

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) TRADE POLICY FORMULATION AND IMPLEMENTATION

(i) Trade policy objectives

1. During the period since 1996, Brazil's main objective has been the implementation of the trade agreements negotiated at the beginning of the 1990s, namely the Uruguay Round and MERCOSUR. In relation to the WTO Agreements, new legal instruments were introduced to reflect the commitments in the domestic legislation. Deregulation and privatization of the services sector was also related to the presentation of offers in the WTO services negotiations.

2. Better market access conditions for Brazilian products are also a key item on Brazil's trade agenda. To this end, unilateral trade facilitation and promotion efforts, as well as regional and multilateral negotiations have been undertaken. At the multilateral level, Brazil is of the view that trade in agriculture should be subject to the same rules as trade in manufactured goods.

3. At the regional level, Brazil's major trade objective is the completion of MERCOSUR, by including all sectors currently excluded from free trade (i.e. automobiles and sugar), the progressive elimination of the exceptions to the Common External Tariff (CET), and the deepening of integration in new areas, such as government procurement, services, technical regulations, and the coordination of economic policies. This will hopefully be followed by the creation of a broader economic space in South America, through free-trade agreements between MERCOSUR and the other countries (e.g. the Andean Pact members), and the conclusion of the FTAA negotiations. The pursuit of negotiations with the European Union, to establish a transatlantic free-trade area, are also part of Brazil's agenda. Nevertheless, the authorities noted that the subregional, regional and inter-regional projects are not considered an alternative to the multilateral trading system.

(ii) Institutional and legal framework

4. Brazil's institutional and legal framework has remained mostly unchanged since 1996. Brazil is a federal republic with 26 States and a federal district. The 1988 Constitution grants broad powers to the Federal Government, made up of the executive, legislative, and judicial branches. The President, assisted by the Ministers, exercises executive power. The President holds office for four years, with the right to re-election for an additional four-year term, and appoints his own Cabinet. The Ministers of State are chosen by the President, and their duties include countersigning acts and decrees signed by the President, expediting instructions for the enforcement of laws, decrees, and regulations, and presenting the President an annual report of their activities.¹ Under Law No. 9.649 of 27 May 1998, the structure and some of the functions of various ministries have changed; through subsequent Provisional Measures further changes are being implemented.

5. Legislative power is exercised by the National Congress, which is composed of the Chamber of Deputies and the Federal Senate. The total number of elected deputies representing the States, territories and the Federal District is determined in proportion to the population. Deputies are elected by popular vote for a period of four years. The Federal Senate is composed of representatives of the States and of the Federal District, elected by a majority vote. Senate terms are for eight years, with elections staggered so that two thirds of the upper house is up for election at one time and one third four years later.²

¹ The 1988 Federal Constitution, (Title IV, Chapter II).

² The 1988 Federal Constitution, (Title IV, Chapter I, Section I).

6. Congress is responsible for deciding on all matters within the competence of the Union, including fiscal and budgetary arrangements; national, regional, and local development plans and programmes; financial, foreign exchange, and monetary matters, and issues related to financial institutions and their operations; and currency issuance limits, and the amount of federal indebtedness. Congress is also responsible for making definitive resolutions on international treaties.³

7. Judicial power in Brazil is exercised by the Supreme Federal Court, the Superior Court of Justice, the Federal Regional Courts and the Federal Judges, and other special courts and judges.⁴ The courts may declare a law or a normative act of the Government unconstitutional only by vote of the absolute majority of their members or of the members of the respective special body.

8. The legislative process comprises the preparation of amendments to the Constitution, supplementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees, and resolutions. Constitutional amendments may be proposed by at least one third of the members of either house, by the President, or by more than one half of the legislative assemblies. Amendments must be ratified by three fifths of the members of each house.⁵ Supplementary and ordinary laws may be proposed by any member or committee of the Chamber of Deputies and the Federal Senate of the National Congress, the President of the Republic, the Supreme Federal Court, the Superior Courts, the Attorney General of the Republic or the citizens.⁶ The submission of draft legislation to the Chamber of Deputies by popular initiative requires that it be subscribed by at least 1% of the population eligible to vote, distributed among at least five States, with no less than 0.3% of the electors in each one of them.

9. A bill of law approved by one House must be reviewed by the other in a single reading (i.e. discussing and voting) and sent for sanctioning or promulgation, if approved by the reviewing House, or it has to be dismissed, if rejected. The House in which voting is concluded must send the bill of law to the President of the Republic; if he concurs, he approves it.⁷

10. In important and urgent cases, the President of the Republic may adopt provisional measures with the force of law and must submit them to the National Congress immediately. Provisional measures lapse if they are not converted into law within a period of 30 days from their publication.

11. International treaties presented to the Congress by the President undergo similar procedures as a domestic bill. International treaties in Brazil have the status of ordinary law (Box II.1). The WTO Agreement is therefore admissible in courts.

(iii) Trade policy formulation and implementation

12. The Chamber of Foreign Trade (CAMEX) was created in 1995 to formulate and coordinate trade policy. CAMEX is part of the Government Council of the Presidency of the Republic. The Chamber consists of: the Minister of Development, Industry and Foreign Trade, who presides over it, and the Ministers of the Civil House, of External Relations, of Finance, of Planning, Budget and Administration, and of Agriculture and Supply, and the President of the Central Bank. The Chamber coordinates the implementation of its decisions, but each ministry remains responsible for matters within its competence.

³ The 1988 Federal Constitution, Title IV (Chapter I, Section II).

⁴ The 1988 Federal Constitution, Title IV (Chapter III).

⁵ The 1988 Federal Constitution (Art. 60).

⁶ The 1988 Federal Constitution, Brasilia (Art. 61).

⁷ The 1988 Federal Constitution, (Arts. 65 and 66).

Box II.1: Ranking of Brazilian Laws

The 1988 Brazilian Constitution sets out the fundamental rights of citizens, as well as the organization and limitations of the Powers of the State. It also contains provisions on the National Tax System, the Economic and Financial Order, and the Social Order.

Complementary Laws require a specific quorum, since their approval is by an absolute majority (50% plus one members) in both Houses of Congress. They regulate topics contained in the Constitution. They are sanctioned by the President.

Ordinary Laws are the common instrument for law-making, establishing rights and obligations on a wide range of issues. They are approved by a simple majority (50% plus one of members present). Like complementary laws they have to be sanctioned by the President.

Provisional Decrees (MPs) were created by the 1988 Constitution and have replaced Decree Laws. They can be enacted by the President in cases of urgency, and enter into force immediately. They are analysed by Congress upon enactment and may be resubmitted every 30 days if Congress fails to do so within that period. They have the same legal status as ordinary laws.

Legislative Decrees refer exclusively to matters of competence of the National Congress. They are approved by a simple majority and are not submitted for presidential sanction. They are of significant relevance in the Brazilian legal system as they are the legal instrument through which international treaties and conventions are internalized. In the Brazilian legal system, for international treaties and conventions to enter into force domestically they must be approved by Congress. Legislative decrees have the same legal status as ordinary laws.

Congress, Senate and Chamber of Deputies Resolutions are approved by a simple majority and are not submitted for presidential sanction. They refer exclusively to matters of competence of Congress and both its Houses and have the same legal status as ordinary laws.

Regulatory Decrees refer exclusively to matters of competence of the heads of the Executive Branch (the President, State Governors, and Mayors). Their purpose is to clarify and to ensure the enforcement of laws. The prevalence of the legality principle in the Brazilian legal system prevents the enactment of any autonomous decrees, that is, decrees creating rights and obligations with no relation to any existing law.

Other normative instruments are used in Brazil for the regulation of laws and decrees (i.e. normative instructions directives, declaratory acts, etc.). The legal ranking of these instruments corresponds to the ranking of the authority that issues them. Therefore, a directive issued by a Minister of State (Federal Government) is superior to that of a State Secretary (State Government).

Source: Brazilian authorities.

13. The Ministry of Development, Industry and Foreign Trade is in charge of implementing trade policy through the Secretariat of Foreign Trade (SECEX), which is divided in four departments: Department of Foreign Trade Operations (DECEX); Department of Commercial Defence (DECOM); Department of International Negotiations (DEINT); and Department of Foreign Trade Policies (DEPOC).

14. The Ministry of External Relations assists the President in formulating foreign policy regarding, *inter alia*, regional integration and foreign trade policy. The Ministry of Finance formulates and implements economic policy. It is in charge of customs and tax policy and administration, inspection, and revenue collection. The National Monetary Council (CMN) is responsible for formulating the foreign exchange policy. In accordance with the guidelines established by the Council, exchange controls, regulations affecting foreign capital, and the management of international reserves are under the jurisdiction of the Central Bank.

15. There are no independent bodies in Brazil with a formal mandate to carry out public reviews and assessments of the Government's trade policy. However, public participation is possible through consultations and public audiences established by CAMEX with the civil society.

(iv) Main trade laws and regulations

16. Brazil does not have a single overall trade law; efforts underway in 1996 to elaborate such a law appear to have been abandoned. It has a large number of laws, provisional measures, decrees, and resolutions, governing foreign trade. This body of legislation is amended frequently, including through the use of provisional measures (MPs) issued by the President.

17. The WTO Agreements are an integral part of Brazilian legislation and have the same hierarchical level as ordinary laws. Moreover, a number of important changes in Brazilian trade-related laws and regulations derive from the adoption of the WTO Agreements. The authorities noted that some domestic legislation required amendments to make them consistent with the WTO Agreements. In this regard, since 1996, new legislation on customs valuation and on intellectual property has been approved. According to the authorities no further amendments to domestic laws are required.

(2) TRADE AGREEMENTS AND ARRANGEMENTS

(i) World Trade Organization

18. Brazil is a founding member of the WTO and grants at least MFN treatment to all its trading partners. As a developing country, Brazil benefited from a transition period to implement a number of commitments under various WTO Agreements; Brazil notified the delayed application of the Agreements on Customs Valuation and Import Licensing Procedures.⁸

19. Brazil made specific commitments in the WTO Negotiations on Trade in Financial Services and in the Negotiations on Basic Telecommunications (Chapter IV). As of June 2000, Brazil had not yet ratified the Fifth Protocol.⁹

20. Certain of Brazil's annual notification requirements under the WTO Agreements are yet to be fulfilled, for instance under the Agreement of Subsidies and Countervailing Measures, and under the Understanding on the Interpretation of Article XVII of the GATT 1994 (Table AII.1).

21. The Brazilian authorities have expressed dissatisfaction regarding the results of the Uruguay Round, specifically in the area of agriculture; it is their view that trade in agricultural products should be brought under the same WTO rules and disciplines as trade in other goods.¹⁰ As a member of the Cairns Group, Brazil has stated its concern about the use of export subsidies.¹¹ Market access was noted as one of the fields requiring particular attention within the multilateral trading system.

22. In preparation for the 1999 Ministerial Conference, Brazil submitted proposals for the negotiations on anti-dumping, subsidies and countervailing measures, TRIMs, and services.¹² Brazil considered that the services negotiations should be conducted under the single undertaking principle, in two well-defined and consecutive phases.¹³ In addition, on behalf of MERCOSUR, Brazil

⁸ WTO documents G/VAL/2, 28 April 1995, and WT/LET/1/303, 2 March 1995.

⁹ WTO document S/FIN/M/25, 8 May 2000.

¹⁰ WTO document WT/GC/W/335, 23 September 1999.

¹¹ WTO document WT/GC/12, 24 September 1998.

¹² WTO documents WT/GC/W/269, 270, and 271, 26 July 1999.

¹³ WTO document WT/GC/W/333, 23 September 1999.

presented proposals regarding the agricultural negotiations, in particular on the use of tariff-rate quotas and the role of state trading enterprises in the sector.¹⁴ As a member of the International Textiles and Clothing Bureau (ITCB), Brazil participated in the evaluation of the implementation of the Agreement on Textiles and Clothing (ATC) and presented suggestion on how importing developed countries could improve the process and the quality of implementation of the ATC.¹⁵

23. Brazil has been involved in 16 cases under the WTO dispute settlement mechanism, seven as a complainant and nine as a defendant (Table AII.2 and AII.3). Brazil participated as a third party in four disputes.¹⁶

(ii) The Southern Common Market

24. Brazil is a founding member of the Southern Common Market (MERCOSUR), composed also of Argentina, Uruguay, and Paraguay. MERCOSUR was established in 1991 with the objective of creating a common market with free movement of goods, services, and persons by the end of 1994. Subsequently, the member countries decided to implement the customs union for goods only from 1995, while the services framework agreement was concluded in late 1997.¹⁷ Under the Ouro Preto Protocol (see below), MERCOSUR acquired legal personality under international law. Membership is now open to other LAIA countries.¹⁸

25. Most tariffs applicable to intra-zone trade were removed on 1 January 1995, when the Common External Tariff (CET) came into force and some 85% of intra-trade became duty free. The four countries agreed that circulation within MERCOSUR of certain specified products would be subject to tariffs to be reduced progressively to zero by December 1998 (Argentina and Brazil) and December 1999 (Paraguay and Uruguay).

26. Regarding imports from third countries, at present each member is allowed a list of products that are exceptions to the CET. The tariffs on these products will progressively converge to the CET; full implementation (all members, all items) should be achieved by 2006. Tariff reductions for products contained in national exceptions lists may only be accelerated, not delayed. Another important area of exception to the CET is that individual members currently operate their own concessionary regimes which, however, should also converge by the end of 2005.

27. Effective 1 January 1998, MERCOSUR temporarily increased its CET by 3 percentage points. Brazil began to implement the increase in November 1997 when the measure was still being negotiated. Among the imports Brazil exempted from this increase are energy inputs such as coal and petroleum and agricultural inputs such as seeds (Chapter III). Argentina began applying the new rates to all imports (except capital goods, telecommunications, and computer equipment, which were all exempt from the increase) on 1 January 1998. The increase is scheduled to be eliminated by 31 December 2000.¹⁹

28. Negotiations among MERCOSUR partners are under way to eliminate remaining restrictions on internal trade in sugar products, automotive products, and services. Negotiations for the establishment of a common automotive regime were concluded in June 2000 between Brazil and Argentina; negotiations continue with Uruguay and Paraguay. The agreement contemplates a six-

¹⁴ WTO documents WT/GC/W/335 and WT/GC/W/337, 23 September 1999.

¹⁵ WTO documents WT/GC/W/283, 3 August 1999, and WT/GC/W/357, 12 October 1999.

¹⁶ WTO documents WT/DS114/1, WT/DS138/1, DS184/1, and WT/DS76/1.

¹⁷ This and MERCOSUR's institutional structure are detailed in WTO (1998a).

¹⁸ LAIA Economic Complementarity Agreement No. 18.

¹⁹ WTO (1998a), and WTO (1998b).

year transition period during which the external tariff would remain at 35% on assembled automobiles, and move gradually up to the agreed CET of 14%, 16% or 18% on autoparts. Both Uruguay and Paraguay would like lower levels of protection.²⁰

29. The issue of a MERCOSUR sugar regime remains unresolved; liberalization of this good is expected for 2001. A Protocol on Trade in Services, aimed at liberalizing such trade within MERCOSUR over a ten-year period, was signed in December 1997; since then annual negotiations through the MERCOSUR Services Group have taken place. The Protocol has four annexes: on movement of natural persons; financial services; land and water transport services; and air transport services. Coordination is also being strengthened in other areas as MERCOSUR encompasses a diversified agenda including environment, justice, education, and labour issues.

30. The Treaty of Asunción, which created MERCOSUR, provides for the coordination of macroeconomic and sectorial policies. Consultations take place among the Ministers of Economy and Central Bank Governors on macroeconomic policy but up to now there has been no coordination as such. In 1999, a move towards a more active coordination of macroeconomic and sectorial policies was taken through Decision No. 6/99 of the CMC.²¹ Members have agreed to harmonize their national statistics; establish common standards for "fiscal responsibility" (i.e. set limits on public spending); and for each country to report on efforts to achieve economic stability.²² MERCOSUR countries agreed on June 2000 to set by March 2001 common debt, deficit, and inflation targets.²³ Chile and Bolivia also take part on the exercise.

31. Two dispute settlement mechanisms exist within MERCOSUR: an arbitration procedure established through the Brasilia Protocol, and a general procedure to deal with all complaints placed before MERCOSUR's Trade Commission under the Ouro Preto Protocol. Brazil used the mechanism established under the Brasilia Protocol recently in a case against Argentina regarding the imposition of safeguard measure on certain imports of woven fabrics of cotton and cotton mixtures (Chapter III(vii)). The procedures were initiated on 7 July 1999 and the arbitration concluded on 10 March 2000 with the recommendation that Argentina withdraw the measure. Under the same mechanism Argentina raised two complaints against Brazil: the first concerned the import licensing system; and the second concerned production and export subsidies on pork meat.²⁴

32. Chile and Bolivia became MERCOSUR associate members on 1 October 1996, and 1 April 1997, respectively. The MERCOSUR-Chile agreement envisages free trade for at least three quarters of tariff lines by January 2006 and free trade for all tariff lines by 2014.²⁵ The agreement with Bolivia provides for a free-trade zone by 1 January 2007.²⁶ In April 1998, MERCOSUR and the Andean Community agreed on a framework for negotiations to create a free-trade area; the negotiations between the two blocks were at a standstill in May 2000. In June 2000 MERCOSUR proposed the reinitiation of negotiations to create a free-trade area. These negotiations are parallel to the negotiations for the establishment of the Free Trade Area of the Americas (FTAA), in which MERCOSUR is negotiating as a group (see (iii) below).

²⁰ *Dow Jones Newswire*, 26 April 2000.

²¹ Coordinación de Políticas Macroeconómicas, MERCOSUR/Dec No. 6, 14 June 1999 [Online]. Available at: <http://www.mercosur.org.uy/espanol/snor/normativa> [24 May 2000].

²² *The Economist*, 11 December 1999.

²³ *Reuters*, 27-28 April 2000.

²⁴ Findings of the MERCOSUR's Tribunal of 28 April and 27 September 1999 [Online]. Available at: <http://www.mercosur.org.uy/espanol/snor/normativa/LAUDO.htm> [24 May 2000].

²⁵ For details of this Agreement see WTO (1997b).

²⁶ For details of this Agreement see WTO (1999).

33. MERCOSUR also has an agreement with the United States for the promotion of trade and investment.²⁷ In June 1998, MERCOSUR and Canada signed a trade and investment cooperation agreement, which would strengthen investment and bilateral trade.²⁸

34. An Interregional Framework Agreement between the European Union and MERCOSUR, was signed in 1995, calling for stronger political dialogue, greater economic cooperation, and preparations for a free-trade area. Three stages were defined for the negotiations: (i) an analysis of merchandise trade flows; (ii) consultations to assess the impact of trade liberalization; and (iii) the definition of concrete proposals.²⁹ Negotiations for a free-trade agreement, which would lead to the elimination of tariffs, started amid strong opposition in Europe, mainly from competing producers of agricultural products.³⁰ Nevertheless, talks have continued with the aim of forging a free-trade area and a Birregional Negotiations Committee has been established. The EU and MERCOSUR will initially seek to make progress on non-tariff measures while negotiations on tariffs should begin on June 2001.³¹

35. In 1995, a working party was established by the Committee on Trade and Development to review MERCOSUR; the examination continues.³²

(iii) Other arrangements

36. Brazil participates in the various negotiating groups of the Free Trade Area of the Americas (FTAA).³³ In the FTAA, Brazil chairs the working group on agriculture. Brazil sees the FTAA as an opportunity to have access to open markets, especially for agricultural goods.

37. As a member of the Latin American Integration Association (LAIA), created in 1980 by the Treaty of Montevideo, Brazil is involved in a customs union with Argentina, Paraguay and Uruguay; two bilateral agreements of economic complementarity with Uruguay and Argentina, which are parallel to MERCOSUR; two free-trade agreements signed by MERCOSUR with Chile and Bolivia; one preferential tariff agreement of regional scope under Article 5 of the Treaty of Montevideo 1980, and a few partial-scope agreements with the LAIA members.³⁴

38. In late June 2000, the Common Market Council of MERCOSUR established the deadline of 31 December 2001 for the negotiation of a Free-Trade Area between MERCOSUR and the Andean Community, which is due to replace the bilateral agreements involving member countries of both regional arrangements, including the agreement that entered into force in August 1999 between Brazil and the Andean Community. A similar decision was reached regarding negotiations between MERCOSUR and Mexico, which should also be concluded by December 2001. In the meantime, trade negotiations between Brazil and Mexico are under way; the two countries have exchanged a list of 2,500 products in the agriculture and industry sectors which would be subject to preferential tariffs; a preliminary preferential tariff quota agreement regarding vehicles was concluded in May 2000.

²⁷ WTO (1998b).

²⁸ *France-Presse*, June 12, 1998; and *The Financial Times*, 18 June 1998.

²⁹ *Diario El País*, 13 November 1997.

³⁰ *The Financial Times*, 9 July 1998.

³¹ *Reuters*, 24 March 2000 and *Bloomberger*, 21 March 2000.

³² WTO documents WT/COMTD/5, 20 September 1995; WT/COMTD/1, 1 May 1995; and WTO/COMTD/1/Add.2, 4, 9, 10, 11, 12, and 14, October 1995 to December 1997.

³³ Information on the integration process of the Western Hemisphere may be found in the FTAA online information. Available at: <http://www.ftaa-alca.org>.

³⁴ The member-countries of LAIA are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela and Cuba.

39. Brazil is a member of the Association of Tin Producing Countries, the International Sugar Organization (ISO), the International Coffee Organization (ICO), the International Cocoa Organization, the International Tropical Timber Organization, and the International Pepper Community. Brazil also participates in the activities of the Cocoa Producers Alliance (CPA) and the Association of Coffee Producing Countries.

40. Brazil participates in the Global System of Trade Preferences among Developing Countries (GSTP).

(3) FOREIGN DIRECT INVESTMENT REGIME

41. The authorities recognize that foreign direct investment (FDI) plays an important role in the continuing development of the economy, and thus maintain a favourable policy stance, according FDI, in general, national treatment. The Federal Government does not grant special incentives to foreign investment other than those available to investment in general.

42. The 1962 Foreign Capital Law and subsequent amendments continue to govern FDI in parallel with sectorial laws.³⁵ Constitutional amendments passed in 1995 eliminated the distinction between foreign and national capital and opened formerly closed sectors such as distribution of gas, mineral exploration and extraction (including hydrocarbons), maritime cabotage and river and lake transport, telecommunication services, and reinsurance operations.

43. The major regulatory change regarding FDI since 1996 involved making compulsory its registration with the Central Bank Foreign Capital Registration and Supervision Office (FIRCE) through the Electronic Declaratory Register (RDE).³⁶ The registration is pro forma and must be completed within 30 days of bringing the funds into the country. Registration is not required for remittance of profits and dividends or to repatriate invested capital.

44. In general, national treatment is granted for all FDI. Certain activities, pursuant to constitutional or other legal provisions, are reserved for the State, are closed to foreign capital, or are opened to foreign capital only under certain conditions (Table II.1). Restrictions regarding professional services also apply across all sectors (Chapter IV(5)).

45. Brazil has signed bilateral investment agreements (BITs) with 14 countries: Belgium, Chile, Cuba, Denmark, Finland, France, Germany, Italy, the Republic of Korea, the Netherlands, Portugal, Switzerland, the United Kingdom, and Venezuela. A number of these agreements were under congressional review for ratification. Brazil is negotiating a BIT with Canada. There are two MERCOSUR protocols regarding investment: the Buenos Aires Protocol ("extrabloc") and the Colonia Protocol ("intrabloc").

46. Double taxation agreements have been signed with Argentina, Austria, Belgium, Canada, China, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, India, Italy, Japan, the Republic of Korea, Luxembourg, Netherlands, Norway, Philippines, Slovak Republic, Sweden, and Spain.

47. Brazil became a member of the Multilateral Investment Guarantee Agency in 1992; and in 1997 became an observer to the International Committee on Foreign Investment and Multinational Enterprises of the OECD.

³⁵ Law No. 4.131, 3 September 1962, and Decree No. 55.762, 17 February 1965.

³⁶ Central Bank Resolution No. 2,337, 28 November 1996; Central Bank Circular No. 2.816, 15 April 1998, and Circular Letter No. 2.795, 15 April 1998.

Table II.1
Exceptions to national treatment

Sectors	Comments
Air transportation and freight agency services	Direct participation of foreign investors is restricted. Some foreign enterprises not established in Brazil may have a minority participation in domestic air transport companies limited to 20% (Articles 21 and 178 of the Federal Constitution, Federal Air Code and Law No. 7.565/86). Authorization is required from the Ministry of Aviation (Law No. 7565 of 19 December 1986 and regulation (Portaria) No. 146 of 30 March 1993).
Airports and airport services	Foreigners are not authorized to administer or operate airports or provide navigation or air traffic services (Brazilian Air Code)
Mineral exploration and hydraulic energy	These activities may only take place with the authorization or concession by the Union, in the national interest, by Brazilians or by a Brazilian company organized under Brazilian laws and having its head-office and management in Brazil, in accordance with Brazilian law. Article 176 §1 of the Federal Constitution.
Electricity and hydroelectric power	Concessions are granted under Law No. 8.987 (Concession Law), 13 February 1995.
Fisheries sector	The exploitation of rivers, lakes and waters and of the territorial ocean and any other fishing activities are reserved exclusively for Brazilian born or foreigners who have been naturalized for ten years; these activities are undertaken by enterprises registered in Brazil. Foreign investors require authorization of the Ministry of Agriculture to engage in any fishing activities. (Decree No. 68.459/71).
Health care	Direct or indirect investment in health care in Brazil is closed to foreign enterprises or capital, except in the cases provided for by laws (Art. 199 of the Federal Constitution). Foreigners may provide private health insurance (Law No. 9.656, 3 June 1998.)
Highway freight transport	Investment is limited to no more than 1/5 of the capital stock with voting rights. The enterprise must obligatorily be organized as a joint stock company and its capital must be represented by registered shares. The limit does not apply to juridical persons already existing on 11 July 1980, which, however, in the event of future capital increases through subscriptions, shall be required to have 4/5 of this increase in ordinary registered shares subscribed and paid by national investors.
Road transport	Foreigners are allowed to participate in companies which were established in Brazil after 7 November 1980. Participation is limited to 20% of the capital with no voting rights. International road transport is reserved to companies with more than half of capital with voting rights held by citizens of the seven countries which are part of the International Land Transport Agreement (ATIT), and of citizens of Latin-American Integration Association (ALADI) countries.
Passengers land transport	Decree Law No. 512/69 and Decree No. 952/93.
Maritime, river, and lake transport and coastwise shipping	Authorization is required from the Ministry of Transportation. The easing of the national government monopoly of these activities was promulgated by means of Constitutional Amendment No. 7 of 15 August 1995.
Shipping	Ownership of Brazilian flag vessels is limited to Brazilian individuals or corporations established in the country with principle domicile and real effective seat in Brazil, for these corporations there are no requirements on minimum national ownership or minimum voting rights by nationals.
Financial institutions	Participation of foreign capital in this sector is subject to national interest and international agreements (Article 192 of the Federal Constitution). The establishment of new branches and subsidiaries of foreign financial institutions, as well as increases in the participation of foreign persons in the capital of financial institutions incorporated under Brazilian law, is only permitted when subject to a case-by-case authorization by the Executive Branch, by means of a Presidential decree. Applying investors may be required to fulfil specific conditions. Foreign persons may participate in the privatization program of public sector financial institutions and in each case commercial presence will be granted, also by means of a Presidential decree. Otherwise, commercial presence is not allowed.
Insurance	Prior authorization is required from the Superintendency of Private Insurance, in the form of an order approving the by-laws of the company and the corresponding foreign equity investment therein.
Telecommunications	Concessions to provide mobile telephone services or the transportation of telecommunications signals through satellites, can only be granted to enterprises constituted according to Brazilian law and established and administered in the country (Article 11 of Law No. 9.295/96).

Table II.1 (cont'd)

Sectors	Comments
Mail services	General mail services, such as letters and telegrams, are a monopoly of the Federal Government. These services are supplied by a state-owned enterprise, which can grant franchises to entities legally established in Brazil. Other services related to the mail distribution, such as special deliveries, may be provided by enterprises operating in Brazil under Brazilian legislation.
Broadcasting of sound and of sound and images, and other publications	The ownership of journalistic and broadcasting enterprises of sound and of sound and images is reserved for Brazilians or those that have been naturalized for more than ten years (Article 222 of the Federal Constitution). The provision of broadcasting of sound and of sound and images is the competence of the Union. It may be undertaken through direct provision, authorization, concession or the granting of permit (Constitutional Amendment No. 8, 15 August 1998).
Cable television	Concessions are granted only to enterprises with a minimum of 51% of Brazilian capital (Law No. 8.977/95).
Services for the safeguarding and transport of valuables	Investment by foreign investors is prohibited by Law No. 7.102/83.
Rural property	Foreigners residing in Brazil are not allowed to acquire or rent a rural property bigger than a quarter of the municipality in which the property is located. A specific permit is required according to the dimension of the property (Law No. 5.709, 7 October 1971; and Decree No. 74.965, 26 November 1971).

Source: Brazilian authorities; and IDB (1999), *Foreign Investment Regimes in the Americas: A Comparative Study*, October.