.

13. The telecommunications system has a relatively low telephone density at only 8.9 units per 100 inhabitants. The authorities estimate that between 1994 and 1999 the demand for fixed telephone lines should increase from just over 12 million to 26 million (public telephones included), rural telephones from 230,000 to 700,000, public telephones from some 345,000 to 800,000 and cellular telephones from 720,000 to 9.6 million.

²The Treaty of Asuncion, establishing MERCOSUL, provided for the establishment of a common market with free circulation of goods, services and workers from 1 January 1995, but only the customs union for goods has been implemented to date - see Chapter II.

Table VII.3
Selected statistics on telecommunications

Item	Units	1992	1993	1994	1995
Access lines for ordinary telephony	Million	10.6	11.4	12.2	15.3
Access to cellular telephony	Thousand	60.5	250.5	720.7	1,530.5
Total telephone lines in operation	Million	9.9	10.7	11.7	13.5
Public payphones	Thousand	259.6	298.6	343.7	366.6
Access to packet-switched data communication network	Thousand ports	14.2	30.5	45.8	47.0
Capital investment	US\$ billion	3.0	2.9	3.4	5.3
Localities served	Thousand	15.4	16.1	17.5	20.6
Number of employees	Thousand	89.6	93.6	96.6	92.5
Contribution to GDP	Per cent	1.5	1.6	1.3	...

... not available

Source: Brazilian authorities.

14. The cornerstone of Brazil's telecommunications sector is *Telecomunicações Brasileiras S.A.*, TELEBRAS, a joint public and private stock holding corporation controlled by the Ministry of Communications on behalf of the Federal Government. TELEBRAS is charged with planning, establishing and operating telecommunications services at the national level; it is also responsible for securing the financial resources to carry out such programmes. The Federal Government owns about 23 per cent of the capital of TELEBRAS and 51 per cent of the voting shares; foreign investors control about 14 per cent of the capital.

15. TELEBRAS and 28 other publicly controlled firms form the TELEBRAS system. Out of those firms, 27 are regional telephone companies with monopolies for the provision of basic telecommunication services in particular Brazilian States. TELES, in the State of Sao Paulo, is by far the largest of the regional telephone companies, and the seventh largest Brazilian firm. Carriers, not part of the TELEBRAS system, account for only some 5 per cent of Brazil's installed telephones.

16. The *Empresa Brasileira de Telecomunicações*, EMBRATEL, incorporated in 1965 under 97 per cent federal government ownership, is the second largest company in the TELEBRAS system. EMBRATEL is responsible for providing interstate services through the basic telecommunications network; it also operates international telecommunication services. On average, TELEBRAS has a capital participation of 84 per cent in EMBRATEL and the regional telephone companies.

17. The TELEBRAS system accounts for some 95 per cent of investment in installed capacity, with most investment largely financed from the system's internally generated funds. In the past, the National Telecommunications Fund, FNT, provided resources to support the expansion of the telecommunications network; the FNT was terminated in the mid-1980s. By law, 30 per cent of revenue from telephone calls went into the FNT, but, as public finances weakened, part of that revenue was

diverted into other government activities; in general, investment in telecommunications fell markedly during the 1980s.³

18. In recent years, capital expenditures in telecommunications have recovered, investment by the TELEBRAS system reaching about US\$3.4 billion in 1994. However, the authorities estimated that meeting growing demand would require investments of some US\$37.5 billion between 1995 and 1999, of which TELEBRAS was expected to be able to provide only about 60 per cent.

(ii) Regulatory framework

19. The 1988 Constitution required that all public telecommunications services fall under the control of State enterprises; the Brazilian Code of Telecommunications, Law No. 4117 of 27 August 1962, established the basic regulatory framework for the telecommunications sector. The Federal Government, through the Ministry of Communications, is responsible for regulating telecommunication services, including the administration of the electromagnetic spectrum. The Ministry of Communications has supervisory functions over the TELEBRAS System, having all powers associated with a controlling share holder.

20. Brazil's regulatory framework makes a fundamental distinction between "public" services and "non-public" services. Public services are those provided to the community at large through the public switch network, independently of the type of transmission (e.g. voice, data, fax or telex) or its means (e.g., fibre optics, radio or satellite). Non-public services include paging and limited services; the latter are those provided to closed user groups connected to the public network, subject to restrictions.

21. A licence is required to operate all telecommunication services. Criteria used to grant licences include the applicant's technical and financial capacity and, in certain cases, pricing policies and the amount offered for the licence. Applicants must be Brazilian firms; for some services there are limits on foreign ownership of voting shares. The Ministry's decisions may be appealed to the President or the courts. As public services have been provided up to now by State-controlled companies, no formal obligations have been established regarding universal services or technology transfer.

22. Public services may only be provided by companies in which the Federal Government holds at least 51 per cent of the voting shares. For cellular telephones, a maximum of two operators per region are allowed: one must be a TELEBRAS associate, while the other must be a private Brazilian company.⁴ Public companies must maintain separate accounts for cellular services to prevent cross-subsidization, which would place private competitors at a disadvantage. Although no private firms were involved in the operation of cellular telephones in early 1996, the authorities expected to issue the first private licence before the end of the year. Since the early 1990s, efforts made to liberalize telecommunication services, including limited services, cellular telephones and value added services, have been challenged before the Brazilian courts.

23. Foreign participation is not allowed in broadcasting services. For cable television, the operator must be a Brazilian company; a maximum of 49 per cent of voting shares may be under foreign control. Concessions are granted for renewable periods of 15 years. No foreign participation is allowed in mail services such as letters, telegrams, post cards and grouped mail services, which may only be

³World Bank (1992), p. 42.

⁴Brazilian firms are those incorporated under Brazilian laws, and with headquarters and administrative control in Brazil.

provided by the State company, *Empresa Brasileira de Correios e Telégrafos*, ECT. Other mail services may be provided by private Brazilian companies with no restriction on foreign capital participation.

24. Rates for public telecommunication services are established by the Ministry of Communication in co-ordination with the Ministry of Finance, which must approve all adjustments to public rates. Criteria for setting rates are contained in the Code of Telecommunications and provide for operators to cover all costs, including capital expenditure as well as improvements and expansions to the network. For cellular telephones, ceiling rates are proposed by the operators for approval by the authorities. Certain users (e.g., residential or rural) are subject to lower fixed charges; international calls subsidize local public telephone services.

25. The resale of international telecommunication services is not covered by the law; calling card services may be operated as part of special arrangements between companies.

26. The Ministry of Communications is responsible for certification of telecommunications equipment. Devices connected to the basic telecommunications network must be certified, as must equipment relying on the use of radio frequencies. Although self-certification is not allowed, certificates may be granted on the basis of documentation prepared and measurements performed directly by applicants. Recognition of foreign certificates is decided on a case-by-case basis, but, according to the authorities, foreign and domestic producers of equipment receive the same treatment.

27. The Secretariat report for the previous Trade Policy Review of Brazil noted that TELEBRAS' dominant position and its purchasing policies combined to give Brazilian producers a virtual monopoly in the supply of telecommunications equipment. Moreover, government policies, in particular the use of government procurement policies to encourage the transfer of specific technologies, encouraged the transformation of multinational company affiliates into joint ventures controlled by nationals. This situation has changed and preference, in the form of a price margin, is now only given for the acquisition of Brazilian-made equipment classified as an informatics product.

28. As part of its participation in the Uruguay Round GATS negotiations, Brazil made specific commitments in the telecommunications area only with respect to courier services (Table AVII.1); this reflects the fact that at the time of the negotiations most of the telecommunications sector was reserved for the State. The country's subsequent efforts to open the sector resulted in Brazil becoming a full participant in the negotiations on basic telecommunications, having submitted two offers to the WTO Negotiating Group. By and large, these offers reflect proposed changes or changes already made to the sector's regulatory framework (see following sub-section).

29. For non-public services, Brazil has offered to allow foreign interests to participate in "non-public" services for closed user groups (e.g., voice telephony, packet-switched data transmission, telex, telegraph and private leased circuit services). Brazil also offered to allow foreign participation in value-added services, such as E-mail, voice mail, on-line information and/or data processing, in cellular telephone (band B frequency), in paging and in satellite-space segment provision services. In cellular telephone and satellite services, foreign participation may be restricted to 49 per cent of the voting shares. Brazil also proposed to adopt, no later than two years after a new Telecommunications Act is approved, modified regulations on competition, inter-connection, universal services, licensing criteria and the separation of operational and regulatory functions.

(iii) Recent and planned reforms

30. The partial liberalization of telecommunications services is seen as a way to complement the sector's large investment requirements and to enhance competition. Constitutional Amendment No. 8 of 1995 has made possible the participation of private enterprises in services previously reserved to State enterprises. Further changes are being considered to:

- consolidate the liberalization of cellular telephone networks, satellite transmission and value-added services;
- establish a new regulatory framework and pricing structure;
- restructure the TELEBRAS associate companies into regional firms with the aim of creating stronger enterprises able to compete on equal terms with private firms; and
- prepare for the possible privatization of parts of the TELEBRAS system.

31. In early 1996 the National Congress was considering a draft bill that would relax restrictions on foreign participation in cellular telephone (band B frequency), and satellite and value-added services. Under the bill, foreign interests would be allowed to own all of a firm's non-voting shares (up to two-thirds of the total capital) and to control up to 49 per cent of the voting capital. In the latter case, the restriction on foreign ownership would remain for three years after the legislation came into force, and would then be adjusted if required by the "national interest."

32. Under the proposed legislation, the length of concessions would vary with the type of service; concessions for satellite and cellular telephone services would be granted for renewable periods of 15 years, while ten-year renewable concessions would be granted for limited services. Concessions for limited, satellite and cellular telephone services would be available only to Brazilian firms.

33. The bill requires the public, regional telephone companies to create new firms to operate their cellular telephone services separately to prevent cross-subsidization between cellular and basic public services. The bill also provides for the creation of an independent National Communications Commission to take over the present regulatory functions of the Ministry of Communications.

(3) Banking and Insurance

Article 192 of the 1988 Constitution requires the National Congress to restructure the national financial system and adopt complementary regulations regarding, inter alia:

- authorization for the operation of financial institutions, providing access to all instruments in the market for public and private banks;
- authorization and the operation of insurance, pension funds and capitalization institutions, as well as an official supervisory agency and an official reinsurance agency;
- conditions for foreign capital participation in the above-mentioned institutions, taking into consideration the national interest and international agreements; and
- the establishment of a fund or insurance to protect and guarantee credits, investments and deposits.

34. Article 192 of the Constitution also established a 12 per cent ceiling on real interest rates.

35. Article 52 of the Transitional Constitutional Provisions of 1988 makes the adoption of complementary regulations for Article 192 a pre-condition for allowing the establishment in Brazil of new foreign financial institutions or any increases in foreign participation in the capital of Brazilian financial institutions. Limitations may be waived pursuant to international agreements, reciprocity or the national interest.

36. Various legislative proposals have been made since 1988 to introduce the complementary legislation referred to in Article 192 of the Constitution and Article 52 of the Transitional Constitutional Provisions, but none has been approved by Congress. Since 1988, about ten foreign financial firms have been authorized to increase their capital participation in domestic financial institutions or to install branches in Brazil.

(i) Banking

(a) Market structure and performance

37. Brazil has a large and diversified banking system covering commercial, development, investment, savings and multi-purpose banks as well as consumer finance, leasing, and real estate finance companies. The system includes some 265 banks, plus hundreds of credit co-operatives, security brokers and dealers, and consortium managers (Table VII.4).⁵ The banking system encompasses both federal and State institutions and private firms. Foreign participation is modest; overseas banks established in Brazil account for less than 10 per cent of total assets.

Table VII.4
Structure of the banking system, March 1996

	Main Offices	Branches	Total Assets	
	No.	No.	US\$ billion	Per cent
Commercial banks	38	4,091	102.2	18.9
Foreign banks ^a	18	77	18.6	3.4
Others	20	4,014	83.6	15.4
Multi-purpose banks	202	11,481	291.8	53.8
Foreign banks ^a	20	309	33.5	6.2
Others	182	11,172	258.3	47.7
Development banks	6	9	3.0	0.6
Investment banks	17	47	7.3	1.3
Savings banks	2	1,821	86.8	16.0
Credit co-operatives	926	-	1.3	0.2
Consumer finance companies	45	101	1.6	0.3
Security brokers	227	366	7.9	1.5
Securities dealers	313	574	10.5	1.9
Leasing companies	77	114	20.5	3.8
Savings and loan companies	22	33	7.4	1.4
Consortium managers	455	6,040	1.6	0.3
Total	2,532	36,158	541.9	100.0

a Refers to banks under foreign control (where the majority of voting capital is foreign) and branches of foreign banks.

Source: Brazilian authorities.

38. Public sector banks play an important rôle in the Brazilian system. Federal institutions provide the bulk of investment finance and agricultural credit through a wide chain of federal, regional, State commercial and State development banks (Chapter V). The Federal Savings Bank (CEF) and *Banco*

⁵Consortium managers provide credit for the acquisition of durable consumer goods.

do Brasil are the country's first and second largest banks respectively; together they control assets of about US\$154 billion representing about 32 per cent of the system's capitalization. The CEF is responsible for financing new and existing housing, at preferential rates, and managing the Employment Guarantee Fund (FGTS), the Social Integration Program (PIS) and the Fund for the Formation of Civil Servants (PASEP). The CEF holds about 18 per cent of the banking system's assets and has become in recent years a multi-purpose bank, acting as a private institution in several areas of activity.

39. *Banco do Brasil* accounts for just under 14 per cent of the banking system's total assets and is Brazil's second largest bank in terms of deposits. *Banco do Brasil* is the principal executor of banking services for the Federal Government, with activities extending to areas related to foreign trade and the financing of rural and industrial activities. The Federal Government holds a controlling 73 per cent stake in *Banco do Brasil*; the balance of shares is publicly owned and traded.

40. The National Development Bank (BNDES) plays a particularly important rôle in the provision of preferential credit in support of Brazil's development objectives (Box V.3). In addition to the CEF *Banco do Brasil* and BNDES, there are 26 State-owned banks and three federally owned, regionally operated development banks. The largest banks after the CEF and *Banco do Brasil* are Bradesco, Unibanco and Itaú, all private banks with total assets of US\$80 billion, or some 17 per cent of banking assets.

41. The Brazilian securities market has expanded rapidly in recent years, influenced by the opening of the economy, in particular through the liberalization of securities regulations to facilitate foreign portfolio investment. Foreign participation in the stock market (BOVESPA) has increased rapidly from close to US\$5.5 billion in 1993 to about US\$11.5 billion in 1995. Multi-purpose banks play a prominent rôle in the securities market, followed by public and private pension and mutual funds.

42. Brazilian banks benefited for many years from high inflation: they were able to earn high yields on non-interest bearing deposits such as demand deposits and resources in transit, which tended to compensate for administrative inefficiencies. The new environment of low inflation and high real interest rates resulting from the *Plano Real* (Chapter I) has seriously affected the banking system, reducing profit margins and resulting in substantial losses in some institutions

43. Since the adoption of the *Plano Real* in mid-1994 the Central Bank has had to intervene in or liquidate some 31 institutions, notably the *Banco Economico* and BANESPA, the Sao Paulo State bank, the latter alone requiring some US\$15 billion in refinancing. In 1996, the Government announced a plan to increase by R\$7.8 billion the capital of the *Banco do Brasil* after the bank disclosed losses of R\$4.0 billion in 1995.⁶

44. Banks are under pressure to adjust to the new economic environment of low inflation and high interest rates by cutting costs and diversifying into new activities. Personal credit operations have increased, investment portfolios have diversified, and service charges have been set more realistically; personnel cuts have also been implemented, with the loss of some 66,000 positions in 1995. State-owned banks, with high labour costs and a large proportion on non-performing loans, are expected to face a more difficult adjustment process than private banks, with several expected to have to go through drastic restructuring with a view to their eventual privatization.

⁶*Banco do Brasil's* problems have been attributed to non-performing loans related to past policies requiring the bank to finance loss-making State companies and agriculture (*Financial Times*, 21 March 1996).

45. Although bank profits have fallen, they remain higher than in non-financial activities. Moreover, Brazilian banks still exhibit some of the best performance indicators in Latin America, including a 13 per cent net interest margin and 20 per cent equity relative to assets. Most analysts agree that Brazil's private bank sector remains solid and that the stability of the largest institutions forms a buffer against a systemic crisis.⁷ Observers foresee further bank consolidations leading towards a three-tier banking system: retail banking with a small number of large institutions, investment banking with a reduced number of highly specialized firms, and companies engaged in narrowly defined activities such as financing vehicle sales.

(b) Regulatory Framework

46. The most important laws affecting the structure and operation of Brazil's banking system are Law No. 4595 of 1964 and Law No. 4728 of 1965. Law No. 4,595 established the National Monetary Council (CMN) as the decision-making organism of the National Financial System; the Council is responsible for defining policies and for regulating activities in the monetary and credit areas. The CMN is composed of the Minister of Finance, who presides over its meetings, the Minister of Planning and Budget, and the President of the Central Bank (Chart II.1). The Central Bank of Brazil is the main agency in charge of implementing the policies defined by the CMN. The Central Bank regulates all financial institutions; their establishment and expansion are subject to prior authorization by the Bank.⁸

47. The Federal Savings Bank (CEF), *Banco do Brasil* and the National Development Bank (BNDES) play auxiliary roles in the execution of credit policies.

48. Prudential regulations are established by the CMN and the Central Bank. Financial institutions must comply with accounting standards set by the CMN and the Central Bank's Accounting Plan for the National Financial Institutions System (COSIF). The Plan's norms are binding on commercial, development, investment and savings banks, consumer finance companies, leasing companies, securities brokers, securities dealers, savings and loan companies, and credit co-operatives. Financial accounts are verified by independent public auditors, registered with the Securities Exchange Commission (CVM).

49. Resolution 1524 of 21 September 1988 opened the possibility of establishing multi-purpose banks, also formed through allowing the merger of specialized financial institutions. Prior to the issue of Resolution 1524, specialized financial institutions operated in various financial sectors, often as part of financial conglomerates. The resolution broadened the range of activities in which banks could engage, seeking in this way to reduce segmentation in the financial system, allowing the merger of subsidiaries into one organization, reducing the circumvention of prudential regulations and increasing efficiency by giving financial institutions greater organizational flexibility. The arrangement proved highly attractive and 91 applications were approved in 1988; most foreign banks took advantage of the scheme.

50. Approval procedures for financial institutions include publishing a "declaration of intention" which describes the type of institution to be created, the initial capital and the name of the principal administrators. All financial institutions must meet minimum levels of paid-in capital and net worth (Resolutions 2099 of 17 August 1994 and 2139 of 29 December 1994). Paid-in capital and net worth

⁷*Euromoney*, September 1995; *Financial Times*, 19 April 1996.

⁸The Central Bank is also responsible for implementing Brazil's monetary policy (Chapter I).

levels are related to the risk of particular activities and vary from R\$200,000 for securities brokers and exchange brokerage firms to R\$7 million for commercial banks and the commercial bank portfolio in multi-purpose banks. Risk-based capital is required as provided under the Basel Agreement.

51. Under the 1988 Constitution, the participation of foreign firms in the Brazilian banking system is restricted. Except in connection with the privatization programme, there is no market access guarantee for the establishment of new branches and subsidiaries of foreign firms or for increases in foreign participation in established firms. The total number of foreign branches in Brazil is limited to that existing on 5 October 1988. Exemptions may be authorized by the President of the Republic, based on international agreements, reciprocity or the national interests; it appears that no such exemptions have been made.

52. The operations of foreign banks established before 1988 were "grandfathered" i.e., unaffected by the constitutional change, but were still subject to restrictions on expansion. Both foreign and domestic banks are subject to restrictions on the number of branches they may open. Foreign banks are only allowed to acquire branches of other foreign banks. Foreign banks must relocate branches by closing one branch to open a new one.

53. National treatment is granted to foreign banks operating in Brazil. The requirements for obtaining permits to expand operations or conduct new activities are the same for all financial institutions; the conditions are established by the National Monetary Council and the Central Bank.

54. Financial services provided by MERCOSUL institutions are subject to the same treatment as any other foreign agent. However, an ad-hoc group has been set up to negotiate a framework agreement along the lines of the General Agreement on Trade in Services (GATS). Such agreement would include a liberalization process consistent with Article V of the GATS (on economic integration) and based on positive lists to be implemented over ten years. The negotiations also envisage a dispute settlement mechanism and specific rules for the sectors included in the relevant annex of the GATS. The ad-hoc group is also to document all agreements signed between individual MERCOSUL members and third parties.

56. There are no obligations on domestic operators to use specific banks for particular transactions.

(c) Recent Reforms

57. Difficulties in the banking sector have spurred efforts to set up a market-based system to prevent problems and deal with institutions in distress. Steps were taken in 1995 to establish the deposit insurance system called for in the 1988 Constitution: CMN Resolution No. 2211 of 16 November 1995 provides for a safeguard system to guarantee deposits and reduce the risk of liquidity crises. The system would include a fund to be created by the industry; it would be financed from charges on items such as the balances to be guaranteed as well as on certain bank services. The insurance system would fully cover deposits of up to R\$ 20,000, which account for 95 per cent of bank deposits.

58. Provisional Measure No. 1,179 and Resolution No. 2208, both of 3 November 1995, created the Programme for the Restructuring and Strengthening of the National Financial System (PROER). The Programme seeks to achieve an ordered consolidation of banks through rules defined by the Central Bank. It was implemented by Provisional Measure No. 1182 of 17 November 1995, requiring the Central Bank to restructure the entire banking system and give the Bank the authority to maintain within the system only healthy institutions with the necessary levels of solvency. The Provisional Measure also simplified the conditions under which the Federal Government may gain control of institutions

in difficulties with a view to their future sale; in each case, a time limit is to be specified for the sale, which may only involve private investors.

59. In order to ensure the recovery of a financial institution, the Central Bank may require their recapitalization, the transfer of stock control, mergers or break-ups; failure to comply with such requirements allows the Central Bank recourse to the Temporary System of Special Administration, interventions or extra-judicial liquidations. In such cases, the Central Bank may authorize the transfer of properties and rights to third parties. The Bank may also adopt precautionary measures such as removing individual administrators or restricting an institution's activities.

60. Brazil's list of commitments under the General Agreement on Trade in Services (GATS) includes engagements to introduce into the schedule criteria for the participation of foreign capital in Brazilian financial institutions within two years after the adoption by the National Congress of legislation permitting such participation.

(ii) Insurance

(a) Market structure and performance

61. The share in GDP of the insurance sector remained static at around 1 per cent between 1980 and 1993; however, that share has doubled following the introduction of the *Plano Real* in mid-1994 and the achievement of a more stable economic environment. The value of insurance premiums has also risen sharply, from US\$7.3 billion in 1993 to US\$11.7 billion in 1994 and US\$14.2 billion in 1995. Considering all firms and agents operating in the sector, insurance employs directly some 213,000 persons.

62. The Brazilian insurance market is served by 122 companies and a government-controlled monopoly re-insurer. There are several independent insurance companies but some of the largest firms are bank affiliates, with about 70 per cent of the market controlled by insurers linked to financial institutions. Brazil's four largest insurance groups are Sul América, Bradesco, Itaú and Bamerindus, which together collected some R\$6.2 billion in premiums in 1995. Market concentration is high, the ten largest insurance firms having collected close to 64 per cent of all premiums in 1995. Several foreign insurers have ownership interest in Brazilian insurance companies but foreign-controlled firms account for only some 10 per cent of total premiums.

(b) Regulatory framework

63. Decree-Law No. 73 of 1966 established the basic legal framework within which insurance activities take place in Brazil. The Decree-Law created the Private Insurance National System (SNSP) comprising the National Private Insurance Council (CNSP), the Brazilian Re-insurance Institute (IRB), the Private Insurance Superintendency (SUSEP) as well as insurance companies and insurance brokers; open pension funds are also part of the SNSP.

64. The CNSP's responsibilities include defining policies for private insurance and reinsurance as well as regulating the establishment, organization, operation and supervision of entities undertaking activities within the SNSP. The Council is also charged with ensuring that the constraints faced by foreign insurance firms operating in Brazil are reciprocal to those applied to Brazilian firms established or seeking to enter the countries of origin of such firms.

65. SUSEP is charged with implementing the policies defined by the CNSP, supervising firms operating within the SNSP, processing applications to operate or liquidate insurance companies and approving contracts coverage and premiums. Prior authorizations have not been required since 1992, but contracts must be submitted to the SUSEP for analysis and filing; based on its analyses, the Superintendency may require modifications or order the suspension of marketing. The SUSEP may also set reference premiums to ensure appropriate levels of technical reserves.

66. The IRB has competence to accept mandatory or optional re-insurance both in Brazil and abroad; insurance companies must re-insure with the Institute liabilities exceeding their retention limits. The IRB is also responsible for placing overseas insurance and re-insurance; re-insurance operations abroad are usually restricted to the excess the domestic market cannot absorb, based on the technical retention capacity of the Institute and retrocession consortia. Such consortia are administered by the IRB and membership is compulsory for all insurance companies operating in Brazil. The Federal Government owns 50 per cent of the IRB's shares, with the rest controlled by insurance companies.

67. The procurement of insurance services by governments (Federal, State and municipalities) used to take place at set prices, with contracts allocated to insurers through a "lottery" system. Since the approval in 1993 of Law No. 8666 regulating government procurement of goods and services (Chapter V(1)), the public sector has contracted insurance services through a tendering system. Tenders are opened to all insurers operating in Brazil and meeting the requirements set by the contracting agencies, normally related to the insurer's financial situation and its expertise in the relevant area.

68. Under the 1988 Constitution, foreign access to Brazil's insurance market is relatively restricted. The incorporation of new branches and subsidiaries of foreign insurance companies, as well as increases in the percentage of the participation of foreign persons and firms in the capital stock of Brazilian insurance institutions with headquarters in Brazil is not permitted. No distinctions are made between companies from different trading partners, including MERCOSUL.

69. Foreign nationals may establish themselves as brokers. However, the presence of foreign capital in domestic brokerage firms, directly or indirectly, is restricted to 50 per cent of the domestic firm's total capital and one-third of its voting capital. This rule does not apply to firms established before 3 July 1986.

70. Imports may only be insured with companies established in Brazil; exports must be insured in Brazil when the sale includes the insurance cost.

(c) Recent and planned reforms

In line with Article 192 of the Constitution requiring the adoption of complementary regulations for the national financial system (see introduction to section (3)), new regulations for such system, including insurance, were under consideration by the National Congress in mid-1996. Awaiting promulgation at that time was a constitutional amendment substituting a general re-insurance provision for the reference in Article 192 to an official re-insurance agency; as a result, future complementary regulations would cover re-insurance in general and not only such an agency. The regulations would include foreign participation in the insurance sector, rules for the authorization and operation of insurance establishments, and capitalization and private pension schemes; the new regulations would also cover the official supervisory agency (SUSEP) and may establish an indemnification fund to protect insured parties against the liquidation of insurers.

71. Under Article 52 of the Transitional Constitutional Provisions, the President of the Republic may waive the prohibition on the entry of foreign capital; using this prerogative, new foreign capital was authorized in health insurance in 1996.

72. Brazil's list of commitments under the General Agreement on Trade in Services includes engagements to introduce into the schedule criteria for the participation of foreign capital in insurance, re-insurance and brokerage activities in Brazil within two years after the adoption by the National Congress of legislation permitting such participation.

(4) International Transport

(i) Air transport

73. All 18 Brazilian airline companies are private enterprises; equity participation is allowed in three of these firms. Activity levels are relatively high: in 1995 international air services involved just over 305,000 tonnes of cargo, 7,200 tonnes of mail and some 6.4 million passengers, with foreign firms providing about half of the cargo and passenger services and 60 per cent of mail operations.⁹ There are 25 fully operational international airports in Brazil.

74. The Department of Civil Aviation (DAC) of the Ministry of Aeronautics is the agency responsible for the planning, direction, co-ordination, operation and provision of incentives for Brazil's civil aviation sector, in accordance with the objectives defined in the National Aerospace Policy. Responsibility for granting authorization to construct and operate airports and auxiliary services lies with the DAC and other agencies, including the Aeronautics Engineering Direction (DIRENG), the Brazilian Enterprise for Airport Infrastructure (INFRAERO), and the Flight Protection and Electronic Direction (DEPV).

75. The operation and administration of public airports comes under the exclusive control of INFRAERO; DEPV has responsibility for navigation and air traffic services. Foreign enterprises may not administer or operate airports nor provide navigation and air traffic services; however, they may operate other auxiliary services for their own benefit (i.e., these services may not be marketed to third parties). Construction authorization for airports and auxiliary services is granted through public tender open to all parties.

76. The operation of public air services is subject to DAC authorization. Authorization is only granted to legal persons with headquarters in Brazil, four-fifths of voting rights in Brazilian hands and under Brazilian management.

77. There are three firms operating as national flag carriers (Varig, Vasp and Transbrasil). According to the authorities, such carriers receive no special benefits, with access to routes granted on the basis of public proposals by airline companies. There is no restriction on national lines purchasing craft and other equipment from foreign sources.

78. The principle of reciprocity is the basis of Brazil's international bilateral agreements; no preferences are granted to carriers from other countries, including those from MERCOSUL. Cabotage services are reserved to national companies.

⁹Domestic air services involved the handling of close to 350,000 tonnes of cargo, 7,100 tonnes of mail and some 18.1 million passengers.

(ii) Ports and maritime transport

(a) Ports

79. In 1994, Brazil's 12 busiest ports handled almost 122 million tonnes; in volume terms the most important ports were Tubarão, which handled 43 per cent of the total, followed far behind by Santos, with 19 per cent, and Praia-mole with 11 per cent.¹⁰

80. The government agencies involved in the international maritime transport sector are: the Ministry of Transport, which has responsibility for trade-related matters through the Departments of the Merchant Navy (DMM) and of Ports and Inland Waterways (DPH); the Ministry of the Navy, whose Department of Ports and Coasts (DPC) is responsible for safety and navigation; and the Ministries of Finance and of the Environment.

81. Port services are regulated by Law No. 8630 of February 1992. The law provides for a decentralized system of ports administration, with ports under federal, State, municipal and private administration operating side by side. Most ports, including those involved in liner cargo, are administered by the State firm, Docas Companies. Various specialized terminals are managed by state-run PETROBRAS and Companhia Vale do Rio Doce (CVRD). Private companies operate a small number of terminals. Law No. 8630 envisages increasing private participation in ports administration and an ending the Stevedore Union special rights.

82. DPH is the Government's central planning agency for ports, while Docas Companies has responsibility for investments in ports. Federal regulations are applicable to security, safety, customs and the use of operational areas. Regulations are applied on a non-discriminatory basis. Firms supplying auxiliary port services must be established as legal entities under Brazilian law. The authorities noted that no discrimination exists against the participation of foreign capital in the provision of auxiliary services.¹¹

83. The use of pilotage, towing and tug assistance, navigation aids, berth and berthing services and other terminal facilities is mandatory at all ports. Pilotage and tugs for general cargo operation are supplied by private companies. Crews are not allowed to undertake stevedoring; in some ports the use of the facilities must be related to pre-established activities. CVRD and PETROBRAS contract services or use their own equipment to handle bulk operations (dry and liquid). Private companies are important providers of services such as oil and fresh water supplies, garbage collection and ballast waste disposal.

84. Port services are available on a non-discriminatory basis, the authorities indicating that there is no discrimination against foreign firms in respect of access or use of sea-ports. No country receives preference on access or use of ports. The only port restriction imposed on foreign vessels concerns minimum distances of sea traffic from Navy installations. DPC has the right to inspect and prevent ships from entering harbours on safety grounds.

¹⁰Further details on the structure and rules governing both ports and maritime transport are contained in Brazil's replies to the Questionnaire on Maritime Transport Services (S/NGMTS/W/2/Add.34, 18 July 1995).

¹¹Including container and depot services, maritime agencies, forwarding services, cargo handling, storage and warehousing, customs clearance and vessel maintenance.

85. The authorities indicated that one measure discriminating in favour of national maritime transport services or service suppliers is the lighthouse fee which applies only to foreign flag vessels (Decree-Law No. 1023 of October 1969).¹²

86. The Secretariat report for the previous Trade Policy Review of Brazil pointed out that poor port infrastructure was a major barrier affecting imports and export. The Government has addressed such infrastructure problems through legislative reforms and privatization.

(b) Maritime transport

87. In 1994, there were 196 national flag vessels in Brazil's fleet with a deadweight tonnage of just over 8.6 million tonnes. Bulk carriers and oil tankers were the main vessel types in the Brazilian register. Also in 1994, the estimated share of total Brazilian international trade carried by sea was 91 per cent by volume, or 94 per cent by value. Some two thirds of the total international maritime trade corresponded to exports, and about 70 per cent was carried in foreign flag vessels.

88. Article 178 of the 1988 Federal Constitution gave Brazilian shipowners priority in the provision of maritime transport services. This article imposed constraints on the hiring of foreign nationals, including the requirement that at least two thirds of the crew and the captain of Brazilian flag vessels had to be Brazilian nationals. Article 178 was removed in 1995 by Constitutional Amendment No.7; revisions to the corresponding regulations are in progress.

89. Intermodal transport is regulated by Law No. 6288 of December 1975. Under that law, only companies controlled by Brazilian nationals may issue "intermodal documents of transport" for inland cargo. Law Project No. 4586-A/90, now with Congress, seeks to revoke Law No. 6288 and establish rules for Multimodal Transport Operator activities. No discriminatory regulations affect bulk transport services, except that imported crude oil and domestically produced petroleum and petroleum products must be transported by national flag vessels. International maritime transport of general cargoes requires the filing with the authorities of tariff schedules and other information.

90. Foreign commercial presence for the supply of international maritime transport services requires the supplier to be established in Brazil under Brazilian law, and that the majority of the company's voting rights be owned by Brazilian nationals. Such shares must be at least 60 per cent to obtain registration of a vessel in Brazil. These restrictions are under review by Congress.

91. The authorities indicated that there were no measures limiting the total value of maritime transport services undertaken by foreigners or institutional arrangements for cargo allocation, except for certain bilateral agreements and reservations concerning government cargoes. Cargoes under bilateral agreements amount to some 8-8.5 per cent. Brazil maintains cargo-sharing agreements with Algeria, Angola, Argentina, Chile, Peru, Romania and Uruguay.

92. Brazil is not a party to the United Nations Convention on a Code of Conduct for Liner Conferences. At present, liner conferences and their agreements are not subject to government control. Filing of tariff schedules and complementary data are required by the maritime authorities; the authorities noted that all parties are given equal treatment.

¹²Preferential treatment is also granted to Brazilian shipping enterprises in the form of the Merchant Marine Fund for Shipbuilding; this fund is also used to finance the construction of vessels in Brazilian shipyards for export.

93. Current legislation reserves certain cargoes to Brazilian flag vessels operated by national companies, including equipment and parts for Brazilian military organizations. The maritime transport of cargoes of public entities and goods benefiting from official fiscal or credit programmes must also be transported in Brazilian flag vessels. When no such vessels are available or rates are not considered reasonable, a waiver may be given for the use of foreign vessels; in such cases preference is given to vessels registered in countries with which Brazil has agreements.

94. Violation of fair commercial practices in the maritime sector fall under the general competition laws (Law No. 8884 - Chapter V(1)). However, the Government was studying the need for specific antitrust regulations for maritime transport services.

95. Constitutional Amendment No. 7 eliminated restrictions and reduced former requirements in the transport sector, in particular maritime navigation (Box II(1)). A draft bill to introduce the required implementing regulations was under consideration by Congress in mid-1996. The bill proposes changing the requirements for granting authorizations to navigation firms and for the registry of Brazilian flag vessels; it seeks to allow foreign freight vessels to provide services between Brazilian ports under certain circumstances and to open internal navigation to foreign ships when reciprocity is granted.

REFERENCES

- Aguilar D. (1993), A Questão da Transmissão de Preços Agrícolas, R. Econ. Sociol. Rural, 31(4), pp. 291-308.
- Auty R.M. (1995), Industrial Policy, Sectoral Maturation, and Postwar Economic Growth in Brazil: The Resource Curse Thesis, Economic Geography, 3, pp. 257-272.
- Bastos M-I. (1992), The interplay of domestic and foreign political constraints on the informatics policy of Brazil, Working Paper No 6, The United Nations University.
- Baumann R. (1995), "An Appraisal of Intra-Firm Exports from Brazil in 1980 and 1990", The Developing Economies, 33 (1), pp. 32-51.
- Baumann R. (1994), "A saga da competitividade das exportações industriais brasileiras - 1992", Pesquisa e Planejamento Econômico, 24(2), pp. 135-186.
- Bertrand J.P. (1994), Politique agricole, politique d'ajustement et compétitivité agricole et agro-alimentaire du Brésil et de l'Argentine, in M. Benoit-Cattin, Economie des politiques agricoles dans les pays en développement, Paris.
- Brandão A.S. (1994), Distributional implications of international agricultural trade liberalisation: a case study of Brazil, in Modelling economy-wide reforms, Paris.
- Brazilian Embassy in London (1996), Software, Internet address: <http://www.demo.co.uk/itamaraty/software.html>, July.
- Delgado G. da C. (1994), Agricultura e Comércio Exterior: Rumo da Regulação Estatal e suas Implicações para a segurança Alimentar, Cadernos Temáticos, Rede Interamericana Agricultura e Democracia, Rio de Janeiro.
- Fritsch W. and G. Franco (1992), "Los avances de la reforma de la política comercial e industrial en Brasil", in ¿Adonde va America Latina?, Santiago.
- Gandara and Kaufman Consultores Associados (1994), Privatização do Sector Siderúrgico Brasileiro: Avaliação de Resultados e Perspectivas, Report commissioned by the National Development Bank (BNDES), October.
- Henz R.A. (1995), Condicionantes externos à política agrícola, Ensaio FEE, Port Alegre, 16(1), pp 52-65.
- Krueger A., M. Schiff and A. Valdez (1991), The Political Economy of Agricultural Pricing Policy, Johns Hopkins Press for the World Bank.
- Moguillansky G. (1994), "Factores determinantes de las exportaciones industriales brasileñas durante la década de 1980", Cuadernos de Economía, 31(92), pp 3-25.
- Randall L. (1993), The Political Economy of Brazilian Oil, Praeger, Westport, Connecticut.

Rask K. (1994), Evidence of the empirical relevance of the infant industry argument for the protection of Brazilian ethanol production, Agricultural Economics, 10(3), 245-256.

Scherer A.L. and S. Campos (1993), As mudanças no comércio internacional e as exportações brasileiras de têxteis e vestuário, Ensaio FEE, Porto Alegre, 14(1), pp. 229-254.

Tauile J.R., J. Fagundes and M. Arruda (1995), "A indústria de autopeças: perspectivas para a década de 90", RBE, 49(3): pp 499-519.

U.S. Trade Representative (1996), 1995 National Trade Estimate- Brazil, Internet address: <http://www.ustr.gov/reports/nte/1995/brazil.html>, July.

Vaz e Dias J.C. (1993), Intellectual Property Rights Protection and the Inflow of Foreign Technology and Direct Foreign Investment: the Brazilian Case, Doctoral Thesis, Department of Law, University of Kent at Canterbury.

World Bank (1992), Brazil - Reforming the Telecommunications Sector: Policy Issues and Options for the 1990s, Washington.

World Bank (1994), Brazil - The Management of Agriculture, Rural Development and Natural Resources, Volume II: Background Papers, Washington.