

AGENDA FOR GERMANY



Brazilian National Confederation of Industry
THE FUTURE OF INDUSTRY

AGENDA FOR GERMANY

BRAZILIAN NATIONAL CONFEDERATION OF INDUSTRY – CNI

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Brazilian National Confederation of Industry
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CONTENTS

INTRODUCTION	7
1 PROFILE OF TRADE RELATIONS	9
2 2019-2020 RESULTS	13
3 DEMANDS OF THE PRIVATE SECTOR	15
3.1 Free Trade Agreement	16
3.2 Double Taxation	17
3.3 Authorized Economic Operator	18
3.4 Air Services	19
3.5 Acquisition or Leasing of Land by Foreigners	20
3.6 Industry 4.0	21
3.7 OECD	22
3.8 Intellectual Property	23
3.9 Royalties	24
3.10 Health Surveillance	25
3.11 Social Security	26
3.12 Industrial Subsidies	27
3.13 WTO Reform	28
3.14 WTO Dispute Settlement System	29
BRAZIL-GERMANY ECONOMIC MEETING	31
CONTACTS	33

INTRODUCTION

For the first time in 39 years, the Brazilian National Confederation of Industry (CNI) and the Federation of German Industries have canceled the annual edition of the Brazil-Germany Economic Meeting (EEBA, in the Portuguese acronym).

This decision echoes the severity of the Covid-19 pandemic and the understanding that, in the short term, the priorities of both countries should be focused on containing the disease.

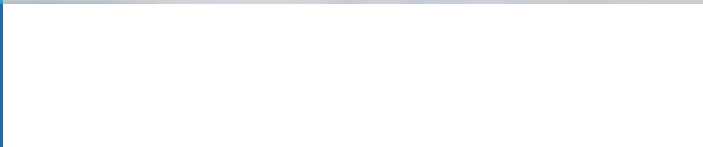
Although it is premature to assess the impacts of the pandemic on bilateral trade, the private sector remains organized to identify the issues that should be negotiated by governments, as a contribution to the survival of companies and the maintenance of jobs, mitigating the aggravation of the crisis.

The Agenda for Germany is a document that lists the main interests of Brazilian companies aiming to improve the bilateral business environment.

We expect that the Brazil-Germany Joint Commission on Economic Cooperation will be held on the scheduled date on a digital platform. Therefore, the authorities of both countries will be able to follow the topics listed in the present document, which are essential to the resumption of growth in both nations.

Robson Braga de Andrade

President of the Brazilian National Confederation of Industry

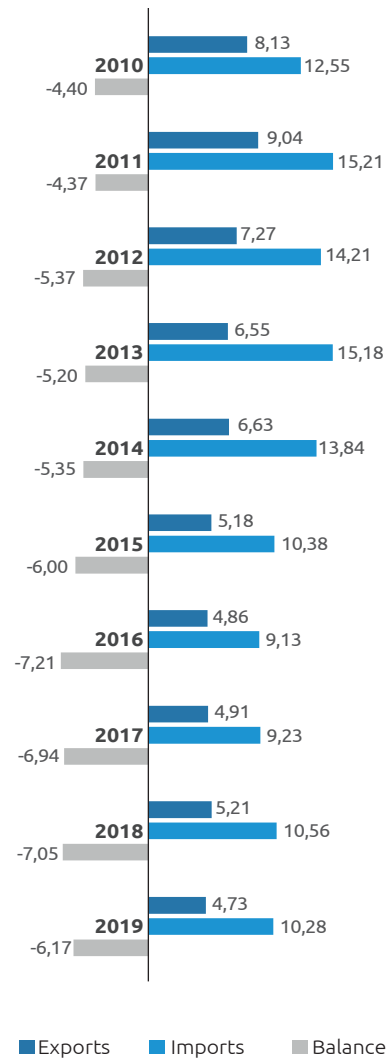


1 PROFILE OF TRADE RELATIONS



Germany is a strategic trade and investment market for Brazil. The country is currently Brazil's fourth largest trading partner, accounting for 3.7% of total imports and exports in 2019.

CHART 1 – Brazil - Germany Trade Balance

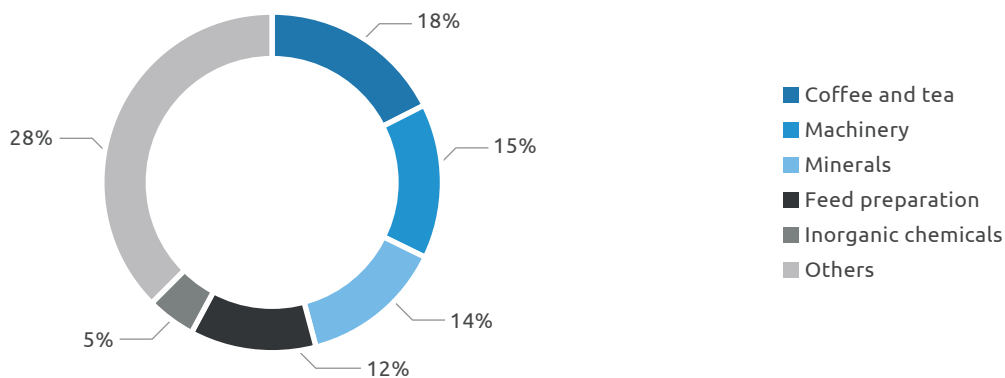


Source: Ministry of Economy. Prepared by: CNI.

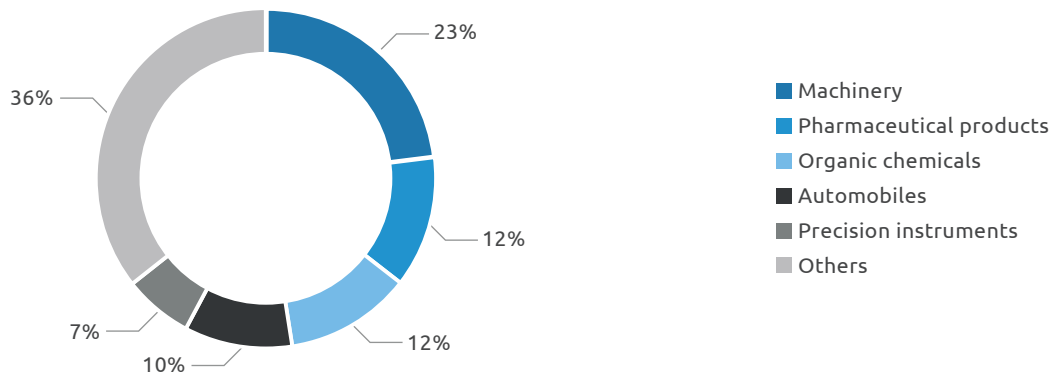
The diversification of bilateral trade is noteworthy for Brazil's exports to Germany, as well as for its imports, which underscore the enthusiasm of the flow of trade between the two countries. Brazilian exports are composed mainly of manufactured and semi-manufactured goods.

CHART 2 – Trade agenda

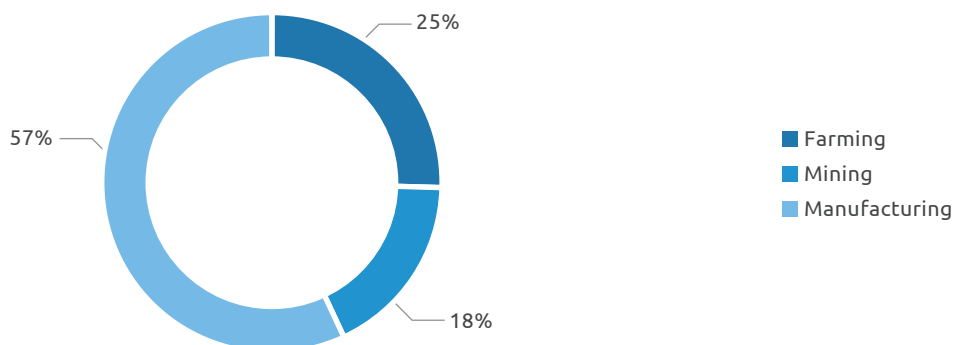
BRAZILIAN PRODUCTS EXPORTED TO GERMANY - 2019



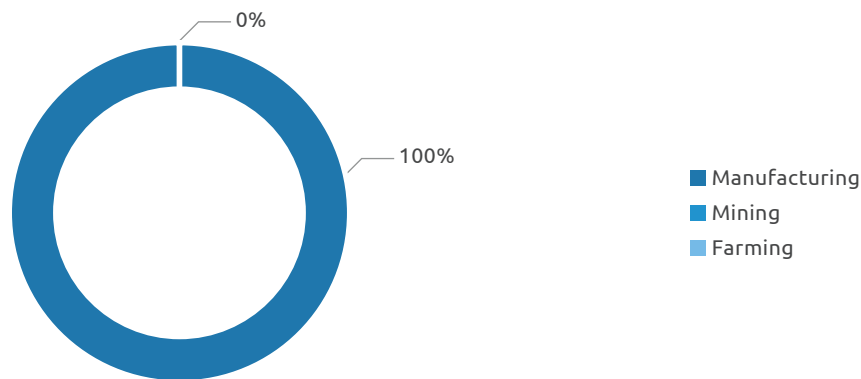
GERMAN PRODUCTS IMPORTED BY BRAZIL - 2019



**COMPOSITION OF BRAZILIAN EXPORTS TO GERMANY - 2018
(ISIC - INTERNATIONAL CLASSIFICATION OF ALL ECONOMIC ACTIVITIES)**



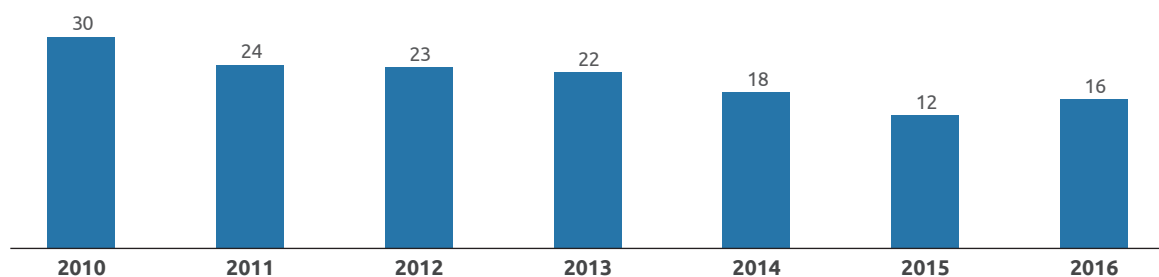
COMPOSITION OF IMPORTS INTO BRAZIL FROM GERMANY - 2018 (ISIC - INTERNATIONAL CLASSIFICATION OF ALL ECONOMIC ACTIVITIES)



Source: Central Bank of Brazil. Prepared by: CNI.

Regarding investments, Germany is the largest foreign investor in Brazil, with a total of US\$ 4.3 billion invested in sectors such as coal, oil and gas, automotive industry, financial services, rubber, and chemicals. Although the volume of investments has declined since 2010, there was a 33% recovery in.

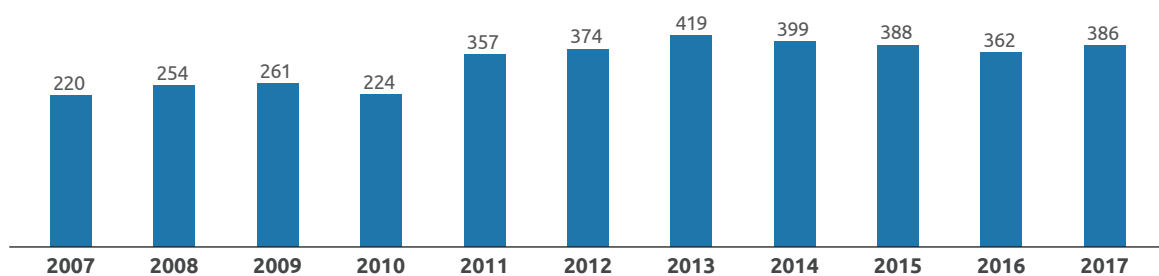
CHART 3 – German Investments in Brazil (US\$ billions)



Source: Central Bank of Brazil. Prepared by: CNI.

In the opposite direction, between 2010 and 2017, Brazilian companies held investments of around 101 million dollars in Germany, with emphasis on medical equipment, automotive parts, ceramics and glass, plastics, and industrial equipment.

CHART 3 – Brazilian Investments in Germany (US\$ billions)



Source: Central Bank of Brazil. Prepared by: CNI.



2 2019-2020 RESULTS



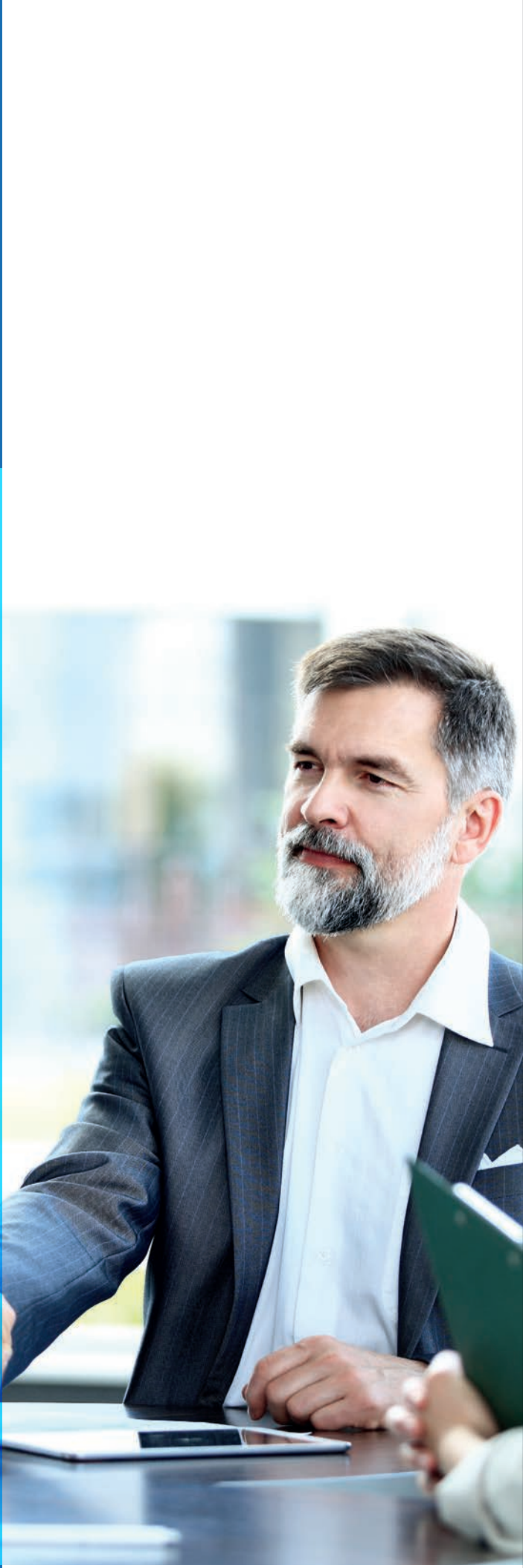
Free Trade Agreement: conclusion of the Free Trade Agreement between Mercosur and the European Union (2019).

Air services: enactment of the Agreement between the Federative Republic of Brazil and the European Union on Certain Aspects of Air Services (2019).

Movement of people: enactment of the Memorandum on a Working Holiday Program between Brazil and Germany (2019).

Intellectual property: entry into force of the new pilot project between the Brazilian Institute of Industrial Property (INPI) and the European Patent Office (EPO), valid for five years, covering patent applications with any International Patent Classification (2019).

Agribusiness: signing of a Memorandum of Understanding between the Ministry of Agriculture, Livestock and Food Supply (Mapa) and the German Federal Ministry of Food and Agriculture on the establishment of a German-Brazilian agropolitical dialogue (2019).



3 DEMANDS OF THE PRIVATE SECTOR



From February to May 2020, a list of needs and main demands of companies and associations which participate in dialogue mechanisms managed by CNI's International Affairs Area was compiled.

As a result, 14 measures were identified with the potential to improve the business environment and increase trade and investments between Brazil and Germany.

3.1 FREE TRADE AGREEMENT



OBJECTIVE

Signing and internalization of the Biregional Association Agreement between Mercosur and the European Union.



CONTEXT

Negotiations for the ratification of the Biregional Association Agreement between Mercosur and the European Union began 20 years ago and were marked by interruptions until the conclusion of negotiations in June 2019.

Germany's support was essential for the ratification of the agreement, and now, as leader of the European Commission, the country plays an important role in the ratification process.

This agreement will provide numerous market access opportunities for both countries and create a stable regulatory framework to promote the trade of goods and services and bilateral investments.



BENEFITS

To level access conditions to the European market.



GOVERNMENTAL BODY

Office of the Chief of Staff of the Presidency and National Congress.

3.2 DOUBLE TAXATION



OBJECTIVE

Start of negotiations for a Double Taxation Avoidance Agreement (DTA).



CONTEXT

The DTA defines which tax authority can collect taxes and reduces the aggregate tax burden on bilateral operations. Germany revoked the existing DTA with Brazil in 2005.

Over the last decade, Brazil signed new DTAs that were more in line with the standards of the Organization for Economic Cooperation and Development (OECD), reducing tax rates for certain revenues and eliminating historical clauses such as tax sparing and matching credit.

In 2019, the Brazilian government proposed a dialogue on taxes between representatives of the Brazilian Federal Revenue Service and its counterpart in Germany, the Federal Ministry of Finance, however, there was no engagement from the German side.



BENEFITS

Increased legal security for bilateral trade, increased investments and exports, increased encouragement for technology acquisition and international financing.



GOVERNMENTAL BODY

Ministry of Economy.

LEARN MORE

<http://www.portaldaindustria.com.br/publicacoes/2019/9/acordo-para-evitar-dupla-tributacao-entre-o-brasil-e-alemanha-caminhos-para-convergencia/>

3.3 AUTHORIZED ECONOMIC OPERATOR



OBJECTIVE

Germany's support for the adoption of a work plan for a Mutual Recognition Agreement (MRA) between Brazilian and European Union Authorized Economic Operator (AEO) programs.



CONTEXT

The MRA allows the procedures adopted in AEO certification in Brazil to be recognized in Germany, and vice versa. Thus, authorized companies are automatically recognized in Customs as low risk.

The Brazilian AEO model achieved a reduction of more than 70% in time for customs inspections. In exports, the average time for cargo clearing fell from 3.4 hours to less than 1 hour, and in imports, from 23.7 hours to 4.4 hours.

In order for negotiations to begin with the European Union, the support of Germany to adopt a joint work plan between Brazil and the European Union is required.



BENEFITS

Integration of production chains, speeding of the process of import and export bureaucratic procedures, and increased competitiveness.



GOVERNMENTAL BODY

Ministry of Economy.

LEARN MORE

<http://www.portaldaindustria.com.br/publicacoes/2018/11/impactos-economicos-da-implantacao-do-programa-operador-economico-autorizado-no-brasil/>

3.4 AIR SERVICES



OBJECTIVE

Extension of the freedoms of the Air Transport Agreement.



CONTEXT

In 2017, Brazil started negotiating Air Transport Agreements directly with European countries after several frustrated attempts to negotiate with the whole bloc.

Brazil and Germany have an agreement in force regarding access to the 5th “freedom of the air” for passenger transportation. However, since Germany is an important air hub on its continent, it is important to update this agreement to the “6th freedom of the air”, which allows intermediate landing in the territory of registration of the aircraft for travel between a third State and the contracting State.

With respect to cargo-only services, Ordinance No. 527, of August 5, 2019, of the Brazilian Ministry of Infrastructure, defined as a principle for negotiating agreements the granting of traffic rights up to the “7th freedom of the air”.



BENEFITS

Increased offer of air services, reduced costs for transportation of goods, increased foreign trade competitiveness.



GOVERNMENTAL BODY

National Civil Aviation Agency of Brazil (Anac) and Ministry of Infrastructure.

LEARN MORE

<https://www.portaldaindustria.com.br/publicacoes/2019/10/modalidade-aerea-no-comercio-exterior-brasileiro-prioridades-da-industria/>

3.5 ACQUISITION OR LEASING OF LAND BY FOREIGNERS



OBJECTIVE

Adoption of Draft Law no. 2963/2019 regarding land acquisition by foreigners.



CONTEXT

The acquisition of land by Brazilian companies controlled by foreigners has been subject to different interpretations by the Federal Attorney General's Office (AGU), which has resulted in legal uncertainties in new business transactions.

In the 1990s there were considerable foreign investments in agribusiness due to the elimination of the interpretation of limitations on the acquisition of rural properties by Brazilian companies under foreign control.

Over the last few years, the AGU has issued divergent opinions on the constitutionality of Law 5709/1971, which provides for the acquisition of rural property by a foreigner residing in the country or a foreign legal entity authorized to operate in Brazil, which has created legal uncertainty and inhibited investments from sectors that directly or indirectly depend on land use.

Draft Law no. 2963/2019 of the Federal Senate may solve the issue, since it aims to improve and adapt the legislation to enable the acquisition and use of rural property by foreigners in Brazil while still protecting the national sovereignty.



BENEFITS:

Legal security for foreign investments and an environment that favors innovation.



GOVERNMENTAL BODY

National Congress.

3.6 INDUSTRY 4.0



OBJECTIVE

Adoption of an action plan for governmental cooperation for Industry 4.0.



CONTEXT

In 2019, the Brazilian Chamber for Industry 4.0 was launched, an agency to coordinate the governance of initiatives for the promotion of industry 4.0 in the country. The Chamber adopted as a reference the structure of Germany's Plattform Industrie 4.0.

Considering the similarity of objectives and models of the initiatives of both countries, a cooperation agenda was proposed to share experiences in public-private partnerships for projects to promote industry 4.0 and possible collaboration on projects for each of the initiatives, addressing issues such as regulations and cybersecurity.



BENEFITS

Increased competitiveness.



GOVERNMENTAL BODY

Ministry of Economy and Ministry of Science, Technology, Innovation and Communications.

3.7 OECD



OBJECTIVE

Support for Brazil's OECD membership application.



CONTEXT

According to a CNI study, until April 2020, Brazil had voluntarily incorporated 82 of the 252 binding OECD agreements, arrangements, recommendations, declarations, or decisions, which is equivalent to 32% of the total legal instruments adopted, more than the other five competitors for accession into the organization.

Brazil is negotiating the adhesion to the Codes of Liberalisation of Capital Movements and Current Invisible Operations, which should positively impact the business environment.



BENEFIT

Adoption of public policies aimed at macroeconomic balance, open trade, transparency, and increased security for foreign investments in Brazil.



GOVERNMENTAL BODY

Ministry of Economy, Office of the Chief of Staff of the Presidency, and Ministry of Foreign Affairs.

3.8 INTELLECTUAL PROPERTY



OBJECTIVE

Conversion of the Patent Prosecution Highway (PPH) Agreement pilot project between INPI and the EPO into a permanent one.



CONTEXT

The pilot project between the Brazilian Institute of Industrial Property (INPI) and the European Patent Office (EPO) started in 2017.

In December 2019, Brazil unified all its PPH agreements, adopting the same requirements for all countries. The biggest change was the exclusion of the Brazil's limitation on sectors of previous models.

The PPH helps to avoid redundant effort by examiners in partner countries by ensuring reciprocal access and voluntary use of the analysis to reduce the time for patent granting. Therefore, this is an instrument that stimulates research, development and innovation, contributing to the competitiveness of Brazilian industry and exports.



BENEFITS

Reduced time to grant patents, greater legal security, and greater competitiveness.



GOVERNMENTAL BODY

INPI (National Institute of Industrial Property).

LEARN MORE

<http://www.inpi.gov.br/pph>

3.9 ROYALTIES



OBJECTIVE

Elimination of restrictions on the deductibility of royalty expenses for corporate income tax (IRPJ) purposes.



CONTEXT

The concept of royalties, for tax purposes, is not uniform in Brazilian legislation, which negatively impacts companies with high royalty expenses, especially in cases related to the deductibility of royalty expenses for IRPJ purposes. The lack of an adequate classification results in the application of one of the deduction restriction rules.

The OECD and Brazil give different treatments to companies that send funds abroad by way of assignment of software sales/distribution rights. In order to avoid double taxation, the OECD recommends that these revenues be classified under the “corporate profits” article, while the Brazilian Federal Revenue applies the “royalties” article. This results in double taxation on these revenues and more expensive operations by not allowing the foreign company to deduct the withholding Income Tax (IRRF) collected by the Brazilian company.

Moreover, the company may still be subject to further rules on restricting the deductibility of the expense, such as: (i) inability to deduct when royalties are paid to partners, individuals, or corporations, or managers of companies, or their relatives or dependents; (ii) mandatory registration of the act or contract at INPI; and (iii) conditioning the deduction to a maximum limit of 5% of net revenues on operating expenses.



BENEFITS

End of double taxation, greater legal security, compatibility with international rules, and increased competitiveness.



GOVERNMENTAL BODY

Ministry of Economy.

3.10 HEALTH SURVEILLANCE



OBJECTIVE

Adoption of work plans for technical cooperation between regulatory authorities.



CONTEXT

The Brazilian Health Regulatory Agency (Anvisa) has cooperation instruments with the German Federal Institute for Risk Assessment (BfR), the agency responsible for human and animal food safety and substance and product safety, and with the German Federal Institute for Drugs and Medical Devices (BfArM), which is authorized to carry out inspections, certifications, and other regulatory mechanisms related to medications and medical devices for human use.

The memorandum of understanding between Anvisa and BfR did not define specific cooperation activities and the existing work plan was finalized in 2015. Cooperation between Anvisa and BfArM could also be improved with the adoption of a work plan in pharmacovigilance.

There is room for cooperation in areas such as: (i) identifying research and studies to provide a scientific basis in regulatory matters; (ii) the sharing of product risk information; (iii) developing specific procedures for the ongoing sharing of toxicological assessment data to support regulatory decisions; (iv) the sharing of information aimed at improving toxicological and human health risk assessments with a scientific basis; (v) knowledge of the regulatory systems of each institution; (vi) improving the transparency of criteria related to technical training, staff exchanges, and training; and (vii) review and reliance models.



BENEFITS

Strengthening of regulatory capacity and training of technical personnel.



GOVERNMENTAL BODY

Anvisa – Brazilian Health Regulatory Agency.

3.11 SOCIAL SECURITY



OBJECTIVE

Extension of the relocation period of the Social Security Agreement between Brazil and Germany to five years.



CONTEXT

Social security agreements allow the taxpayer of one of the countries to remain bound only to the Social Security system of the country of origin for the time established in the agreement.

The agreement in force between Brazil and Germany provides for the application of the legislation of the country of origin for two years and currently there is the possibility of administrative extension of the relocation period to five years. However, the analysis is discretionary, which creates insecurity for companies and expatriate workers.



BENEFITS

Economic gains for companies and workers from both countries working outside their territory.



GOVERNMENTAL BODY

Ministry of Economy.

3.12 INDUSTRIAL SUBSIDIES



OBJECTIVE

Brazilian's adhesion to the Joint Trilateral Statement (USA, Japan and the EU) within the WTO.



CONTEXT

In January 2020, the United States, Japan, and the European Union (EU) signed a trilateral statement to strengthen multilateral trade rules to combat industrial subsidies and the practices of non-market economies. The proposal extends the list of subsidies deemed "prohibited", reverses the burden of proof for subsidies that are extremely harmful, adds subsidies to the definition of "serious damage", among others.

The text also highlights the importance of technology transfer for the mutual growth and development of countries, as long as it is reasonable, voluntary, and based on market principles, countering the forced transfer imposed by some countries, a practice that also targets Brazilian companies.



BENEFITS

Strengthening of multilateral rules and fight against unfair trade.



GOVERNMENTAL BODY

Ministry of Economy and Ministry of Foreign Affairs

3.13 WTO REFORM



OBJECTIVE

Negotiation of proposals for the WTO reform.



CONTEXT

The weakening of the multilateral trade system may negatively affect the Brazilian productive sector. Reforms should include the improvement of regular work and transparency in the WTO, strengthening negotiation mechanisms and rules of procedure.

The notification of measures in TBT and SPS committees should be improved, as well as the notification of subsidies. There is room for improvement and strengthening of the Trade Policy Review Mechanisms and the conclusion of negotiations on new topics at the WTO should be encouraged, since the new agreements will revitalize and improve the organization. The most important new agreements are especially those on e-commerce, investment facilitation, trade facilitation in services and small and medium enterprises.



BENEFITS

Assurance of a multilateral trading system with rules and predictability.



GOVERNMENTAL BODY

Ministry of Economy and Ministry of Foreign Affairs.

3.14 WTO DISPUTE SETTLEMENT SYSTEM



OBJECTIVE

Negotiation of alternatives to the Dispute Settlement Body (DSB) and adhesion of Germany to the temporary plurilateral arrangement for the Appellate Body (WTOAB).



CONTEXT

Since 2017, the United States have blocked the appointment of arbitrators to the DSB, which has led to the suspension of the Body and the loss of the enforcement capacity of the WTO.

Among the largest economies, Brazil is, proportionally, the most offensive DSB user, with 67% of the cases and awards that added up to US\$ 9.5 billion in subsidies or barriers to exports. Brazil has panels in progress of up to US\$ 8 billion.

The Plurilateral Arrangement for the WTOAB is a temporary alternative solution, as it allows the use of arbitration procedures, on a provisional basis, from appeal to resolution of the dispute. Brazil has joined the arrangement together with important members such as the European Union, China and Mexico.



BENEFITS

Resumption of the legal backbone of the WTO.



GOVERNMENTAL BODY

Ministry of Foreign Affairs.



BRAZIL-GERMANY ECONOMIC MEETING



The Brazil-Germany Economic Meeting (EEBA) is the most important event for business dialogue between the two countries. Created in 1983, this meeting aims to strengthen cooperation and increase trade and investment between Brazil and Germany. The EEBA is organized by the Federation of German Industries (BDI) and the Brazilian National Confederation of Industry (CNI), in partnership with the German-Brazilian Chamber of Commerce and Industry (AHK).

In parallel to the EEBA, there is also a meeting of the Brazil-Germany Joint Commission on Economic Cooperation, a bilateral governmental mechanism that monitors relations in the economic-commercial and investment areas, in coordination and in line with the private sector of both countries.



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