



BRAZIL-U.S. ROADMAP ON TRADE FACILITATION AND GOOD REGULATORY PRACTICES

KEY ISSUES IN NEGOTIATING
BILATERAL COMMITMENTS



Brazilian National Confederation of Industry
THE FUTURE OF INDUSTRY





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BRAZILIAN NATIONAL CONFEDERATION OF INDUSTRY – CNI

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CNI
Confederação Nacional da Indústria
Sede
Setor Bancário Norte
Quadra 1 – Bloco C
Edifício Roberto Simonsen
70040-903 – Brasília – DF
Tel.: (61) 3317-9000
Fax: (61) 3317-9994
<http://www.portaldaindustria.com.br/cni/>

Serviço de Atendimento ao Cliente - SAC
Tels.: (61) 3317-9989/3317-9992
sac@cni.org.br



TABLE OF CONTENTS

1 CONTEXT	7
2 KEY TRADE FACILITATION ISSUES.....	11
3 KEY GOOD REGULATORY PRACTICES ISSUES	17





1 CONTEXT

Brazil and the United States are important and long-standing partners in the areas of trade and investment. The bilateral trade relationship between these countries is far reaching, diversified, and focused on high value-added products. While U.S. firms' direct investments in Brazil top \$70 billion, and Brazilian businesses' investments in the United States exceed \$39 billion, these trade and investment¹ ties fall far short of the potential of the two largest economies in the Americas.

Considering the current warm ties between the two governments, as well as the determination of President Trump and President Bolsonaro to obtain significant results, concluding a bilateral trade package in 2020 has emerged as an attractive opportunity to enhance commercial ties between the two countries. A bilateral trade package will become even more relevant once the COVID-19 pandemic is under control as the measures under discussion will expedite and enhance the resumption of commerce.

Among areas of interest in a trade package, modernized rules on trade facilitation and good regulatory practices are among those that have long been sought by both countries' business communities. Commitments in these two areas — along with digital trade, anticorruption measures, some intellectual property measures, and other nontariff barriers — could be addressed quickly, with readily identifiable economic gains for the companies in both countries. Seizing these opportunities would be in line with the Joint Declaration between Presidents Trump and Bolsonaro of March 7, 2020.

The reduction of bureaucracy, transaction costs, and unnecessary delays related to commercial flows based on trade facilitation measures would provide greater competitiveness and efficiency for trade between the two countries. According to the World Trade Organization (WTO)², adopting initiatives of this nature can reduce costs in international trade by up to 14%.

1 U.S. Department of Commerce, Select USA, available in: <https://www.selectusa.gov/servlet/servlet.FileDownload?file=015t0000000LKAK>. According to Apex-Brasil, direct investment of American companies in Brazil account for \$68 billion and direct investment of Brazilian companies in the United States account for \$42.8 billion.

2 WORLD TRADE ORGANIZATION. **Trade facilitation agreement**: easing the flow of goods across the borders. Available in: https://www.wto.org/english/thewto_e/20y_e/wto_tradefacilitation_e.pdf. Access in: 11 may 2020.



In parallel, the application of recognized good regulatory practices would contribute to greater transparency, coherence, and legal certainty for the economic activity of both countries, while reducing costs and encouraging growth and job creation.

Based on an analysis of obligations assumed by Brazil and the United States in international agreements with other commercial partners, as well as the main benefits sought by the business community, this document offers details on the chief objectives of the private sectors of the two countries with regard to trade facilitation and good regulatory practices. We intend to address additional areas in subsequent publications.





ORDEM E PROGRESSO



2 KEY TRADE FACILITATION ISSUES

The facilitation of trade between Brazil and the United States, through measures of simplification and modernization on export and import procedures, has the potential to increase bilateral flows of goods and cut trade transaction costs. In this regard, the following rules would enhance the obligations established by the WTO Trade Facilitation Agreement (TFA), cut transaction costs and limit unnecessary delays in commercial transactions:



PUBLICATION AND AVAILABLE INFORMATION

- Publication via digital platform of information on legislation and rules, rates, fees, charges, and procedures required for import, export, and customs transit.
- Detailed Information, including the responsible regulatory agency, fees and charges and procedure required for importation, advance consultation, export and customs transit, working hours of the authorities and their point of contact, reasons for application and form of payments.
- Information services free of charge.



CONSULTATIONS PRIOR TO PUBLICATION

- Public consultation regarding the introduction or changes in general rules on foreign trade procedures before their entry into force, with typical deadlines of at least 60 days for parties to submit comments.
- A 45-day deadline, in general, between publication and the entry into force of rules and regulations.



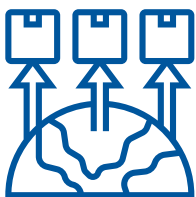
BINDING ADVANCED RULINGS

- Expanded scope of issues subjected to advanced and binding rulings before importation of goods into the territory of each country (including tariff classification, rules of origin, customs valuation, quotas, refunds, deferrals or other exemptions from customs duties, and issues related to controls of foreign trade agencies).
- Request for advanced rulings through each country's single window systems.
- Online publication of decisions in the single window system of each country, with the capability of using a search tool.
- Response time within 120 days after the request.
- Minimum validity of three years of a ruling after a response is issued, except in the event of change in facts or circumstances.
- Access to administrative (on-line) and judicial review.



FEES AND CHARGES

- List of fees and charges published through the single window system of each country.
- Periodic review of fees and charges to (i) ensure the fulfillment of commitments established by the General Agreement on Tariffs and TFA, such as maintaining the proportionality between the value and the service provided; and (ii) reduce the number and diversity of fees and charges required.
- Remuneration to government employees not based on the percentage of fines collected.

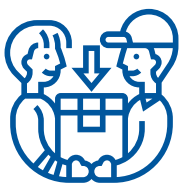


RELEASE AND CLEARANCE OF GOODS

- Electronic availability and processing of customs information through the single window systems before the goods arrival.
- Customs clearance and removal of goods at the point of arrival, without temporary transfer to warehouses or other places, before the final determination of customs duties, taxes, and fees, and within the minimum deadline necessary to ensure compliance with the customs legislation.



- Simplified clearance that allows the release of goods within a period not to exceed 48 hours after the arrival of goods.
- A single appointment for the physical verification of the goods by all the inspection agencies, without prejudice to any controls in cases of audits after dispatch.
- Reduction of physical inspections of goods and the adoption of inspections via modern and nonintrusive technologies.
- Express delivery with specific rules for release before arrival, single electronic shipment, minimum documentation requirements, accelerated release (within a maximum of six hours after arrival at customs), and a separate and simplified process for these shipments. Commitment to a technical dialogue to reassess the de minimis requirement and its application to private companies.
- Use of nonmonetary guarantees, including, in cases of frequent importers, the use of instruments that cover multiple imports, if appropriate.
- Acceptance of the use of electronic signatures in customs documents.
- Development of a time release study to promote greater transparency of random selection times practiced by the agencies and enable a better calculation of costs and predictability by the operators.



COORDINATED BORDER MANAGEMENT AND CUSTOMS COOPERATION

- Cooperation and mutual assistance in customs matters, including the integration of non customs agencies involved in foreign trade (e.g., health, metrology) and their risks management.
- Establishment of formal channels for exchanging information between the agencies of the two countries through blockchain technologies for greater security and agility.
- Interoperability between the single window systems of each country, allowing sharing data and reciprocal use of the information by each party.



- Detailed procedures for sharing information about illegal activities of companies, with the definition of processes, format of the request for information, deadlines, and obligations.



RISK MANAGEMENT

- Use of automated electronic risk analysis tools shared between the agencies of each country.



PERISHABLE GOODS

- Priority in releasing perishable goods, including the possibility of releases after customs' working hours.



IMPORT, EXPORT, AND TRANSIT FORMALITIES

- Use of international standards, recommendations, models, and methods developed by World Customs Organization (WCO), such as the Data Model and the Revised Kyoto Convention.
- Single window systems based on the WCO data model and with guidelines for implementation, interoperability, protection of confidential information, and transfer of electronic information.
- Possibility of corrections in multiple import declarations through a single submission in the electronic system.
- Periodic reviews of the import licensing regime to maintain the balance between customs controls and the compliance criteria required from trade operators.
- Leverage risk management principles to revise regulatory agencies review process for import licenses for automatic release.
- Acceptance of ATA Carnet for temporary admission processes and expansion of adoption of the Istanbul Convention annexes by both countries.
- Certification of origin, standardized forms, and certifications. Criteria for the certification of origin, in digital format, to have the same legal validity as paper certificates. Standardization and automation of other forms and certifications, such as phytosanitary certificates (e-phyto) and Certificate of free sale (CFS).



- Application of the International Plant Protection Convention (IPPC) brand on only one side of the wooden package that receives phytosanitary treatment.
- Maximum period for the application of a fine for violation of customs rules.
- No mandatory requirement of original commercial invoice signed by the exporter in the import declaration.
- Elimination of foreman costs from the composition of the customs value.



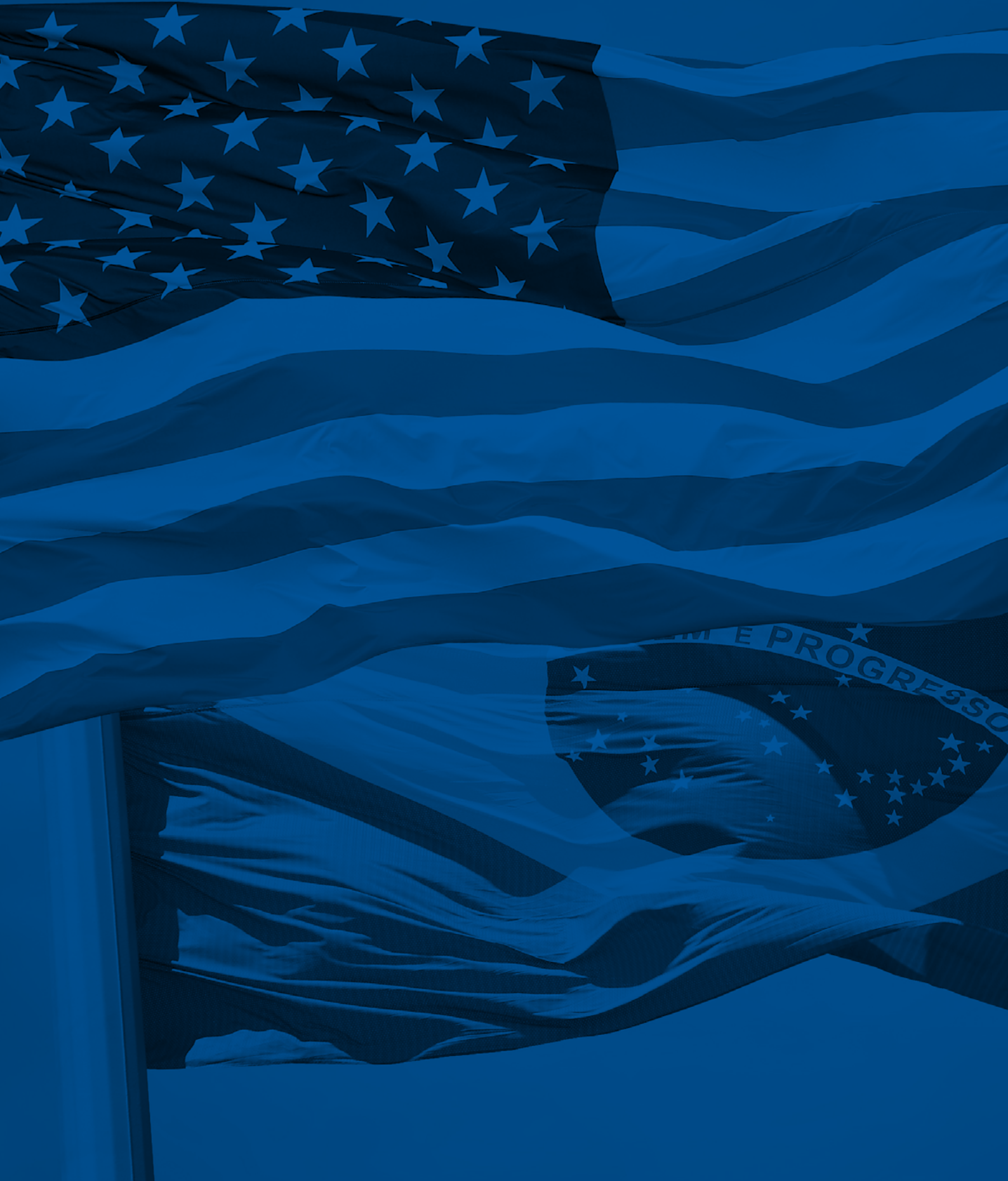
AUTHORIZED ECONOMIC OPERATOR (AEO)

- Mutual Recognition Agreement between the AEO customs programs of the two countries that integrate processes of other agencies involved in foreign trade.
- Special benefits aimed at greater ease, security, and speed of operations for the AEO.



NATIONAL COMMITTEE ON TRADE FACILITATION

- Public-private committee for implementing and continuous monitoring of commitments.





3 KEY GOOD REGULATORY PRACTICES ISSUES

Good Regulatory Practices (GRP) refer to rules that promote transparency, coherence, and participation of stakeholders in the regulatory activity of government entities and agencies.

These rules should be seen as a quality control mechanism necessary for the development of regulations, ensuring on a continuous and systematic basis their adequacy, good cost-benefit balance, and reduction of restrictive impacts on the intended targets. Regulations developed within GRP structures are more likely to effectively achieve their objectives and minimize barriers to international trade.

In this sense, bilateral approaches to GRP should be negotiated between Brazil and the U.S., including the following commitments:

- Publication of a regulatory agenda, indicating possible regulations to be developed in a calendar year.
- Implementation of public consultations, along with the publication of a proposed regulation, with an opportunity for comments by all interested parties with a deadline of not less than 60 days.
- Availability of a single publicly available website for the deposit and examination of information regarding the creation of regulations.
- Implementation of regulatory impact analysis as a necessary step before the publication of new regulations.
- Elaboration of retrospective analysis on current regulation with the goal to assess the need for its modification or revocation to rationalize technical requirements in line with international norms and standards, when appropriate.
- Commitment to draft regulations based on quality, science-based data and rely upon risk-based approaches, as well as referencing international standards and norms.



- Creation of a central body for regulatory coordination, with the objectives of avoiding redundancies and implementing coherence with the country's internal regulatory process, ensuring that any government agency's regulations are developed and published under a consistent set of criteria across the government and based on international standards.
- Support flexibility within the regulatory environment to ensure that new regulations recognize emerging scientific innovation through the proportionate use of different regulatory instruments i.e. both statutory laws and guidelines.



**CNI**

Robson Braga de Andrade
President

Industrial Development Office

Carlos Eduardo Abijaodi
Director

International Affairs Unit

Diego Zancan Bonomo
Executive Manager

Trade Policy Unit

Constanza Negri Biasutti
Trade Policy Manager

Michelle Queiroz de Moura Pescara
Ronnie Sa Pimentel
Project Team – CNI

Communication Office

Ana Maria Curado Matta
Director

Publicity and Advertising Executive Office

Armando Uema
Manager

Katia Rocha
Editorial Management Coordinator

André Oliveira
Editorial Production

Corporate Services Office

Fernando Augusto Trivellato
Director

Administration Superintendence

Maurício Vasconcelos de Carvalho
Superintendent

Alberto Nemoto Yamaguti
Normalization

Brazil US Business Council

Leonardo Abranches
Advisor

Amcham Brasil

José Pimenta Júnior
Kaike Silveira
Departamento de Relações Governamentais

ZPC Consultoria em Comunicação

José Paulo Oliveira
Reviewer

Editorar Multimídia
Projeto Gráfico e Diagramação





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