

# Consider Brazil as a Market for your Products or Services

By Jean Schtokal  
Foster, Swift, Collins & Smith P.C.  
and Filepe deFritas,  
Ramos, Bichara, Barata, Costa Rocha  
Advogados

Brazil should be part of your international growth strategy. Brazil is the fifth largest country in the world in terms of population and size and should be part of your international growth strategy. It is the 8<sup>th</sup> largest economy in terms of GDP and was not badly hit by the global recession. The U.S. is Brazil's biggest import partner, followed by China, Argentina and Germany and our trade balance with Brazil is positive (more U.S. exports to Brazil than Brazilian imports to the U.S.).<sup>1</sup>

## Free Trade Treaty

Brazil is a great entry point for trade with other Latin American countries since the MERCOSUL common market permits tariff-free trade between Brazil, Argentina, Uruguay and Paraguay for most products originating in any of those countries. Venezuela, Bolivia, Chile, Peru and Ecuador are associate members.

## Contract Law in Brazil is Different Than in the U.S.

Provisions selecting U.S. law may not be enforceable in Brazil. In Brazil, international contracts are governed by the place of execution (unless it is against Brazil's public policy principles). However, some Brazilian court opinions suggest the parties' right to choose the law governing their contract may be respected in some situations. It is recommended that parties select the governing law in their contracts, but realize that the selection of U.S. law may be disputed by a Brazilian court. In addition, if a Brazilian court determines it has jurisdiction over a matter, it will very frequently apply Brazilian law.

Historically, for most contracts (government contracts and others excluded), Brazil permits parties to choose the place where a dispute can be heard. Arbitration as a dispute mechanism will usually be enforced, and the Brazilian Arbitration Law contains a specific provision on enforceability foreign arbitration awards.

Regarding sales agents, parties are free to negotiate terms. However, Brazilian law grants agents the right to receive a commission on sales closed within

the agents' territory, even though the agent did not directly participate in the transactions. There can be limits on the duration commissions are received and regarding the customers for which commissions will be paid.

Termination of an agent can be costly. Agents have the right to termination payments and reasonable notice of termination. The amount of the payments and notice depend on whether the agreement is for a specific term, or an indefinite term. In some circumstances agency agreements for a specific term will be deemed to have an indefinite term. If the contract is for a fixed term the termination payment must be no less than the monthly average commission up to the date of termination multiplied by half of the months in the contract term. If a contract for a definite term is renewed, it will be deemed an indefinite term contract. Termination payments for termination of an agent by the principal without cause or by the agent with cause in the case of an indefinite term agreement can be no less than 1/12<sup>th</sup> of total commissions over the life of the agreement.

Distribution agreements, unlike

agency agreements, are not regulated by a specific law in Brazil. General contract law principles apply. One exception is contracts for distribution of autos and software. Moreover, to limit damages for termination of a distribution agreement, it is wise to provide several months advance notice of termination in indefinite term distribution agreements.

## Consumer Protection Laws

Brazil's consumer protection law requires customer support and after sales service for imported consumer products. The importee or distributor is responsible for such services, so you should appoint agents and distributors who are qualified to provide services.

## Summary

While the laws are different in Brazil, significant market opportunities exist. U.S. companies should perform background checks on intended trade partners, and engage legal counsel to protect their interests when selling products or services in Brazil.

<sup>1</sup> U.S. Commercial Service, "Doing Business in Brazil: 2010 Country Commercial Guide for U.S. Companies."



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