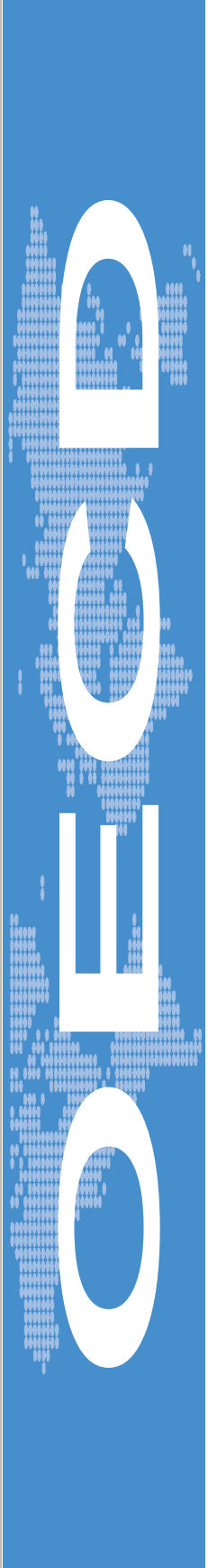

OECD REVIEWS OF FOREIGN DIRECT INVESTMENT

BRAZIL

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became Members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996) and Korea (12th December 1996). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

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EXAMENS DE L'OCDE SUR L'INVESTISSEMENT DIRECT ÉTRANGER
BRÉSIL

Foreword

This report presents an assessment of Brazil's foreign direct investment policies. It is the result of an examination held in July 1997 by the Committee on International Investment and Multinational Enterprises (CIME) as part of Brazil's request to become an observer in the Committee and to adhere to the 1976 OECD Declaration on International Investment and Multinational Enterprises and its Related Decisions and Recommendations.

The 1976 Declaration promotes non-discriminatory policies toward established foreign enterprises and sets voluntary guidelines for foreign investors to follow in host countries.

Brazil has also signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and adhered to the OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials, which are the two other prerequisites for CIME observership.

This report was approved and derestricted by the OECD Council on 23 October 1997.

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Summary and conclusions

Until recently, Brazil was overshadowed by other countries as a destination for foreign direct investment. This is particularly true when one considers its size – the fifth largest country in the world – as well as its economic weight – the world's tenth largest economy. Starting in 1993, however, FDI has been on a sharp rise, boosted by a substantial improvement in macroeconomic stabilisation, a policy shift towards liberalisation and the opening of state-reserved activities to private and foreign operators. Inflows reached a record $US9.9 billion in 1996 and may exceed $US12 billion in 1997. Brazil ranked fifth among non-OECD countries and eighteenth worldwide as an FDI recipient between 1990-1995.

Over 75 per cent of the stock of inward investment has come from OECD countries. The United States is the single largest investor, but European firms are also very active (France, Germany, Italy, the Netherlands, Spain and Switzerland). At the regional level, Brazilian investments have been increasing rapidly. Manufacturing, notably in the automotive sector, attracts the largest percentage of FDI inflows but it is expected that the share of services and public utilities will grow substantially in response to the needs of 160 million Brazilian consumers. Outflows are also rising, particularly to Mercosur countries. Brazil can be regarded as a "major player" in the field of foreign direct investment.

Liberalisation of foreign direct investment has been a strategic component of Brazils' reform process. The most far-reaching measure was the 1995 Constitution amendment which eliminated the distinction between Brazilian companies on the basis of their level of foreign ownership. This opened up critical areas of economic activity – including mining, petroleum, electricity, transport and telecommunications – to foreign involvement. Statutory equity limitations were also lifted or relaxed in important sectors (notably transport and telecommunications). These measures have been amplified by the reactivation of privatisations, the deregulation of monopolies, and new rules for the granting of concessions. Tax reform has reduced the tax burden on foreign direct investment.

Another salient feature of Brazil's regulatory regime is the absence of a general authorisation mechanism for FDI. Registration with the Central Bank of capital invested and of profits is required for information and statistical purposes only. A number of improvements have been made to simplify the procedures and reduce delays, and others are being developed (such as the introduction of electronic registration already in place for portfolio investment and import financing).

Brazilian legislation, however, still deviates from the National Treatment principle in a number of areas. These concern the financial sector, telecommunications, radio, television and publishing, cable television, air and road transport, fishing, rural properties, health care and security services, and transport of valuables. Investment in real estate in "national security areas" is subject to special authorisation. There is a statutory requirement for the employment of nationals in Brazilian companies.

The 1995 constitutional amendment does not extend national treatment to non-established firms. The absence of a distinction between pre- and post establishment in privatisation law is a precedent that could be followed in other legislation. The banking legislation provides far greater room for discretionary action by the authorities than those of OECD countries. A relatively large share of Brazilian banking activities remain in state hands. More liberal and clearer market access rules for this sector – including to the Brazilian payment system – could therefore be considered by the Brazilian authorities. There is also scope for further simplification of foreign exchange regulations. Vigilance needs to be exercised with respect to the implementation of the new Industrial Property Law.

The OECD encourages Brazil not to relax the pace of its reforms and to pursue its efforts towards a broader application of the fundamental principles of the OECD liberalisation instruments. FDI relations between Brazil and Member countries are expanding rapidly. Brazil is also an important player in Mercosur, a regional grouping of non-member countries that is of growing interest to Member countries.

The OECD welcomes Brazil's adherence to the various components[1] of the OECD Declaration on International Investment and Multinational Enterprises, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related Recommendations[2] and the fact that Brazilian authorities will participate fully in the implementation of these instruments. The Organisation believes this development should contribute to the liberalisation process in Brazil and provide a framework for the expansion of FDI relations between Brazil and OECD countries.

Summary and conclusions

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Chapter 1

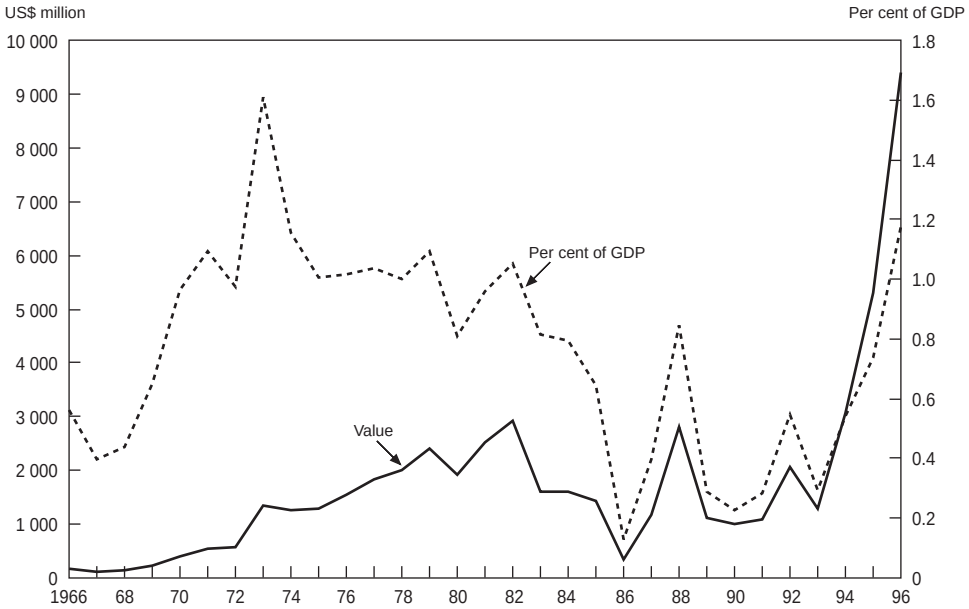
Direct investment in the Brazilian economy

A. Foreign investment in Brazil

Brazil is the fourth leading recipient of direct investment inflows since 1990 among non-member countries and the fifteenth world-wide. Given record inflows into Brazil in 1996, Brazil will probably rank higher once information for 1996 is available for all countries. Excluding offshore financial centres, Brazil is the principal non-member destination for firms from many OECD countries, including Canada, France, Germany, Italy, the Netherlands, Switzerland and the United States. In spite of its prominent role as a destination for global FDI flows, Brazil has nevertheless been overshadowed in recent years by other locations, principally in Asia. Its share has since recovered slightly as inflows reached almost US$5 billion in 1995 and over $9 billion in 1996. Outflows were also at record levels, particularly to Mercosur countries, although they remain only a fraction of the level of inflows which is which is consistent with Brazil's current level of development.

Chart 1 shows inflows into Brazil in dollar terms and as a percentage of GDP. While growth in inflows in the past three years has represented a dramatic break with the relatively low levels of inflows over the past decade, it is still below the levels of the early 1970s in real terms. As of 1996, inflows into Brazil had returned to the same levels (as a percentage of GDP) as in the late 1970s and early 1980s. The decline in inflows in the mid-1980s resulted partly from the unfavourable economic situation characterised by high inflation and fiscal imbalances and partly from the adoption of more restrictive rules towards foreign investors, particularly the Federal constitution of 1988. The recovery in inflows recently owes much to the improvement in the economic situation, the privatisation process and a liberalisation of policies towards foreign investment. Given the sheer size of firms scheduled to be privatised and the continuing interest of foreign investors in the Brazilian market, inflows should continue at the same high levels for much of the current decade. Government estimates for 1997 are US$15 billion.

Chart 1. **Direct investment in Brazil, 1966-1996**



Source: International Financial Statistics, IMF.

In conjunction with the dramatic improvement in macroeconomic stabilisation, the liberalisation of the Brazilian economy during the 1990s has served as a powerful catalyst for foreign investment. According to a Central Bank study, privatisation has accounted for one third of recent FDI in Brazil. Steps towards trade liberalisation and that undertaken as part of the Mercosur agreement have increased the attractiveness of the region as a whole to foreign investors. In addition, liberalisation of the treatment of foreign investors has opened up many new opportunities for foreign firms. The registered stock of foreign investment in Brazil which amounted to US$37 billion in September 1991 stood at close to US$58 billion in June 1995, an expansion of some 57 per cent in nominal terms. Although portfolio investment accounted for a large part of the flows, foreign direct investment has also been growing considerably.

With a population of 160 million, Brazil is the world's fifth largest country and the tenth largest economy. As a result, it has attracted many of the largest multinational enterprises, particularly in the automotive sector. While many of these firms were initially attracted by the promise of a captive market in the heyday of import

substitution policies, the liberalisation measures adopted in the 1990s in conjunction with the Mercosur agreement have led to a renewed interest on the part of foreign investors. According to the Ministry of Industry, foreign investors are committed to over US$26 billion in new investment between now and the end of the decade. Over two-fifths of this new investment will be in the automotive sector, principally by established American and European firms, but also new investment from Korean firms. Reported investments in 1997 already point towards another record year, with US$6 billion in the first five months alone. These investments have included banking, insurance, retailing and active participation in various privatisations.

It is important to recognise that many of the foreign firms which have investment projects planned in Brazil are already well-established within the Brazilian economy. Unlike many other dynamic non-member countries, Brazil has a long history of foreign-owned firms manufacturing for the domestic market. Many large multinational enterprises (MNEs) such as General Motors and Goodyear invested in the first half of the century. As recently as 1980, Brazil had the seventh largest stock of global direct investment and was the principal host to inward investment among non-OECD countries. By 1995, it had fallen to fourteenth place in terms of stocks.

As a result of this historical legacy of inward investment, foreign-owned firms already play a major role in the Brazilian economy. Thirty-one of the largest 100 companies in Brazil in 1993 were foreign-owned, compared with 25 in the public sector and 44 private Brazilian firms (see Table 1). These foreign firms are particularly prevalent at the top of the list, together with several State-owned firms, some of which have since been privatised. Together they employed a quarter of a million Brazilians and exported US$6.3 billion worth of merchandise in 1993.

The orientation of these affiliates towards the domestic Brazilian market can be gleaned from a comparison of the operations of General Motors in Mexico and Brazil in 1993. Although the Mexican affiliate employs three times more than the Brazilian one, its exports are ten times as high as those from Brazil. Furthermore, while the Mexican affiliate exported two thirds of its output, the Brazilian affiliate exported only seven per cent in 1993.

As a result of this long history of inward investment in Brazil, foreign investors now dominate many sectors which are not reserved to the State. The products of foreign MNEs in Brazil account for 100 per cent of sales of large computers, 95 per cent of automobiles, 90 per cent of electrical and communications products,

Table 1. **Foreign companies in Brazil, 1993**

Rank 1993	Foreign-owned Brazilian Companies	Sector	Employees	Assets $ m.	Exports $ m.
2	Autolatina	Automotive	48 000	3 153	638
4	General Motors	Automotive	21 622	n.a.	2 850
5	Shell	Petroleum	2 730	1 570	n.a.
6	Souza Cruz (BAT)	Tobacco	12 500	1 472	n.a.
9	Fiat	Automotive	16 632	1 083	604
11	Carrefour	Retailing	17 583	n.a.	–
14	Gessy Lever	Soaps/cosmetics	9 366	590	82
15	Esso	Petroleum	1 213	317	n.a.
16	Texaco	Petroleum	1 501	325	–
18	Atlantic	Petroleum	1 588	239	–
19	Mercedes Benz	Automotive	17 056	814	482
21	IBM	Computers	3 474	n.a.	127
22	Nestlé	Food	12 855	781	n.a.
35	Xerox	Electronics	4 926	n.a.	65
42	Rhodia	Petrochemicals	8 487	877	72
47	Cargill Agricola	Food	2 752	346	191
48	Makro	Retailing	4 740	200	–
50	Robert Bosch	Auto parts	9 300	n.a.	153
51	Hoechst	Chemicals	4 958	359	n.a.
53	Philip Morris	Tobacco	4 591	192	128
58	Goodyear	Tyres	6 200	n.a.	162
59	Philips	Electronics	7 632	n.a.	95
65	Alcoa Aluminio	Metals	9 506	1 279	223
68	Pirelli Pneus	Tyres	4 685	269	110
70	Ref. de Milho	Food	3 910	222	n.a.
78	Asea Brown Boveri	Machinery	3 489	300	72
79	Sanbra	Food	3 682	418	118
82	Fleischmann Royal	Food	6 368	n.a.	
83	Scania	Automotive	3 600	n.a.	113
88	Bayer	Chemicals	3 211	346	n.a.
90	Avon	Soaps/cosmetics	2 393	n.a.	n.a.
97	White Martins Industrials	Chemicals	3 500	382	
			264 050	15 534	6 285

Source: "Latin America's largest companies 500", *America Economia*, special issue 1994/95.

80 per cent of pharmaceuticals, 70 per cent of chemicals and 60 per cent of non-ferrous metals.[3]

Table 2 shows the stock of foreign investment in Brazil by source. The United States is the single largest investor, but European firms as a group are more active.

Table 2. **Stock of foreign investment (direct and portfolio) in Brazil at 30 June 1995, by source**
(US$ million)[1, 2]

Source	Investments	Reinvestment	Total	Share of total (%)
Total	**45 504**	**12 579**	**58 083**	**100.0**
United States	17 427	3 003	20 430	33.2
Germany	5 029	2 845	7 874	13.6
Japan	3 660	900	4 560	7.9
United Kingdom	3 612	729	4 341	7.5
France	2 036	1 150	3 186	5.5
Netherlands	1 734	707	2 441	4.2
Italy	2 004	422	2 426	4.2
Switzerland	1 344	779	2 123	3.7
Canada	1 272	612	1 884	3.2
Bahamas	1 230	13	1 243	2.1
Sweden	352	273	625	1.1
Panama	458	128	586	1.0
Belgium	267	305	572	1.0
Luxembourg	498	130	628	1.1
Bermuda	803	14	817	1.4
Argentina	146	218	364	0.6
Liechtenstein	323	32	355	0.6
Portugal	319	19	338	0.6
Kuwait	268	0	268	0.5
Netherlands Antilles	270	32	302	0.5
Australia	248	9	257	0.4
Other	2 204	259	2 463	4.2

1. Conversion to US dollars at the parity of 30 June 1995. Investments in portfolio, Fixed-income Funds, Foreign Capital and Privatisation Funds are included. Distribution by holding's country.
2. Inter-company loans, bonds, commercial paper and notes are not included.

Source: Central Bank of Brazil.

Indeed, the Brazilian market is relatively more important for European firms than it is for American ones. French and German firms, for example, have invested almost as much in Brazil as they have in the emerging Asian economies. Japanese investment is facilitated by the presence of a large emigrant community in Brazil, but is nevertheless only a small and falling share of total Japanese investment abroad. Japanese investment in Brazil in 1996 represented only two per cent of the total inflow. Among European investors in 1996, the largest investors were from France, Spain and the Netherlands. The United States was the largest single investor with almost US$2 billion in direct investment.

Although inflows into Brazil originate predominantly in OECD countries, a small but rising share of inward investment is coming from neighbouring countries. This has been encouraged both by the privatisation process in Brazil which has attracted investments by newly privatised firms in the region and by the Mercosur agreement which stimulates the economic integration of the signatory countries. Bilateral flows between Brazil and Argentina have been increasing recently.

Table 3 shows the stock of inward investment by sector as of mid-1995. The figure for services is overstated because it includes various portfolio flows such as fixed-income and privatisation funds which are not usually classified as direct investment. If they are excluded, the manufacturing share rises to 72 per cent, while services fall to 22 per cent. More recent figures show a higher share of foreign investment in public utilities, following recent privatisations in this sector. The privatisation of the electricity company, Light, brought in US$1 384 million in foreign investments alone, through a consortium led by Electricité de France. The retail sector brought in US$671 million and telecommunications US$564 million following the sale of CRT to a consortium led by Telefonica of Spain.

Foreign interest is also growing in the banking sector. Consumer spending is experiencing a boom, and foreign banks are well-placed to benefit from this potential. Unlike many local banks which made healthy profits for years from inflation and which are now burdened with non-performing loans, foreign banks are well-capitalised. Formerly, many foreign banks focused on niche sectors such as credit cards or the financing of car sales. They are now moving into retail banking. A number of foreign banks have entered the market or strengthened their existing position in 1997. Hong Kong and Shanghai Banking Corporation (HSBC) has acquired one of the five largest banks, Banco Bamerindus, for US$1 billion in March 1997. Banco Santander acquired a majority stake in Banco Geral de Comercio for US$220 million. Other foreign banks such as Société Générale and Lloyds TSB have also been engaged in consolidating their presence. The growing interest in Brazil by foreign banks has also been encouraged by a more liberal attitude of the Central Bank towards foreign investment in the sector. There had been a freeze on the expansion of foreign investors in banking since 1988.

B. Outward Brazilian investment

As with inflows, Brazilian outflows of FDI show a clear upward trend – albeit with considerable volatility (Chart 2). Outflows reached US$1.4 billion in 1995, or one quarter of the level of inflows. Over one third of these flows have gone to the

Table 3. **Stock of foreign investment in Brazil at 30 June 1995, by sector**
(US$ million)[1, 2]

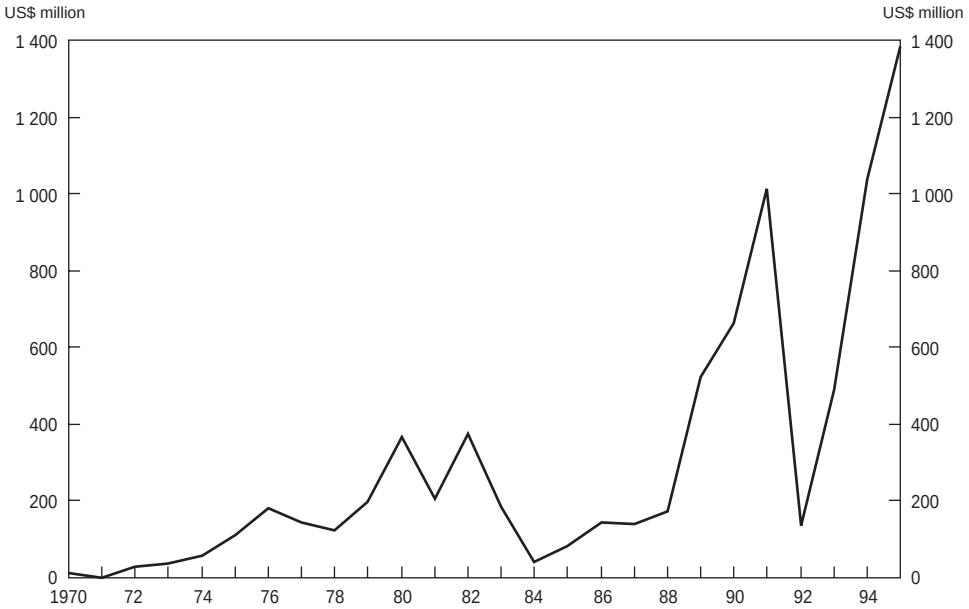
Sector	Investment	Reinvestment	Total	Share of FDI Total (%)
Total	**45 503**	**12 579**	**58 082**	
Portfolio[3]	15 343		15 343	
Direct investment	30 160	12 579	42 739	100.0
Agriculture	175	126	301	0.7
Livestock	128	1	127	0.3
Fishing	12	2	14	0.0
Minerals	899	191	1 091	2.6
Manufacturing	21 046	9 866	30 913	72.3
Iron and steel	538	88	626	1.5
Metals	1 947	670	2 617	6.1
Non-electric machinery	2 540	770	3 311	7.7
Electric machinery and comm. equipment	2 572	1 119	3 692	8.6
Automobiles	3 181	1 279	4 461	10.4
Auto parts	691	474	1 165	2.7
Basic chemicals	2 747	1 298	4 046	9.5
Petroleum products	516	337	854	2.0
Medical and vet. products	1 416	518	1 934	4.5
Textiles	362	326	687	1.6
Food products	835	1 067	1 902	4.5
Tobacco	190	68	259	0.6
Other	3 611	1 843	5 359	12.5
Public Utilities	60	10	71	0.2
Transport	26	3	29	0.1
Other	34	7	41	0.1
Services	7 096	2 250	24 689	57.8
Banks	1 409	548	1 957	4.6
Property management	3 345	1 086	4 431	10.4
Other	2 342	616	2 968	6.9
Other	743	130	873	2.0

1. Conversion to US dollars at the parity of 30 June 1995.
2. Inter-company loans, bonds, commercial paper and notes are not included.
3. Includes investments in Fixed-income Funds-Foreign Capital and Privatisation Funds.

Source: Central bank.

Cayman Islands, suggesting that investors have been interesting in placing funds in offshore financial affiliates. Such placements are common for countries which have had a legacy of various capital controls. Another one third has flowed to the United States. Although only ten per cent of the stock of outward investment as of mid-1995 had gone to the rest of South America, there has nevertheless been an increas-

Chart 2. **Brazilian outflows**



Source: *Balance of Payments Statistics*, IMF; *World Investment Directory: Latin America and the Caribbean 1994,* UNCTAD.

ing tendency for Brazilian firms to make acquisitions in neighbouring countries, notably Argentina. VASP, a private Brazilian airline recently expressed interest in buying a controlling stake in Aerolineas of Argentina for an estimated US$300 million.[4]

C. Methodological issues

There is no minimum percentage of foreign ownership in order for an investment to be considered as foreign direct investment, but as a general rule the Central Bank considers as foreign subsidiaries those enterprises with more than 50 per cent of the voting capital controlled directly or indirectly by foreign investors. For branches, voting capital must be entirely in the hands of the foreign investor. Data on FDI flows are based on registrations at the Central Bank. They include investment in assets, disbursements of foreign exchange, reinvestment of profits, conversion of external credits or into investments and conversion of other assets held by residents abroad into investment. Reinvested earnings are included whether they

are invested in the existing company or in another sector of the economy. Reinvested earnings are not recorded for outward investment. Short- and long-term loans between the parent and the subsidiary, as well as other related credit made available from the country of origin of the investor, are not classified as direct investment, but rather as part of the external debt of the country.[5]

Chapter 2

Regulatory framework for FDI

A. Overview of economic reforms

At the end of 1993, a combination of favourable political, economic and historical circumstances made it possible for the Government to lay the groundwork for a long-term, multi-pronged attack on three decades of high inflation. This process resulted in a sharp drop in inflation and paved the way for the introduction of the *Real Plan* in 1994. Since then the national currency has fluctuated within a band established by the Central Bank having as a reference the monetary base and foreign reserves. The Government has taken steps to tackle the problem of the public sector including:

- the refinancing of State government debt owed to the Federal government;
- the prohibition of State bank lending to State governments;
- the introduction of measures aimed at balancing State government budgets;
- the creation of the Fund of Fiscal Stabilisation in 1996 to reduce the degree of earmarked tax revenues;
- the fight by Federal, State and Municipal governments against tax evasion and avoidance.

Macroeconomic stabilisation and fiscal reform have been accompanied by trade liberalisation. The implementation of a tariff reduction programme has brought import tariffs down from an average 32.2 per cent in 1990 to 14.3 per cent in 1994. The maximum duty is 40 per cent, but Brazil undertook during the closing session of the Uruguay Round of GATT to cut its ceiling on import duties to 35 per cent. Non-tariff restrictions have been also relaxed and currently only a very narrow range of products require authorisation from special agencies for the issuance of an import licence. The World Trade Organisation has nevertheless noted that Brazil maintains high tariffs in certain sectors and has a complex tariff structure with frequent adjustments.

Liberalisation of the legal framework for FDI is an integral part of the overall reform process. In 1995, Constitutional amendments approved by Congress eliminated the concept of "Brazilian company of national capital" (Art. 171 of the 1988 Federal constitution) and opened a number of strategic areas to private and foreign participation. Adoption of implementing regulations is now in progress. Other significant policy changes include legislative actions to allow foreign capital remittances, increase intellectual property protection and provide the legal framework for the participation of foreign companies in the privatisation of State industries and public utilities.

B. The regulatory framework of FDI

i) The Constitution

Brazil is a Federal Republic comprising 26 states and a Federal district. Each state has its own government and courts. Under the Brazilian Constitution, legislation including civil, commercial and criminal law may only be enacted by the National Congress whereas local legislatures enact procedural legislation.

According to Article 24 of the 1988 Federal constitution, fiscal and economic law are matters of shared competence between the Union and the States. In these matters, the Union imposes the general guidelines and in the absence of a Federal framework, States are allowed to exercise a full legislative competence. A recent law makes it clear that Federal legislation overrides state laws.

Regulatory powers regarding foreign investment are the exclusive competence of the Federal Government; states do not have regulatory powers in this matter. This is enunciated in Article 172 of the Federal constitution which states that federal legislation will regulate, based on national interest, *foreign investments, reinvestment incentives and profit remittance*s. The commercial registration of firms, the granting of investment incentives and the provision of infrastructure projects are, however, under state competence, with occasional participation from the Federal Government. State and local communities also have the power to grant incentives to attract domestic and foreign investments. Article 151 of the Federal constitution allows the granting of fiscal incentives aiming at promoting regional economic and social development.

The Federal constitution and the Law No. 4131 provide the main legal framework with respect to FDI. States are bound by the Constitution in the area of

national treatment for foreign investors. Amendment No. 6 to the Constitution modified Articles 171 and 176 by eliminating the distinction between "national companies" and "national companies of Brazilian capital" and by allowing foreign companies to exploit minerals and hydroelectric power under concessions or permits. The amendment defines Brazilian companies as those established under Brazilian law, with headquarters and administration in Brazil; it seeks to provide all Brazilian firms with the same treatment independently of capital origin. Legally speaking, national treatment is assured only to already-established foreign firms, even if in practice the same treatment is given to first establishments. Foreign investors have access to domestic legal recourse as well as to international recourse for which Brazil is a member. International arbitrage awards, however, must be ratified by the Supreme Court before they come into force. The Supreme Court examines formal aspects but not the substance of the award.

The Constitution (Article 175) also provides the basis for granting public service concessions in Brazil. Implementing regulations are contained in Law No. 8987 of 13 February 1995 (the Concessions Law) which defines sector-specific criteria under which the Government may authorise third parties to perform public services. The concessionaire, investing for his own account and at his own risk, will act on his own and will be compensated by collecting tariff charges from the public. The Concessions Law introduces competition into sectors that are overly protected and excessively regulated, allowing national and foreign enterprises to invest in the most dynamic and strategically important areas for national development (electric energy – generation, transmission and distribution – telecommunications, transport, highway construction, ports and airports sanitation and water supply).

ii) General requirements

Foreign firms may invest freely in Brazil in most sectors, subject to registration at the Central Bank. The registration is necessary in order to remit capital and profits for information and statistical purposes. Failure to register may result in civil and pecuniary sanctions in accordance with Resolution No. 2,275 of 30 April 1996. Since the elimination of the concept of "Brazilian companies of national capital" in 1995, foreign investors have been guaranteed identical juridical treatment under equal conditions, and all forms of discrimination not specified in legislation have been prohibited. A number of sectors are nevertheless reserved to domestic firms although the list of restricted sectors has been reduced recently. Foreign take-overs of Brazilian firms in non-restricted sectors are permitted under the same competition rules as domestic firms. Foreigners are free to participate in

privatisations, and a 40 per cent limit on their share of voting stock has been eliminated. The State nevertheless has the possibility to maintain a golden share in a few cases. Established foreign firms also have the same rights concerning government procurement. The legal framework for privatisation makes no distinction between established and non-established enterprises.

Foreign capital is broadly defined as goods, machinery and equipment entering Brazil without any initial outlay of exchange for use in the production of goods and services, as well as those financial or monetary resources introduced into the country for investment in economic activities provided that, in both cases, they belong to individuals or legal entities resident, domiciled or with headquarters abroad.[6]

Foreign investment registration with the Central Bank is effected through the issue of a Certificate of Registration (CR) by the Department of Foreign Capital (FIRCE) and, based on the geographic zoning system in effect, should be petitioned from the Regional Office of the Central Bank that has jurisdiction over the headquarters of the company receiving the investment. According to the provisions contained in this legislation, the petition must be presented within a maximum of 30 days of entry of the resources into the country or, in the case of reinvested profits, of the respective accounting entry. Registration involves no fees or other type of commission. Investments involving royalties – including franchises – and technology transfer must be registered with the National Institute of Industrial Property (INPI) as well as with the FIRCE.

The Central Bank has recently adopted measures to ease registering procedures by eliminating registration delays and by obliging the FIRCE to issue the Certificate of Registration within 30 days from the entry date of the investment. There is no limit for the effective registration by the Bank. The Bank only registers investment inflows and is not responsible for granting entry authorisations. Registration is automatic for credit operations related to import financing; these operations are now done electronically. Other measures adopted include more consistent criteria for registering investments in goods, registering foreign investment in the form of patents or trademarks, and the reinvestment of profits from financial revenues.

The Certificate of Registration is essential to permit remittances of profits and dividends abroad, as well as repatriation of the invested capital at any time following investment, provided there has been due compliance with corporate and tax legislation and all other relevant norms. For monitoring and control purposes,

investments, redemptions, earnings, capital gains, transfers and other movements of foreign portfolio investments are subject to electronic declaratory registration at the Central Bank.[7] Remittances of capital gains from FDI require specific Central Bank approval. The Brazilian experts have indicated that this requirement is motivated by fiscal reasons and verification of the selling price in relation to the total of company assets.

Unlike subsidiaries, branches may not deduct for tax purposes or pay royalties for trademark and patent licences for contracts between the Brazilian branch and the parent company overseas. This is justified by the fact that the Brazilian branch and its parent are considered to be part of the same legal entity and that very limited foreign investment occur in that form. This matter is nevertheless under review in the INPI. Transfer of trademark fees are limited to one per cent of turnover. Royalty deductions are limited to five per cent of product sales.

As any other fund, foreign capital investment funds and privatisation funds must be authorised by the Securities and Exchange Commission (CVM) irrespective of the origin of the capital. Transfers of resources from one portfolio mode to the other, among portfolios of the same mode and among investors should be notified by the Managing Institution through the Central Bank Information System up to the business day subsequent to that of the transaction.

Brazil still benefits from transitional status under Article XIV of the Articles of Agreement of the International Monetary Fund related to exchange restrictions, according to which qualifying IMF members may restrict international payments and current transactions. These countries are nevertheless under an obligation to ease and eliminate these restrictions as soon as their balance of payments situation allows it. Capital repatriation from Brazil has been delayed or suspended in the past and profit remittances have been prevented during balance of payments crises. Brazil is reviewing prospects for abandoning its transitional IMF status, but the authorities have not yet reached a decision.

Although international currency may freely enter and exit the country, Brazil has a dual exchange rate regime regulated by the Central Bank. One rate (known as the "commercial" or "financial rate") is applied to international transfers related to imports, exports, loans and financing transactions in general, and FDI and profit flows. The other rate (known as "tourism or floating rate") was initially applied to tourism transactions but has been extended to other transactions (such as health and education expenses, real property acquisition abroad, etc.). These transactions in

general are not subject to an authorisation from the Central Bank but must be performed by a banking institution authorised to operate on the exchange market. Moreover, any transaction above US$10 000 must be reported to the Central Bank by the operating commercial bank. The two exchange rates have been kept very close to each other and "parallel" rates account for a very small share of the total volume of exchange transactions.

iii) Mercosur

Another important aspect of the liberalisation process in Brazil has been the Mercosur Agreement. Brazil has signed the Protocol for the Promotion and Protection of Investment for non-members of Mercosur (Buenos Aires Protocol signed on 5 August 1994) and the Protocol for the Promotion and Protection of Investment for Mercosur members (Colonia Protocol signed on 17 January 1994) which covers FDI originating in Mercosur countries. Both agreements, which contain arbitrage settlement procedures relatively new under Brazilian law,[8] are still under careful consideration. The Extra-zone Protocol provides, *inter alia*, the following benefits for non-signatory countries:

- Each member party undertakes to assure that just and equitable treatment will be accorded to investments of third parties and will in no way hamper their management, their continuance, their utilisation, their privileges or their realisation, by any unjustified or discriminatory measures.
- Each of the member parties will provide full protection to third party investments and will not grant to those a less favourable treatment that is accorded to its own national investors or investors from other states.
- Free transfer of funds which includes, *inter alia:* capital and additional amounts invested for maintenance and development purposes; profits, revenues, interest, dividends and other current income; loan reimbursements; royalties and professional fees; funds resulting from asset liquidation or sale; compensation and indemnification; and salaries paid to authorised foreign workers connected to an investment, and the guarantee that the transfer is done in convertible money.
- Dispute settlement between a foreign investor and a party through domestic court intervention or international arbitration at the investor's preference. Arbitration decisions enforced by the parties under their respective legislation.

In the intra-zone Protocol Brazil has reserved the right to establish transitory exceptions to national treatment including: mining, hydroelectricity production, health care, radio and television and other telecommunication services, acquisition or rent

of rural areas, participation in the financial intermediary system, insurance, building, and ownership and cabotage services. These exceptions do not, however, involve any preferential treatment for Mercosur partners. More recently, there was a significant loosening of the rules concerning the following sectors: telecommunication services, mining, hydroelectricity, financial intermediary system and insurance.

C. Juridical forms of operation

Brazil has a functional commercial code which governs most aspects of commercial association, except for corporations formed for the provision of professional services, which are governed by the civil code. Bankruptcy laws provide for creditors' rights. There is in general no capital minimum required except in banking institutions or insurance companies.

Foreign firms may engage in business in Brazil by acquiring an existing corporation or by forming a local subsidiary in Brazil. Many foreign firms choosing the latter route prefer to establish a limited-liability company (*Sociedade por quotas de responsabilidade limitada*) which entails fewer formalities and less public disclosure than the other option (one of several types of the *Sociedade Anonima* SA – equivalent to a US corporation or UK public company). These two forms of company structure are widespread as they allow limited liability for partners. It is only on very rare occasions that partners have recourse to the other types of company structures in which their liability is not limited.

Company Law No. 6404 of 1976 and the Securities Commission (CVM – *Comissao de Valores Mobiliarios*) are designed to provide protection for minority shareholders, strengthen stock markets and facilitate the formation of conglomerates. The law introduced new corporate concepts to Brazil, including those of a controlling shareholder and the mandatory distribution of dividends.

A special CVM Commission is in the process of drafting a proposal that will modify Brazil's basic company law redefining the rights of minority and preferred shareholders.

A company may also organise as a branch in Brazil. However, unless there is a substantial tax advantage in the investor's home country (*e.g.*, through deduction of exchange losses from the parent's taxable income), the disadvantages of this form probably more than outweigh the benefits. The establishment of a branch takes six months and the costs are greater than for other business forms. In addition, the regime for royalty payments is more stringent.

In a firm employing more than three persons, two-thirds of all employees must be Brazilian nationals, receiving two-thirds of the total payroll. These nationality requirements date back from the 1934 Constitution and are likely to be reviewed, especially for small and medium-sized firms. Moreover, foreign specialists not available locally are excluded from the calculations, as are directors who are not employees. Foreign managers must be permanent residents in Brazil, essentially for liability reasons in cases of fraudulent actions or fraudulent bankruptcy.

D. The tax regime

In Brazil, the origin of foreign direct investments (real estate acquisition, paid-ups, individual buyout of shares of national enterprises) is generally irrelevant for fiscal matters. Taxes applied to foreign direct investments are identical to those applied to national firms. They are charged on profits, gross income, value added, financial operations, real estate and payroll.

As the total tax charge over dividends paid to residents abroad was considered too high, the following measures were taken in order to stimulate FDI in the country:

- end of the supplementary income tax of on dividends which are higher than 12 per cent of the registered capital (Law 8383/91);
- reduction of the withholding tax from 25 per cent to 15 per cent on remittances of royalties or payments resulting from technical assistance between parent company and Brazilian subsidiaries as of 1 January 1996 (Law 9249/95);
- benefit and dividend remittances over proceeds obtained since 1 January 1996 are exempted from withholding tax (Law 9249/95). Prior rate was 15 per cent from 1 January 1993 through 31 December 1995 (Law 8383/91);
- tax leverage is done on company's international revenue basis with the granting of a local fiscal credit on taxes payable abroad.

It can also be noted that Brazil has contracted a number of bilateral investment protection and double taxation agreements. (See Chapter 5.)

E. Investment incentives

Investment incentives in Brazil are offered to specific industries, for investments in less developed regions, and for investments in tax-exempt export processing zones.

Market-based credits by BNDES are available for certain sectors and geographical regions. Non-established firms may have access to such public financing if the Ministry of Planning and Budget considers the investment of national interest.

Investment incentives in less developed regions are channelled through three "*superintendencias*" (a kind of Federal agency): SUDAM (for the Amazon), SUDENE (for the north-east) and SUFRAMA (Manaus). The north-eastern region of Brazil receives the majority of investment incentives. State development banks also provide funding (medium- and long-term) to manufacturing, agriculture and infrastructure projects. State and governmental authorities give tax incentives to companies willing to invest in priority sectors (steel, agriculture, construction material). The tax incentives include temporary exemptions or reduction of state value-added taxes and municipal service taxes. In addition, States may offer long-term financing using State funds for investors, donations and grants of land, and the provision of specific infrastructure such as telephony, energy and water, rail and road transport.[9]

Decree Law 2452 of July 1988 elaborated a set of policy instruments to aid the establishment of export processing zones (EPZs) to promote the development of less advanced regions in Brazil. This programme was reportedly stalled for a number of reasons.[10] No EPZ project has been launched yet and there are questions as to whether any of them may eventually materialise.

In addition to EPZs, Manaus has free trade zone status (FTZ) and has become the largest free trade zone in South America. Foreign imports entering the FTZ of Manaus are exempt from custom duties as well as from state sales tax and industrial taxes if they are used for local consumption, industry, agriculture or fishing. No taxes are levied on goods produced in the FTZ if these are processed or re-exported. Imports are exempted from state taxes up to a maximum of 80 per cent.

In general terms, the above mentioned incentives must receive previous approval by the SUDENE, SUDAM and SUFRAMA (all subordinated to the Ministry of Planning) Councils. Factors and criteria taken into account include the industrial sector, the location of the investment, the extent of export-import substitution, the use of local raw materials, and the number of jobs created. Candidates do not submit a formal application but rather an outline of the project and an explanatory letter (reasons for the project, relevant developments for the region or the sector). After a first selection, candidates present a detailed description of the project including production costs, financing, machinery and technology imports, and job creation.

The Government has adopted a special regime for the automotive sector which includes a mixture of incentives and performance requirements.[11] Beginning in March 1995, following a deterioration in the balance of payments, the Government raised tariffs on consumer durables, including automobiles. These tariffs were subsequently lowered for all but the automotive sector. In June 1995, the Government imposed quotas on automobiles which were subsequently removed following a ruling in the WTO. Brazil announced at the end of 1995 that foreign carmakers with operations in Brazil would be able to cut tariffs on finished vehicle imports if they achieved a local content of 60 per cent or more and balanced their exports of vehicles with imports of parts. Companies qualifying for the tariff cuts could see tariffs fall from 70 per cent to 35 per cent. This policy affects both companies exporting to Brazil and those wishing to invest since tariff reductions depend on the level of local content which rises only slowly for new investors. The benefits accrue mainly to foreign carmakers already established or which establish in Brazil. The Government has indicated its intention to hold consultations about the matter in the WTO.

F. Protection of intellectual property

On 14 May 1996, a new Industrial Property Bill was approved by the Brazilian Congress and signed by the President. The new law, which came into effect on 14 May 1997, intends to bring Brazil's patent and trademark regime up to the international standards specified in the Uruguay Round Trade Related Aspects of Intellectual Property (TRIPS) Agreement. The main innovations of this recent law are the following:

- chemical/pharmaceutical substances, chemical compound and processed food products can now be patented. This is also true for genetically altered micro-organisms;
- the term for product patents has been extended from 15 to 20 years; the term of model patents has been extended from 10 to 15 years;
- the patent owner may now ask the INPI (*Instituto Nacional de Propriedade Industrial*) to launch a public tender for the exploitation of the patent;
- protection of trademarks is improved by the inclusion of internationally "famous" brand names;
- the law provides for "pipeline" protection, effective immediately, as well as for pharmaceutical, chemical and processed food products which have been patented in other countries but not yet placed on any market;
- compulsory licensing may be granted[12] if a patent owner exercises his rights in an abusive manner (economic abuses) or when the patent is not exploited in Brazil within three years of its issuance;

- trademarks will be cancelled five years of after issuance if they have not been used in Brazil, if their use was interrupted or if the main characteristics were changed during this period of time;
- the new law guarantees and improves the legal protection of industrial property owners against violations of their rights;
- the INPI shall register transfer of technology contracts at the latest 30 days after their submission. Evidence of "legitimate use" of a trademark or a patent is no longer demanded.

Brazil is a member of the World Intellectual Property Organisation (WIPO) and a signatory of the Bern Convention on Artistic Property, the Washington Patent Co-operation Treaty and the Paris Convention on Protection of Intellectual Property. In August 1992, Brazil removed its reservations and accepted fully the Stockholm revision of the Paris Convention.

G. Government procurement

In general, the law forbids the granting of preferences based on the domicile of bidders or differential treatment between Brazilian and foreign firms. However, when all other factors are equal, suppliers may be selected according to whether a service or good is, in descending order of priority, domestically-produced, and produced or supplied by Brazilian firms as defined by the 1995 constitutional amendment. The law applies to government procurement at the Federal, State and municipal levels as well as in public agencies (Law No. 8666 of 21 June 1993).

Interested parties must provide evidence of their technical and financial positions, fiscal standing as well as legal status: for foreign firms, the latter involve official registration or authorisation to operate in Brazil. Foreign firms without operations in Brazil and involved in an international tender must have legal representation there; requirements (and others) do not apply when funds from multilateral financing organisations are involved. International tenders must comply with guidelines on monetary and foreign trade policy. Domestic charges and taxes paid by domestic firms are added to bids made by foreign companies in order to decide on awards. There is no central procurement agency in Brazil. Procurement is the responsibility of each individual government body, including State enterprises, although some control is exercised through their budgets.

H. Access to local finance

The access of foreign companies to the national financial system may be restricted by the Central Bank in case of balance of payments disequilibrium

(Law No. 4728/65 of 14 July 1965). There are no restrictions when funds for investment are collected abroad.

Law No. 4131, articles 37, 38 and 39, restricts public financial institutions to finance enterprises whose central control belongs to individuals who are not residents in Brazil, except in the following cases:

- the funds were collected abroad;
- a special authorisation from the Ministry of Planning and Budget can be requested based on national interest (in the case of companies which are not yet established in Brazil);
- the enterprises that operate in sectors and geographical regions which were considered a priority by Presidential decree (in the case of companies already established in Brazil).

Chapter 3

Sectoral measures

In spite of the general principle of national treatment, foreign investment restrictions exist in the following sectors or activities in the private sector domain: banking, insurance, telecommunications, fishing, radio, television and publishing, cable television, air transport, rural properties and security services. There is also scope for discrimination in the field of government procurement for a limited number of products and access to local finance (see Chapter 2). A number of activities remain subject to a monopoly or concessionary regime (see Chapter 4).

A. Banking

The 1988 Constitution regulates foreign investment in the financial sector. Article 192 of the Constitution indicates that a complementary legislation (still to be enacted) shall establish conditions for the foreign participation in the financial system. In the absence of such legislation, foreign participation has been regulated by Transitional Constitutional Provisions (Article 52) which condition the establishment of new branches and subsidiaries of foreign financial institutions and participation of foreign investors in the capital stock of existing Brazilian financial institutions to the issuance of a Presidential decree. These provisions allow foreign banks to establish subsidiaries or to acquire Brazilian banks (including State-owned banks) under certain conditions (*i.e.*, obligations under international agreements, reciprocity or national interest).[13]

The dramatic reduction in inflation under the Real plan has undermined the profitability of many Brazilian banks and has encouraged a greater openness towards foreign investment. An executive decree issued in August 1995 (Exposé of Motives No. 311) established the basic guidelines for renewed foreign participation in the sector, justified on the basis of the country's own economic interest to

allow foreign banks to invest. Potential investors in federal or state banks must submit a proposal to the Central Bank which, in turn, forwards it to the National Monetary Council (CMN). Following CMN approval, the President signs a decree officially authorising the investment. A separate decree signed in the same year deals with foreign participation in Federal and State-owned banks.

Since the end of 1996, the CMN has allowed foreign branches in Brazil to operate as multi-banks and to expand their activities. These privileges had formerly been restricted to subsidiaries of foreign banks. In addition, foreign investment funds may now hold preferred shares in Brazilian banks. Supplementary legislation concerning foreign investment in banking is expected to be approved by the Congress this year.[14]

In practice, these decrees are automatically granted when the foreign bank seeks and obtains previous approval from the CVM (Brazilian SEC) and the CMN. Full foreign control of a Brazilian bank has already been permitted, as well as the establishment of a new foreign subsidiary,[15] and there is an administrative understanding that foreign participation shall also be allowed in the state banking privatisation programme. There is no legal restriction to the participation of foreign investors in the privatisation of federal and state banks. Nearly one half of the banking system is still in State hands, at either the Federal or state level.[16]

B. Insurance

There is no restriction for foreign direct investment in the sector according to a rule by the Legal Federal Adviser ("*Parecer 104*" of 5 June 1996), The *health* insurance sector falls under the legislation concerning the insurance sector in general. Examples of foreign involvement include the 100 per cent ownership of "Compannhia Paulista de Seguros" by the US Liberty Company, HSBC's 100 per cent acquisition of "Bamerindus", the fifth largest Brazilian insurer, and UK equity interest in "Unibanco Seguros".

To be enacted Constitutional Amendment No. 13 modifying paragraph 2 of Article 192, will permit foreign private reinsurers to operate in the *re-insurance* sector. The time frame for this liberalisation, which depends on the adoption of a complementary law is two years. Re-insurance services were previously under the control of the Brazilian Re-Insurance Institute (IRB) with 100 per cent of the voting shares held by the Federal Government.

C. Telecommunications

A licence is required to operate all telecommunication services. Criteria used to grant licenses include the applicant's technical and financial capacity and, in certain cases, pricing policies and the amount offered for the licence. In cellular telephone (band B frequency), and satellite transit services, foreigners may own all of a firm's non-voting shares (up to two-thirds of the total capital) and up to 49 per cent of the voting capital. In the latter case, restrictions on foreign ownership remain for three years after the legislation comes into force in 1997. Foreigners may own, however, all forms of capital in the value-added services sector.

The Constitution originally required that all public telecommunications services fall under the control of State enterprises, but Amendment No. 8 now allows the provision of telecommunication services by private companies. The Amendment is to be ruled by ordinary law and the Government has already sent the corresponding bill to the Congress. The bill proposes significant changes in the telecommunications sector, including the creation of a regulatory body that will be in charge of implementing national policies and the privatisation of the State-owned holding company, *Telebrás* (the government may start with the sale of TELESP, the biggest regional operator and EMBRATEL, the monopoly supplier of interstate and international services). The Government expects to have the bill approved by the Congress at the beginning of the second semester of 1997 after which regional public companies could be transferred to private hands. Two basic principles underpin this structural reform, namely introduction of competition in the exploitation of services and universality of access to basic 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, online information and data processing, in cellular telephone (band B frequency), in paging and in satellite-space segment services.[17]

Brazil presented last February before the Basic Telecommunications Group of the WTO satellite data transmission provision its offer to liberalise its telecom sector. The offer includes *inter alia* the proposal to eliminate restrictions on foreign investments from 20 July 1999 in cellular telephone and satellite transport services. There are no restrictions to the participation of foreign governments or companies under their direct or indirect control in the voting capital of suppliers of these ser-

vices. The offer does not contain any restrictions applying to the number of foreign nationals on boards of directors as well as executive officers in companies supplying these services.

D. Radio, television and publishing

In accordance with Article 222 of the Constitution and Decree law 236/67, foreign participation is limited to native-born Brazilians or persons who have been naturalised citizens for at least ten years. The purchase of technical assistance from foreign enterprises or entities is also forbidden. A constitutional amendment before Congress would allow a foreign minority participation of 30 per cent in the capital of communication companies (broadcasting and publishing, including newspaper).

None of these activities are reserved to the State or constitute a monopoly. These services are exploited on a concession/permission regime, mostly by private enterprises.

E. Cable television

Concessions to exploit cable television services are only granted to Brazilian firms (Law No. 8977 of 6 January 1995). At least 51 per cent of the voting capital must be in the hands of native-born Brazilians or persons who have been naturalised citizens for at least ten years or must belong to firms whose headquarters are in Brazil and whose control is under native born Brazilians or persons who are naturalised citizens for at least ten years. This policy is currently under review.

F. Transport

Air transport

In accordance with Article 21 of the Federal Constitution, the Brazilian Air Code and Law 7565 of 19 December 1986, direct participation of foreign capital in air transport is restricted. Some foreign companies not established in the territory have been authorised to hold up to a 20 per cent stake in some national air companies. Authorisation is granted by the Air Ministry under Law 7565 of 19 December 1996 and Law 146 of 30 March 1993.

In addition, according to the Brazilian Air Code, foreign enterprises may not administer or operate airports nor provide navigation and air traffic services.

Maritime and inland waterways transport

Constitutional Amendment No. 7/95 eliminated restrictions and reduced former requirements in maritime navigation established by the Article 178 of the 1988 Federal constitution. The implementing regulations change the requirements for granting authorisations to navigation firms and for the registry of Brazilian flag vessels; it allows foreign freight vessels to provide services between Brazilian ports under certain circumstances and to open internal navigation to foreign ships when reciprocity is granted. The liberalisation of cabotage does not extend, however, to tourism transport according to Article 1, III of Law No. 9432/97 (8 January 1997).

The new law also applies to inland waterways and all maritime transport other than cabotage (Articles 1 and 2). Exceptions under Article 1 relate to war vessels or state vessels not engaging in commercial activities, sport and leisure vessels, tourism vessels, fishing vessels, and scientific research vessels.

Foreign controlled firms created and constituted according to Brazilian law are considered as Brazilian companies and have access to Brazilian flag advantages (Article 3, II, Law No. 9432/97). Authorisation is granted by the Transport Ministry (Law 671 of 15 February 1994).

Tourism transport follow the same rules. Several foreign firms operate in this sector.

Road and rail transport

The road infrastructure and the rail sector have been opened to the private sector through the privatisation and concessionary programmes.

Foreign participation in *rail transport* is allowed unless contrary to Executive Decree 1,481-49 of 15 May 1997. Foreign companies have actually invested in three out of five of the railway companies (100 per cent of Ferrovia Noroeste S.A., 25 per cent of Ferrovia Centro-Atlantica S.A. and 19.5 per cent of Ferovia Sul Atlantico) created from the dismantling of the Federal railway monopoly (RFFSA). Intrastate rail transport falls under the competence of Brazilian states in accordance with Article 21 of the Brazilian Constitution.

Foreign participation in *road transport* is limited to 20 per cent of the voting capital with respect to companies established in Brazil after 7 November 1980.

Restrictions also apply to all foreign-controlled companies with respect to the raising of capital subscriptions. There are no restrictions on the granting of concessions to established foreign-controlled firms. Non-established firms are also allowed provided all financial resources are collected abroad.

G. Fishing

Exploitation of internal waters, areas within the territorial sea and some other activities are reserved to native-born Brazilians or persons who are naturalised citizens or must be undertaken by firms registered in Brazil. Foreign vessels need authorisation from the Ministry of Agriculture *to develop fishing activities.* This policy is under review.

H. Real estate

In accordance with Article 20 of the 1988 Federal constitution, *border areas within 150 kilometres of international frontiers, coastal land and "national security areas"* such as the Amazon basin are subject to restrictions on foreign ownership for national security reasons. The Sao Paolo municipalities restrict the purchase of land by foreigners to 750 hectares and require compliance with detailed regulations.

Some activities within 150 kilometres from *land* frontiers are subject to approval by the National Security Council (*Conselho de Segurança Nacional* - CSN).[18] These activities concern the transfer or concession of public real property, the opening of roads or waterways, broadcasting, bridges, international roads, runways and strips for aircraft, national security industries, mining (except for civil engineering programmes), transactions involving rural real property, the transfer of rural real property to foreigners, possession of rural lands by foreigners. To be allowed to operate, companies engaging in the above mentioned activities must meet the following requirements: five per cent of the capital must be in the hands of Brazilian individuals; two thirds of the labour force must be Brazilian; the actual management must be exercised by Brazilians who must be in a majority position. In case these activities would be undertaken by an individual, only Brazilians may be granted a special permit by the CSN.

There are also some limitations with regard to *rural property*. A foreign legal person or individual must be a resident in the Brazilian territory in order to purchase or rent any rural property Moreover, this property must be no greater than a

quarter of the total area of the municipality ("*município*") to which it belongs. This restriction is more flexible when the foreigner is married to a Brazilian citizen or has Brazilian descendants. Specific authorisations are needed according to the size of the property to be purchased or rented by foreigners: *a)* up to 50 exploitation units or MEI ("*Modulo de Exploraçao Indefinida"*) from INCRA/Ministry of Agriculture; *b)* from 50 to 100 from the President; *c)* above 100 MEI from the Brazilian Congress. Purchase of real properties up to 20 MEI require the presentation of a specific project of exploration for the land.

I. Security services and transport of valuables

Foreign participation in security services and the transport of valuables is forbidden.[19]

J. Computers

The market reserve policy in the computer sector was terminated in October 1992. As a result, import controls and the requirement for prior authorisation for the domestic production of computer products were eliminated for all firms. The operation of maximum prices and performance differentials was also terminated in October 1992 (Law No. 8248/91). Performance requirements remain with respect to government procurement according to Law No. 8666 of 21 June 1993.

Chapter 4

Privatisation, monopolies and concessions

A. Privatisation

Privatisation in Brazil began officially in 1981, when a Presidential decree created the Special Privatisation Commission. In the first phase (1981-1989), without establishing a guiding plan on the matter, the Government sold 38 companies, transferred 18 to State governments, merged ten into other Federal institutions, closed four and rented one. Most of the sales were of small companies and produced revenues of US$723 million. At the time, the Government had no intention of implementing a large-scale privatisation programme.

In 1990, the National Privatisation Programme (*Programa Nacional de Desestatização* – PND), was created through Law No. 8031, introducing a new and large-scale privatisation programme in the framework of a broad programme of market-oriented reforms. The PND's initial objectives were to: *a)* redefine the role of the Brazilian state through the transfer to the private sector of all economic activities unnecessarily managed by the public sector; *b)* reduce the public sector deficits and debts; *c)* promote the modernisation and competitiveness of the domestic industry; *d)* strengthen domestic capital markets through wider share ownership; *e)* free Federal government management capacity and re-direct it towards health, education, housing, social security and high-technology research and development.

The PND included among its priorities, for the very first time, the sale of State companies considered strategic in the 1970s – *e.g.*, State oligopolies in petrochemicals, fertilisers and steel. Usiminas, a modern and well-managed steel company, was the first to be put up for sale in October 1991. This sale alone produced twice the proceeds of the first phase of privatisation.

Beginning in 1990, the National Economic and Social Development Bank (BNDES) has been the Government agency responsible for implementing the directives established by the Privatisation Committee. Since January 1995, the National Privatisation Council (CND) has co-ordinated the activities of the PND. The CND comprises cabinet-levels officers, is chaired by the Minister of Planning and Budget and is directly accountable to the President of the Republic.

Privatisation in Brazil does not usually involve sales at fixed prices. The companies are sold at a public auction, open to foreign investors, with the final price being determined competitively by the market itself. The Government sets only a minimum auction price, based on appraisals made by two independent consulting firms selected by BNDES via public tender. Equal access has been guaranteed to both domestic and foreign firms since the beginning of the PND. Two consulting firms conduct appraisals of the company, with one including a recommendation of a minimum price and the other pointing out obstacles to privatisation, proposing solutions, identifying potential investors and suggesting the sale model to be adopted.

During the privatisation process there is no direct waiver of debts or any tax holiday. Thus there is no legal or administrative measure leading to cancellation of any type of debt which the State company controlled by the Federal government may have with any public institutions. In addition, with privatisation, the State also transfers the company's remaining debts, in this way reducing the public sector's liabilities. This transfer has amounted to more than US$4.6 billion up to December 1996.

The PND allows investors to use two types of payment, in addition to the Real, The first is medium- and long-term debt of State enterprises, their parent companies and the federal public sector at large. The second is foreign-held securities and credits corresponding to obligations of federal public sector entities. In 1993-1994 the law was changed to allow the wider use of Federal Treasury debts as privatisation currencies. The Government also established a floor for the use of the cash payment for the companies which is set on an *ad hoc* basis. In 1995, the Government, the National Monetary Council and the Central Bank eliminated the 25 per cent discount applicable to the face value of several classes of foreign debt bonds under the responsibility of the Federal government, thus ensuring equal conditions for use of both Brazilian and foreign bonds in the PND.

With the PND, the participation of foreign investors, forbidden in the 1980s, was allowed, though initially in a restricted form. Law No. 8031 (16 August 1990) stipulated that a foreign investor could acquire no more than 40 per cent of the

voting capital, unless authorisation had been voted by Congress. In 1992 this limit was abolished, so that currently foreigners may acquire up to 100 per cent of a privatised company. The State nevertheless reserves the right to retain a "golden share" in specific instances which confers a right of veto on certain matters.

The number of public enterprises was reduced from 250 in 1987-1988 to 147 in early 1996 through liquidation, incorporation or privatisation. From 1991 to 1995, the Programme revenues grossed US$9.61 billion and the participation of foreign investors attained US$417.1 million, equivalent to only 4.3 per cent of the total. In 1996, this participation reached 35.1 per cent (US$1.45 billion) of the US$4.1 billion obtained in the year. The 1996 performance increased the accumulated participation of foreign investors to US$1.9 billion – 13.6 per cent of US$13.7 billion grossed by the PND from 1991 to 1996. The reduced interest of investors from other countries in the first five years of PND can possibly be explained by its concentration in mature industrial sectors such as petrochemicals, fertilisers and steel. The results of the PND in 1996 confirm the great attractiveness of the privatisation of infrastructure sectors to foreign investors.

The biggest privatisation in 1996 occurred in the electricity sector. A majority control in Light, the electricity utility for Rio de Janeiro, was sold to private investors for over US$2 billion. A foreign consortium led by Électricité de France now holds a 34.2 per cent stake (which includes a 7.25 per cent participation by CSN), while the Federal electricity holding company, Électrobrás, holds 28.8 per cent. Another 7.25 per cent is held by CSN, a local steel company.[20] The Brazilian government intends to sell its remaining stake in Light at the end of 1997. This privatisation has been followed by the sale of a 70.3 per cent stake in the electricity distribution company for Rio, CERJ, to a consortium of foreign investors. The authorities of Rio de Janeiro sold their last shares in December 1996; Electrobras' remaining shares account for 13.3 per cent of the CERJ's capital. Further privatisations in this sector will be encouraged by the creation of an independent regulator, Aneel, at the end of 1996 through the passage of Law No. 9427.

Other prominent sectors in which privatisation has occurred include telecommunications, rail transport and mining. In telecommunications, foreign participation can be restricted to a minority stake by the Executive. This matter is under review in Congress. There has nevertheless been substantial foreign interest in the bidding for cellphone licences divided into eight different geographic regions. The State holding company, Telebrás, will be broken into several units, including Embratel which will handle international and long-distance traffic. Privatisation of

these units is intended in 1999. The first privatisation to grant full ownership to a foreign investor occurred in the rail transport sector. A 30 year concession was sold to a US consortium to operate the 1 600 kilometre Western Rail Network. Since then, other rail lines have also been sold to foreigners.

The largest privatisation to date – and the largest in Latin America – occurred with the sale of a 41.7 per cent stake of voting shares in the Companhia Vale do Rio Doce (CVRD), a mining conglomerate. CVRD is the world's largest iron ore producer and exporter, Latin America's largest gold producer and the largest foreign-exchange earner in Brazil. In addition, it has investments in many other activities both in mining and other sectors, including rails (the largest rail freight carrier in Brazil) and ship transport, steel, paper and fertilisers. Its privatisation has proved unpopular in Brazil: indeed, the privatisation succeeded despite opposition from several political groups. All injunctions were eventually nullified and the transfer of the control of CVRD to private hands was effected with a premium of 20 per cent above the minimum price established by the Government. The purchaser was a consortium led by CSN, the steel producer which also bought a share in Light. Other members included Nationsbank from the United States and several foreign and Brazilian investment funds. The Government plans to sell its remaining stake in the company through a public offering to foreign and domestic investors at the end of 1997.

The participation of foreign capital in the Brazilian privatisation process should continue to increase due to the development of a regulatory framework that facilitates the privatisation of public services and the extension of the privatisation process to states and municipalities. These states own a large number of public enterprises in water, sewage, piped gas and electricity, besides controlling a large share of Brazil's highway and railway networks. At the state level, the sales will include also the local state banks. BNDES has signed agreements with several states to give support to their privatisation processes, although privatisation of companies controlled by states and municipalities is not included in the PND. In 1996, three state companies were privatised – CERJ (electricity), CRT (telecommunication) and Ferroeste (railway network), totalling US$1.27 billion in revenues. Adding these results to the PND's proceeds, the total revenues with privatisation in Brazil from 1991 to 1996 reached US$15 billion – or US$19.5 billion considering the liabilities transferred to the new owners. Privatisations in 1997 and beyond are expected to raise US$50 billion, much of it from foreign buyers.[21] Sectors involved will include telecommunications, electricity companies, roads, ports and railways. As in the past, however, delays may be likely. There are no plans presently to privatise Petrobrás, a Federally controlled oil company and the largest Brazilian industrial company.

B. Monopolies and concessions

i) Postal services

General postal services (*e.g.*, letter, telegrams, etc.) is a Federal monopoly provided by a State company which can grant franchises to any individual or legal entity established in Brazil. Other mail services (*e.g.*, special delivery) may be provided by private companies, operating in Brazil, under a National Treatment regime.

ii) Concessions

The Law on Concessions, edited on 13 February 1995, which regulates the implementation of Article 175 of the Constitution, establishes the general rules by which the Government authorises third parties to perform public services and public contracts. The Law on Concessions is designed to inject competition and private funds into traditionally overly-protected and regulated sectors, allowing national and foreign enterprises to invest in strategically important areas for national development. The concessionaire will invest at his own risk and will be compensated by collecting tariff charges from the public. This will allow national and foreign enterprises to invest in the electrical sector (generation, transmission and distribution). Authorisation is given by the National Department of Electrical Energy and Water.[22]

Under the Concessions Law:

- the authority granting a concession must be a public sector legal entity (Federal government, states, the Federal district or municipalities);
- any partnership or legal entity can be a concessionaire, including State-owned companies. It is possible to create a partnership for the purpose of an auction, especially since that is a way for foreign capital to participate immediately in those public service sectors where such capital is still restricted (telecommunications until 1999);
- all concessions will last for a specific period and be offered through public bidding;
- there are no government subsidies; the concessionaire bears the risk of the concession;
- users participate officially in monitoring the services rendered;
- the concessionaire will no longer be guaranteed a fixed return based on total costs – a system that promoted inefficiency. Prices fixed through the tendering process are an element in the factors used in choosing the win-

ning bid; prices may be adjusted only in accordance with rules established in the call for bids and in the contract.

Private companies may also provide public services through permits. The conditions are similar to those of a concession, with some exceptions:

- a permit is granted for an undefined period, but may be revoked by the granting authority at any time;
- the granting of a permit does not require a public bidding process;
- private individuals may be granted a permit, but not a concession.

The Concessions Law establishes the rights and obligations of granting authorities, concessionaires or permit holders and users, as well as fines and penalties.

In addition, 1995 Constitutional amendments opened up new sectors to foreign participation via the concessionary regime:

- By eliminating the distinction between "national companies" and "national companies of Brazilian capital", constitutional Amendment No. 6 opened up the possibility of foreign companies exploiting minerals and hydroelectric power under concessions or permits, according to the National Treatment principle;
- By modifying Article No. 177 of the Constitution, Amendment No. 9 has opened up the petroleum sector to increased private participation. The Amendment makes it possible, under a regulation to be enacted by the Congress, to private companies, including foreign ones, to undertake research, exploration and extraction of petroleum and natural gas, petroleum refining, import and export of refined petroleum products, and the transport via pipelines and ships of hydrocarbons. It is also possible for the private companies to establish joint-ventures with Petrobras (the state-owned company). Constitutional Amendment No. 8, approved by Parliament on 15 August 1995, allows private companies to provide telecommunication services. The amendment will be ruled by ordinary law and the government sent the corresponding bill to the Brazilian Congress in 1996.

The Constitutional Amendment No. 5 of 16 August 1996 opened the distribution of natural gas through pipelines to national or foreign private firms through public concessions, ending the monopoly on local distribution enjoyed by individual States.

Chapter 5

Investment protection and double taxation

A. Bilateral investment protection treaties

Brazil has signed bilateral investment protection treaties (see Table 4) with eight European OECD countries as well as with Latin American countries (Mercosur, Chile and Venezuela). It has also signed a BIT with Korea. None of these BITs have

Table 4. **Brazilian Bilateral Investment Protection Treaties**

Under congressional review for ratification	
Chile	22.03.94
Denmark	04.05.94
Finland	17.03.95
France	21.03.95
Germany	21.09.95
Italy	03.04.95
Korea	01.09.95
Mercosur (intra-zone)	17.01.94
Mercosur (extra-zone)	05.08.94
Portugal	09.02.94
Switzerland	11.11.94
United Kingdom	19.07.94
Venezuela	04.07.95
Cuba	26.06.97
Finalised, awaiting signature	
Belgium-Luxembourg Union	
Norway	
Spain	
Sweden	
Currently under negotiation	
The Netherlands	
People's Republic of China	

Source: Government of Brazil.

been ratified. Other treaties with four European OECD countries as well as with Cuba are agreed upon and should be signed in the next following months. Brazil is currently negotiating BITs with the Netherlands and with the People's Republic of China.

After three unsuccessful attempts in 1981, 1986 and 1988, Brazil adopted a new law on arbitration in September 1996, which entered into force in November 1996. Under this new legal framework, "persons capable of entering into contracts may recourse to arbitration to solve their disputes over transferable patrimonial rights" (article 1 of the law). Parties are free to choose the material legal rules applicable to the arbitration (national laws and regulations; equity; general principles of law; international transitions customary patterns; *lex mercatoria*, etc.) as well as the procedural rules (*ad hoc* institutional rules; national rules or any set of rules freely agreed upon).

This new law also admits general rules of arbitration (such as the autonomy of arbitration clause; the independence competence and discretion of the arbitrators; transparency of the proceedings, right of defence).

One of the most significant aspects of the new law in comparison with the previous regime, is that it now provides legal grounds for the party who wants to start arbitration proceedings to obtain judicial specific performance of the arbitration clause included in the commercial contract against the will of the other party.

Brazil has ratified only a few international arbitration treaties : the Geneva Protocol of 1923; the 1975 Inter-American Convention on Commercial International Arbitration (known as the "Panama Convention") and the 1979 Inter-American Convention on the Recognition of Foreign Arbitral Awards (known as the "Montevideo Convention"). It is not currently a party to the 1978 New York Convention on Recognition of Foreign Arbitral Awards (although the 1996 Law offers an alternative avenue which follows UNCITRAL directives) or ICSID.

It may also be noted that although historically Brazil has been reluctant to accept binding arbitration between foreign economic agents and state entities on the grounds that this would affect the sovereign rights of the State, Brazil has accepted an arbitration clause in its foreign external debt restructuring agreements (1988 Agreement and 1992 Brady Agreement).

B. Double taxation treaties

Brazil has also signed bilateral agreements (see Table 5) to avoid double taxation, with the following countries: Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hungary, Italy, Japan, Korea, Luxembourg, Netherlands, Portugal, Spain, Argentina, People's Republic of China, the Czech Republic, India, Norway, the Slovak Republic, Ecuador, Philippines and Sweden.

Brazil has been renegotiating existing taxation agreements with the following countries: Portugal, Norway and Sweden. Brazil has also been negotiating the signature of new agreements with the UK and Mexico.

Table 5. **Brazilian bilateral agreements on double taxation**

	Decree	Date	Date of entry into force
Argentina	87.976	22.12.1982	23.12.1982
Austria	78.107	22.07.1972	23.07.1976
Belgium	72.547	30.07.1973	02.08.1973
Canada	92.318	23.01.1986	27.01.1986
China	762	19.02.1993	20.02.1993
Czech Republic	43	25.02.1991	26.02.1991
Denmark	75.106	20.12.1974	26.12.1974
Ecuador	95.717	11.02.1988	12.02.1988
Spain	76.975	03.01.1976	01.05.1976
Finland	73.496	17.01.1974	21.01.1974
France	70.506	12.05.1972	16.05.1972
Germany	76.988	06.01.1976	07.10.1976
Hungary	53	08.03.1991	11.03.1991
India	510	27.04.1992	28.04.1992
Italy	85.985	06.05.1981	08.05.1981
Japan	61.899	14.12.1967	18.12.1967
Korea	354	02.12.1991	03.12.1991
Luxembourg	85.051	18.08.1980	20.08.1980
Netherlands	355	02.12.1991	03.12.1981
Norway	86.710	09.12.1981	10.12.1981
Philippines	241	25.10.1991	28.10.1991
Portugal	69.393	21.12.1971	26.10.1981
Slovak Republic	43	25.02.1991	26.02.1976
Sweden	77.053	19.01.1976	

Source: Government of Brazil.

Notes

1. The National Treatment instrument, the Guidelines for Multinational Enterprises, the Incentives and Disincentives instrument and the Conflicting Requirements instrument (a summary of these provisions is presented in Annex 4).
2. Brazil has also signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in December 1997. The related instruments are the Recommendation on Combating Bribery in International Business Transactions and the Recommendation on the Tax Deductibility of Bribes to Foreign Officials.
3. *Investing, Licensing & Trading Conditions Abroad*: *Brazil*, Economist Intelligence Unit, 1997, p. 10.
4. G. Dyer and M. Doman, "VASP set to bid for Aerolineas", *Financial Times*, 31 January 1997.
5. *World Investment Directory, Volume IV – Latin America and the Caribbean*, UNCTAD, 1994.
6. In Brazil, foreign capital is governed by Law No. 4131 of 3 September 1962. This legislation was later altered by Law No. 4390 of 29 August 1964 and regulated by Decree No. 55762 of 17 February 1965.
7. Resolution No. 2337, Circular No. 2728 and Circular Letter No. 2702 of 28 November 1996.
8. A recent step has already been made in this respect with Congress' recent approval of the so-called "Marcos Maciel" law which accords to international arbitrage awards the same status of a court decision.
9. Veiga, Pedro da Motta, "Brazil", presented at an OECD Development Centre Workshop of Policy Competition and Foreign Direct Investment, 18 November 1996.
10. Neto, Raul de Gouvea, *Brazilian Export Processing Zones*, University of New Mexico, mimeo.
11. The Brazilian regulatory regime for the automotive sector is defined by Laws No. 9440 (regional regime) and 9449 (general regime) of 14 March 1997, Decree No. 20725

regional regime of 14 November 1997, Decree No. 2179 (regional regime) of 18 March 1997, Interministerial Measure No. 1 (general regime) of 5 January 1996 and Interministerial Measure No. 3 (regional regime) of 31 March 1997. The directives resulting thereof are general and do not distinguish between the origin of the capital.

12. Compulsory licences are granted under the following conditions:
    – the license may only be requested by a person having legitimate interest and technical and economical capacity to efficiently exploit the subject matter of the patent ;
    – the compulsory license shall not be granted if: 1) the title holder proves legitimate reasons for the failure; 2) the title holder has made serious and effective preparation for exploitation or; 3) justifies the failure to manufacturing or commercialising by an obstacle of legal nature;
    – compulsory licenses shall, in all cases, be granted on a non exclusive basis and no sublicensing shall be permitted;
    – the new law guarantees and improves legal protection of industrial property owners against violations of their rights;
    – the Paris Convention, in its article 5 admits the concession of compulsory license to avoid abuses.

    This procedure is consistent with articles 8 and 31 of the TRIPS as well as with the Paris Convention.

13. *National Treatment Study*, US Treasury Department, Washington, 1994.

14. *Investing, Licensing & Trading Conditions Abroad: Brazil*, Economist Intelligence Unit, 1997.

15. Banco Santander is to acquire 50 per cent of ordinary shares and 49.9 per cent of preferential shares in Banco Geral do Comércio which owns 42 per cent of the operating branches in Brazil. Société Générale has acquired the remaining shares in Banco Sogeral which it did not already hold. HSBC has taken control of Banco Bamerindus in which it already held a six per cent stake. HSBC is the first foreign bank to enter into Brazilian retail banking. Lastly, the largest bank in Korea, the Korea Exchange Bank has established a subsidiary in Brazil.

16. Geoff Dyer, "Foreign banks vie for pole position", *Financial Times*, 11 April 1997.

17. Law No. 9295 of 19 July 1995.

18. Law No. 6634 (2 May 1979) to Decree Law No. 1135 (3 December 1970) and to Decree No. 85064 (26 August 1980).

19. In accordance with Law No. 7, 102/83 and Administrative measure 91/92.

20. G. Dyer, "Light in black", *Financial Times*, 26 November 1996.

21. "Let the party begin", *The Economist*, 26 April 1997.

22. Decree 507, Article 11 of 23 April 1992.

Annex 1

Brazil's exceptions notified in pursuance of the National Treatment Instrument

A. Exceptions at the national level

I. Investment by established foreign-controlled enterprises

1. Banking: Article 52 of the Transitional Constitutional Provisions of 1988 allows the Federal government to issue an authorisation for the establishment of foreign financial institutions or to allow any increase in foreign participation in the capital of Brazilian institutions, as well as the participation in privatisation of State owned financial institutions.

(*Authority*: Article 192 of the Federal constitution [to be regulated by Congress], Article 52 of the Transitional Constitutional Provisions of 1988.)

2. Telecommunications: 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 license. In cellular telephone (band B frequency), satellite and value-added services, foreign interests are 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, restriction on foreign ownership remain for three years after the legislation comes into force in 1997.

(*Authority:* Law No. 9472 of 16 July 1997.)

3. Radio, television and publishing: foreign participation is limited to native-born Brazilians or persons who have been naturalised citi-

zens for at least ten years. The purchase of technical assistance from foreign enterprises or entities is also forbidden.

(*Authority*: Article 222 of the Federal Constitution and Decree law 236/67.)

4. Cable television: the concession to exploit this service is only granted to Brazilian firms. At least 51 per cent of the voting capital must be in the hands of native-born Brazilians or persons who have been naturalised citizens for at least ten years or must belong to firms whose headquarters are in Brazil and whose control is under native-born Brazilians or persons who have naturalised citizens for at least ten years.

(*Authority*: Law No. 8977 of 6 January 1995.)

5. Air transport: direct participation of foreign capital in air transport is restricted. Some foreign companies not established in the territory have been authorised to detain a minority stake, up to 20 per cent in some air national companies.

(*Authority*: Article 21 of the Federal Constitution, Brazilian Air Code and Law No. 7565 of 19 December 1986.)

6. Airports and air traffic services: foreign enterprises may not administer or operate airports nor provide navigation and air traffic services.

(*Authority*: Brazilian Air Code.)

7. Road Transport: foreign participation is limited to 20 per cent of the voting capital with respect to companies established in Brazil after 7 November 1980. Restrictions also apply to all foreign-controlled companies with respect to the raise of capital subscriptions.

(*Authority:* Law No. 6813 of 10 July 1980 updated by Law No. 7092 of 19 April 1983 and regulated by Law No. 99471 of 24 August 1980.)

8. Fishing: exploitation of internal waters, areas within the territorial sea and some other activities are reserved to native-born Brazilians or persons who have naturalised citizens or must be undertake by

firms registered in Brazil. Foreign vessels need authorisation from the Ministry of Agriculture to develop fishing activities.

(*Authority*: Decree No. 68459 of 19 April 1971.)

9. Rural Properties: the foreign legal person or individual must be a resident in the territory and the purchase or renting of the rural property must be no greater than a quarter of the total area of the municipality ("*município*") to which the property belongs. This restriction is more flexible when the foreigner is married to a Brazilian citizen or has Brazilian descendants. Specific authorisations are needed according to the size of the property to be purchased or rented by foreigners.

(*Authority*: Law No. 5709 of 7 October 1971, regulated by the Decree No. 74965 of 26 November 1974.)

10. Health care: direct and indirect participation of foreign capital or enterprises in the sector is forbidden, except in those cases established in law.

(*Authority*: Article 199 of the Federal constitution.)

11. Security services and transport of valuables: foreign participation is forbidden.

(*Authority*: Law 7102/83 and Administrative measure 91/92.)

B. Access to local finance

I. The access of foreign companies to the national financial system may be restricted by the Central Bank in case of balance of payments disequilibrium.

The purchase of public financial institutions is restricted to finance enterprises whose central control belongs to individuals who are not residents in Brazil, except in the following cases:

a) the funds were collected abroad;

b) a special authorisation from the Ministry of Planning and Budget can be requested based on national interest (in the case of companies which are not yet established in Brazil);
c) the enterprises that operate in sectors and geographical regions which were considered a priority by a President's decree (in the case of companies already established in Brazil).

(*Authority*: Law No. 4728/65 of 14 July 1965; Law No. 4131, Articles 37, 38 and 39.)

Annex 2

Brazil's list of measures reported for transparency purposes

A. Transparency measures at the level of National Government

I. Transparency measures based on public order and essential security considerations

Real estate

Border areas within 150 kilometres of international frontiers, coastal land and "national security areas" such as the Amazon basin are subject to restrictions on foreign ownership for national security reasons.

Authority: Article 20 of the Federal constitution.

II. Other measures reported for transparency

Trans-sectoral measures

In a firm employing more than three persons, two-thirds of all employees must be Brazilian nationals, receiving two-thirds of the total payroll. Foreign specialists not available locally are excluded from the calculations, as are directors who are not employees. In addition, under Brazilian company law, the foreign managers must be permanent residents in Brazil, essentially for liability reasons in cases of fraudulent actions or fraudulent bankruptcy.

Authority: Labour Code, Chapter II.

B. Measures reported for transparency at the level of territorial subdivisions

Ten Sao Paolo municipalities restrict the purchase of land by foreigners to 750 hectares and require compliance with detailed regulations.

Annex 3

Monopolies and concessions

A. Public monopolies

i) Mail services

General posting services (*e.g.* letter, telegrams, etc.) is a Federal monopoly, provided by a State company which can grant franchises to any individual or legal entity established in Brazil. Other mail services (*e.g.*, special delivery) may be provided by private companies, operating in Brazil, under a national treatment regime.

ii) Reinsurance

The opening up of the sector for FDI is under examination by the government.

B. Private monopolies

None.

C. Concessions

Under the Concessions Law:

- the authority granting a concession must be a public sector legal entity (Federal Government, State, the Federal District or municipalities);
- any partnership or legal entity can be a concessionaire, including state-owned companies. It is possible to create a partnership for the purpose of an auction, especially since that is a way for foreign capital to participate

immediately in those public service sectors where such capital is still restricted (telecommunications until 1999);
- all concessions will last for a specific period and be offered through public bidding;
- there are no government subsidies; the concessionaire bears the risk of the concession;
- users participate officially in monitoring the services rendered;
- the concessionaire will no longer be guaranteed a fixed return based on total costs – a system that promoted inefficiency. Prices fixed through the tendering process are an element in the factors used in choosing the winning bid; prices may be adjusted only in accordance with rules established in the call for bids and in the contract.

Private companies may also provide public services through permits. The conditions are similar to those of a concession, with some exceptions:
- a permit is granted for an undefined period, but may be revoked by the granting authority at any time;
- the granting of a permit does not require a public bidding process;
- private individuals may be granted a permit, but not a concession.

The Concessions Law establishes the rights and obligations of granting authorities, concessionaires or permit holders, and users, as well as fines and penalties.

i) Federal level

Energy and natural resources

(Gas, ore, nuclear ore and by-products, nuclear energy)

Constitutional Amendment No. 6 modified Articles 171 and 176 by eliminating the distinction between "national companies" and "national companies of Brazilian capital" and allowing foreign companies to exploit minerals and hydroelectric power under concessions or permits, according to the national treatment principle. In the case of mining, an authorisation is needed from the Mining and Energy Minister. In the case of energy, an authorisation is needed from the Departamento Nacional de Aguas e Energie Eletrica (DNAEE).

Authority: Law No. 73 of 21 November 1966.
Law No. 507, Art. 11 of 23 April 1992.

Oil research, exploration, extraction, refining and transportation

By modifying Article No. 177 of the 1988 Constitution, the Constitutional Amendment No. 9 has opened up the petroleum sector to increased private participation. The Amendment makes it possible, under a regulation to be enacted by the Congress, to private companies, including foreign ones, to undertake research, exploration and extraction of petroleum and natural gas, petroleum refining, import and export of refined petroleum products, and the transport via pipelines and ships of hydrocarbons. It is also possible for the private companies to establish joint-ventures with Petrobrás (the state-owned company).

ii) State level

Distribution of natural gas through pipelines

The Constitutional Amendment No. 5 of 16 August 1996 opened the distribution of natural gas through pipelines to national or foreign private firms through public concessions, ending the monopoly on local distribution enjoyed by individual States.

Annex 4

The OECD Declaration and Decisions on International Investment and Multinational Enterprises

(Summary of main provisions)

A. Nature of the commitments

Adherence to the 1976 Declaration on International Investment and Enterprises implies acceptance of all its components as well as the related Decisions and Recommendations.

The OECD Declaration on International Investment and Multinational Enterprises is a political agreement among Member countries for co-operation on a wide range of investment issues. The Declaration contains four related elements: the National Treatment instrument, the Guidelines for Multinational Enterprises, an instrument on incentives and disincentives to international investment, and an instrument on conflicting requirements. It is supplemented by legally binding Council Decisions on implementation procedures, and by Recommendations to Member countries to encourage pursuit of its objectives, notably with regard to National Treatment.

i) National Treatment

The National Treatment Instrument provides that Member countries should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled by nationals of another Member country treatment under their laws, regulations and ad-

ministrative practices consistent with international law and no less favourable than that accorded in like situations to domestic enterprises.

Under the Third Revised Decision of the Council on National Treatment, adherents to the Declaration must notify the Organisation of all measures constituting exceptions to the National Treatment principle within 60 days of their adoption and of any other measures which have a bearing on this principle (the so-called "transparency measures"). These measures are periodically reviewed by the CIME, the goal being the gradual removal of measures that do not conform to this principle.

The 1991 Review confirmed the understanding reached in 1988 by the Committee on International Investment and Multinational Enterprises on a standstill on National Treatment measures. This understanding provides that Member countries should avoid the introduction of new measures and practices which constitute exceptions to the present National Treatment instrument. Particular attention is to be given to this question in the Committee's work.

A number of Recommendations of the Council have also been addressed to Member countries in the context of earlier horizontal examinations. Most of these recommendations were made to individual countries, but a number of them were of a general character. Concerning investment by established foreign-controlled enterprises, Member countries should give priority in removing exceptions where most Member countries do not find it necessary to maintain restrictions.

In introducing new regulations in the services sectors, Member countries should ensure that these measures do not result in the introduction of new exceptions to National Treatment. Member countries should also give particular attention to ensuring that moves towards privatisation result in increasing the investment opportunities of both domestic and foreign-controlled enterprises so as to extend the application of the National Treatment instrument.

In the area of official aids and subsidies, Member countries should give priority attention to limiting the scope and application of measures which may have important distorting effects or which may significantly jeopardise the ability of foreign-controlled enterprises to compete on an equal footing with their domestic counterparts. Finally, with regard to measures motivated by based on public order and essential security interests, Member countries are encouraged to practice restraint and to circumscribe them to the areas where public order and essential considerations are predominant. Where motivations are mixed (*e.g.* partly commercial,

partly national security), the measures concerned should be covered by exceptions rather than merely recorded for transparency purposes.

ii) Guidelines for Multinational Enterprises

The Guidelines for Multinational Enterprises are recommendations jointly addressed by OECD governments to multinational enterprises operating in their territories. While their observance is voluntary and not legally enforceable, they represent the collective expectations of these governments concerning the behaviour and activities of multinational enterprises.

They also provide standards by which multinational enterprises can ensure that their operations are in harmony with the national policies of their host countries. The areas covered include disclosure of information, competition, financing, taxation, employment and industrial relations, environmental protection, and science and technology.

Member governments must establish within their administration national contact points (NCPs) to deal with the implementation of the Guidelines. The purpose of NCPs is to engage in promotional activities, gather information on experience with the Guidelines, handle enquiries, discuss all matters related to the Guidelines, and assist in solving problems which may arise between business and labour in matters covered by the Guidelines.

One of the NCPs most important functions is to act as a forum for discussion on matters relating to the Guidelines. Business and trade unions should be able to discuss problems which may arise from the Guidelines application, and should use the NCPs as a first step to try and resolve issues at the national level. Effective and timely communication and co-operation with the NCPs of other countries is an important element of this work.

The Committee on Investment and Multinational Enterprises is responsible for activities promoting application of the Guidelines among Member countries. These include providing clarifications of provisions in the Guidelines; proposing changes or amendments of the Guidelines and recommending to the Council procedural decisions; regularly reviewing the Guidelines; exchanging views periodically on the role and functioning of the Guidelines; responding to requests from Members on specific or general aspects of the Guidelines; responding to requests from the social partners on various aspects of the Guidelines; and organising promotional activities such as symposiums, seminars and other activities.

iii) Incentives and Disincentives

The instrument on Investment Incentives and Disincentives recognises that Member countries may be affected by this type of measure and stresses the need to strengthen international co-operation in this area. It first encourages them to make such measures as transparent as possible so that their scale and purpose can be easily determined. The instrument also provides for consultations and review procedures to make co-operation between Member countries more effective. A considerable part of the work undertaken in this area is analytical, two studies being undertaken in the 1980s. Member countries may therefore be called upon to participate in studies on trends in and effects of incentives and disincentives on FDI and to provide information on their policies.

iv) Conflicting Requirements

The instrument on Conflicting Requirements provides that Member countries should co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises. In doing so, they shall take into account the general considerations and practical approaches recently annexed to the Declaration. This co-operative approach includes consultations on potential problems and giving due consideration to other country's interests in regulating their own economic affairs.

B. Listing of exceptions and transparency measures

In accordance with the third Revised Decision of the Council on National Treatment, any new signatory to the Declaration and Related Decisions is entitled to list its exceptions to National Treatment to reflect the state of its laws and regulations upon adherence to the Declaration. This list of exceptions is submitted to the Council for approval. In addition, it needs to notify, for transparency purposes, all other measures having a bearing on National Treatment.

Exceptions to National Treatment fall into five categories: investments by established foreign-controlled companies, official aids and subsidies, tax obligations, access to local bank credit and the capital market, and government procurement.

Transparency measures include measures based on public order and national security interests, restrictions on activities in areas covered by monopolies, public aids and subsidies granted to government-owned enterprises by the state as a share-

holder in the enterprises concerned, and corporate organisation requirements concerning the nationality of management or director positions in the host countries.

The National Treatment instrument is solely concerned with discriminatory measures that apply to established foreign-controlled enterprises. This includes established branches, except for the category of "investment by established foreign-controlled enterprises".

Areas of existing public, private or mixed monopolies are to be recorded for the purpose of transparency since foreign-controlled and domestic private enterprises are subject to the same restrictions. The undertaking to apply National Treatment comes into force as and when areas previously under monopoly are opened up. In such cases, access to these areas should be provided on a non-discriminatory basis. If restrictions prohibit or impede in any way the participation of foreign-controlled enterprises *vis-à-vis* their domestic counterparts, then these restrictions are to be reported as exceptions to National Treatment. The objective is to ensure access to formerly closed sectors on an equal basis.

Annex 5

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Preamble

The Parties,

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions.

Considering that all countries share a responsibility to combat bribery in international business transactions.

Having regard to the Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Council of the Organisation for Economic Co-operation and Development (OECD) on 23 May 1997, C(97)123/FINAL, which, *inter alia*, called for effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, in particular the prompt criminalisation of such bribery in an effective and co-ordinated manner and in conformity with the agreed common elements set out in that Recommendation and with the jurisdictional and other basic legal principles of each country.

Welcoming other recent developments which further advance international understanding and co-operation in combating bribery of public officials, including

actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union.

Welcoming the efforts of companies, business organisations and trade unions as well as other non-governmental organisations to combat bribery.

Recognising the role of governments in the prevention of solicitation of bribes from individuals and enterprises in international business transactions.

Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, monitoring and follow-up.

Recognising that achieving equivalence among the measures to be taken by the Parties is an essential object and purpose of the Convention, which requires that the Convention be ratified without derogations affecting this equivalence.

Have agreed as follows:

Article 1
The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.

3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as "bribery of a foreign public official".

4. For the purpose of this Convention:
   a. "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;

   b. "foreign country" includes all levels and subdivisions of government, from national to local;

   c. "act or refrain from acting in relation to the performance of official duties" includes any use of the public official's position, whether or not within the official's authorised competence.

Article 2
Responsibility of Legal Persons

Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

Article 3
Sanctions

1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.

2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.

3. Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.

4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

Article 4
Jurisdiction

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.

2. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.

3. When more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution.

4. Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps.

Article 5
Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Article 6
Statute of Limitations

Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

Article 7
Money Laundering

Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

Article 8
Accounting

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.

2. Each Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

Article 9
Mutual Legal Assistance

1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.

2. Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.

3. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.

Article 10
Extradition

1. Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.

2. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.

3. Each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution.

4. Extradition for bribery of a foreign public official is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.

Article 11
Responsible Authorities

For the purposes of Article 4, paragraph 3, on consultation, Article 9, on mutual legal assistance and Article 10, on extradition, each Party shall notify to the Secretary-General of the OECD an authority or authorities responsible for making and receiving requests, which shall serve as channel of communication for these matters for that Party, without prejudice to other arrangements between Parties.

Article 12
Monitoring and Follow-up

The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference, or within the framework and terms of reference of any successor to its functions, and Parties shall bear the costs of the programme in accordance with the rules applicable to that body.

Article 13
Signature and Accession

1. Until its entry into force, this Convention shall be open for signature by OECD members and by non-members which have been invited to become full participants in its Working Group on Bribery in International Business Transactions.

2. Subsequent to its entry into force, this Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the Working Group on Bribery in International Business Transactions or any successor to its functions. For each such non-signatory, the Convention shall enter into force on the sixtieth day following the date of deposit of its instrument of accession.

Article 14
Ratification and Depositary

1. This Convention is subject to acceptance, approval or ratification by the Signatories, in accordance with their respective laws.

2. Instruments of acceptance, approval, ratification or accession shall be deposited with the Secretary-General of the OECD, who shall serve as Depositary of this Convention.

Article 15
Entry into Force

1. This Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries which have the ten largest export shares

set out in DAFFE/IME/BR(97)18/FINAL, and which represent by themselves at least sixty per cent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.

2. If, after 31 December 1998, the Convention has not entered into force under paragraph 1 above, any signatory which has deposited its instrument of acceptance, approval or ratification may declare in writing to the Depositary its readiness to accept entry into force of this Convention under this paragraph 2. The Convention shall enter into force for such a signatory on the sixtieth day following the date upon which such declarations have been deposited by at least two signatories. For each signatory depositing its declaration after such entry into force, the Convention shall enter into force on the sixtieth day following the date of deposit.

Article 16
Amendment

Any Party may propose the amendment of this Convention. A proposed amendment shall be submitted to the Depositary which shall communicate it to the other Parties at least sixty days before convening a meeting of the Parties to consider the proposed amendment. An amendment adopted by consensus of the Parties, or by such other means as the Parties may determine by consensus, shall enter into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties, or in such other circumstances as may be specified by the Parties at the time of adoption of the amendment.

Article 17
Withdrawal

A Party may withdraw from this Convention by submitting written notification to the Depositary. Such withdrawal shall be effective one year after the date of the receipt of the notification. After withdrawal, co-operation shall continue between the Parties and the Party which has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal which remain pending.

Annex 6

Statistics on Direct Investment Flows in OECD Countries and in Brazil

Table 1. **Foreign direct investment in OECD countries and in Brazil: inflows 1971-1996**
US$ million

	Avg. annual inflows		Flows of foreign direct investment											
	1971-1980	1981-1990	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Australia	1 130	3 982	2 099	3 457	3 873	7 936	7 887	6 513	4 042	5 036	3 007	3 951	14 193	6 067
Austria	146	327	169	181	402	437	578	647	359	940	982	1 314	636	3 719
Belgium-Luxembourg	922	2 754	957	631	2 338	4 990	6 731	7 516	8 919	10 959	10 458	8 345	10 638	11 048
Brazil	**1 474**	**1 651**	**1 441**	**345**	**1 169**	**2 804**	**1 131**	**989**	**1 103**	**2 061**	**1 292**	**3 072**	**5 300**	**9 400**
Canada	553	3 370	1 298	2 781	8 038	6 456	5 018	7 852	2 747	4 456	4 981	7 259	10 739	6 696
Czech Republic	..	..	..	..	..	..	..	..	..	1 004	654	869	2 562	972
Denmark	156	339	109	161	88	504	1 084	1 133	1 530	1 015	1 681	4 889	4 179	1 379
Finland	38	284	110	340	265	530	489	787	–247	406	864	1 578	1 063	1 219
France[1]	1 691	5 468	2 210	2 749	4 621	8 519	13 062	15 702	15 173	17 862	16 449	15 581	23 682	20 401
Germany	1 397	1 765	553	1 139	1 818	1 115	7 068	2 492	4 089	2 662	1 915	1 548	12 050	–3 243
Greece	..	615	447	471	683	907	752	1 005	1 135	1 144	977	981	1 053	..
Hungary	..	..	..	..	..	14	187	311	1 462	1 479	2 350	1 144	4 453	1 631
Iceland	..	7	23	8	2	–14	19	22	18	–11	–	–	14	1
Ireland[2]	166	137	159	–43	89	91	85	260	1 171	1 239	854	419	626	1 722
Italy	570	2 489	1 071	–21	4 144	6 882	2 181	6 344	2 481	3 210	3 746	2 236	4 817	3 454
Japan	142	328	642	226	1 165	–485	–1 054	1 753	1 368	2 728	86	888	41	222
Korea	..	395	219	436	686	847	737	715	1 116	551	516	758	1 240	1 169
Mexico	..	2 442	1 984	2 401	2 635	2 880	3 176	2 633	4 762	4 393	4 389	10 972	6 963	5 598
Netherlands	1 082	3 785	1 412	3 085	3 031	4 830	8 460	12 154	6 521	7 685	6 599	7 345	10 766	3 317
New Zealand[3]	260	395	227	390	238	156	434	1 686	1 685	1 089	2 380	2 792	2 922	2 772
Norway	307	563	–412	1 023	184	285	1 511	1 807	655	–426	2 244	1 359	1 644	3 437
Poland	..	..	..	..	..	..	..	89	291	678	1 715	1 875	3 659	2 768
Portugal	54	692	273	241	465	925	1 740	2 608	2 451	1 914	1 551	1 254	695	608
Spain	706	4 600	1 945	3 442	4 548	7 016	8 433	13 681	12 443	13 352	8 070	9 428	6 256	6 406
Sweden	90	862	396	1 079	646	1 661	1 810	1 971	6 353	–52	3 843	6 347	14 375	5 461
Switzerland	..	1 243	1 050	1 778	2 044	42	2 254	4 458	2 612	411	–83	3 368	2 187	..
Turkey	23	234	99	125	106	354	663	684	1 041	912	797	637	935	558
United Kingdom	4 050	13 047	5 780	8 557	15 450	21 356	30 369	32 889	16 027	16 214	15 468	10 497	22 810	32 766
United States	5 628	36 508	20 490	36 145	59 581	58 571	69 010	48 422	22 799	18 885	43 534	49 760	60 236	84 629
Total OECD	**20 583**	**88 343**	**44 751**	**71 127**	**118 309**	**139 609**	**173 815**	**177 123**	**124 106**	**121 796**	**141 318**	**160 465**	**230 734**	**214 177**

Note: Most data for 1996 are provisional.
1. Break in series. As from 1988, data are based on a new methodology.
2. Break in series. As from 1990, the results shown are for net (inward and outward) direct investment capital flows.
3. Data for 1995 and 1996 are based on fiscal years ending in March.
Source: OECD, *International Direct Investment Statistics Yearbook 1997*; IMF.

Table 2. **Foreign direct investment in OECD countries and in Brazil: inflows 1985-1996**
As a percentage of GDP

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Australia	1.31	2.07	1.96	3.19	2.80	2.21	1.37	1.73	1.06	1.22	4.07	1.55
Austria	0.26	0.19	0.34	0.34	0.46	0.41	0.22	0.50	0.54	0.66	0.27	1.64
Belgium-Luxembourg	1.14	0.53	1.58	3.11	4.14	3.68	4.26	4.67	4.66	3.42	3.71	3.92
Brazil	**0.64**	**0.13**	**0.40**	**0.85**	**0.29**	**0.23**	**0.28**	**0.55**	**0.29**	**0.54**	**0.74**	**1.18**
Canada	0.37	0.77	1.95	1.32	0.92	1.38	0.47	0.79	0.91	1.34	1.92	1.16
Czech Republic	..	..	..	..	..	..	..	3.60	2.09	2.41	5.61	1.73
Denmark	0.19	0.20	0.09	0.46	1.03	0.88	1.18	0.72	1.25	3.35	2.41	0.79
Finland	0.21	0.49	0.30	0.51	0.43	0.58	–0.20	0.38	1.02	1.62	0.85	0.98
France[1]	0.42	0.38	0.52	0.88	1.35	1.31	1.26	1.35	1.32	1.17	1.54	1.32
Germany	0.08	0.11	0.15	0.08	0.54	0.15	0.24	0.14	0.10	0.08	0.50	–0.14
Greece	1.10	0.99	1.22	1.40	1.12	1.21	1.27	1.17	1.06	1.00	0.92	..
Hungary	..	..	..	..	..	..	4.43	4.22	6.67	2.90	11.30	..
Iceland	0.79	0.20	0.04	–0.23	0.35	0.35	0.27	–0.16	–	–	0.20	0.01
Ireland[2]	0.81	–0.16	0.28	0.26	0.23	0.57	2.53	2.37	1.74	0.78	0.97	2.47
Italy	0.25	–0.00	0.55	0.82	0.25	0.58	0.22	0.26	0.38	0.22	0.44	0.29
Japan	0.05	0.01	0.05	–0.02	–0.04	0.06	0.04	0.07	0.00	0.02	0.00	0.00
Korea	0.23	0.40	0.50	0.47	0.33	0.28	0.38	0.18	0.15	0.20	0.27	..
Mexico	1.01	1.74	1.76	1.57	1.42	1.00	1.51	1.21	1.09	2.61	2.49	1.68
Netherlands	1.10	1.73	1.39	2.09	3.70	4.28	2.25	2.39	2.11	2.18	2.72	0.85
New Zealand[3]	1.01	1.36	0.65	0.36	1.03	3.92	4.05	2.72	5.48	5.48	4.89	4.26
Norway	–0.65	1.34	0.20	0.29	1.53	1.57	0.56	–0.34	1.93	1.10	1.12	2.20
Poland	..	..	..	..	..	0.15	0.38	0.80	1.99	2.02	3.11	..
Portugal	1.15	0.71	1.11	1.91	3.35	3.86	3.21	2.08	1.89	1.48	0.70	0.58
Spain	1.17	1.49	1.55	2.04	2.22	2.78	2.35	2.31	1.69	1.95	1.12	1.10
Sweden	0.39	0.81	0.40	0.91	0.95	0.86	2.65	–0.02	2.07	3.20	6.23	2.18
Switzerland	1.13	1.31	1.20	0.02	1.27	1.97	1.13	0.17	–0.04	1.31	0.71	..
Turkey	0.15	0.17	0.12	0.39	0.62	0.45	0.69	0.57	0.44	0.49	0.55	0.31
United Kingdom	1.26	1.52	2.24	2.56	3.61	3.37	1.58	1.55	1.64	1.03	2.07	2.86
United States	0.51	0.85	1.33	1.21	1.33	0.88	0.40	0.32	0.70	0.75	0.87	1.15

Note: Most data for 1996 are provisional.
1. Break in series. As from 1988, data are based on a new methodology.
2. Break in series. As from 1990, the results shown are for net (inward and outward) direct investment capital flows.
3. Data for 1995 and 1996 are based on fiscal years ending in March.
Source: OECD, *International Direct Investment Statistics Yearbook 1997*; IMF.

Table 3. **Direct investment abroad from OECD countries and from Brazil: outflows 1971-1996**[1]
US$ million

	Avg. annual outflows		Flows of direct investment											
	1971-1980	1981-1990	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Australia	251	2 227	1 887	3 419	5 096	4 985	3 267	265	3 001	951	1 779	5 291	4 064	1 518
Austria	58	413	74	313	312	309	855	1 663	1 288	1 871	1 467	1 201	1 043	1 064
Belgium-Luxembourg	321	2 086	231	1 627	2 680	3 609	6 114	6 008	6 179	11 134	3 843	747	11 503	7 248
Brazil	**125**	**254**	**81**	**143**	**138**	**175**	**523**	**665**	**1 014**	**137**	**491**	**1 037**	**1 384**	**971**
Canada	1 134	4 185	3 862	3 501	8 538	3 848	4 583	4 732	5 652	3 689	5 805	7 414	5 747	7 561
Czech Republic	..	..	..	..	..	..	..	..	..	21	101	120	37	26
Denmark	106	629	303	646	618	719	2 027	1 509	1 851	2 225	1 373	4 040	3 018	2 845
Finland	61	1 158	352	810	1 141	2 608	3 108	2 708	–124	–753	1 409	4 297	1 681	3 551
France[2]	1 394	10 135	2 226	5 230	8 704	16 636	20 704	36 201	25 141	30 427	19 744	24 381	15 761	28 274
Germany	2 485	9 036	5 140	10 076	9 681	12 087	15 181	23 945	23 677	19 529	15 348	17 134	38 573	27 883
Hungary	..	..	..	..	..	..	..	..	..	..	11	49	43	10
Iceland	..	3	..	2	7	1	6	10	27	3	11	23	24	5
Italy	360	2 871	1 820	2 652	2 339	5 554	2 135	7 612	7 326	5 948	7 221	5 109	5 732	5 476
Japan	1 805	18 583	6 452	14 480	19 519	34 210	44 130	48 024	30 726	17 222	13 714	17 938	22 628	23 468
Korea	..	217	67	161	321	164	392	820	1 357	1 048	1 056	2 075	3 120	2 977
Netherlands	2 783	6 576	2 680	4 036	8 576	7 164	14 808	15 272	13 589	14 279	10 714	17 088	12 412	9 991
New Zealand[3]	38	456	174	87	562	615	135	2 365	1 472	391	–1 455	2 039	–167	1 530
Norway	108	900	1 228	1 605	890	968	1 352	1 478	1 840	–80	791	2 145	2 844	5 341
Poland	..	..	..	..	..	..	..	..	..	13	18	29	42	27
Portugal	2	37	15	–2	–16	77	85	165	474	687	141	283	689	771
Spain	127	820	252	377	754	1 227	1 470	2 845	4 427	2 168	2 648	3 897	3 592	4 629
Sweden	460	4 808	1 783	3 947	4 789	7 468	10 288	14 750	7 053	410	1 358	6 756	11 215	4 470
Switzerland	..	3 186	4 572	1 461	1 274	8 696	7 852	6 372	6 543	5 671	8 763	10 798	12 176	..
Turkey	..	0	..	..	9	–	–	–16	27	133	175	78	163	291
United Kingdom	5 511	18 558	10 818	17 077	31 308	37 110	35 172	18 636	15 972	19 156	25 573	28 251	42 676	43 717
United States	13 435	17 599	12 720	17 701	28 977	17 865	37 604	30 982	32 696	42 647	78 164	54 465	95 509	85 440
Total OECD	**30 563**	**104 733**	**56 737**	**89 349**	**136 217**	**166 095**	**211 791**	**227 011**	**191 208**	**178 926**	**200 263**	**216 685**	**295 508**	**269 084**

Note: Most data for 1996 are provisional.
1. Greece, Ireland and Mexico do not report figures for outflows.
2. Break in series. As from 1988, data are based on a new methodology.
3. Data for 1995 and 1996 are based on fiscal years ending in March.
Source: OECD, *International Direct Investment Statistics Yearbook 1997*; IMF.

Table 4. **Direct investment abroad from OECD countries and from Brazil: outflows 1985-1996**[1]
As a percentage of GDP

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Australia	1.17	2.04	2.58	2.00	1.16	0.09	1.01	0.33	0.63	1.63	1.17	0.39
Austria	0.11	0.34	0.27	0.24	0.68	1.05	0.78	1.00	0.80	0.61	0.45	0.47
Belgium-Luxembourg	0.28	1.37	1.81	2.25	3.77	2.94	2.95	4.74	1.71	0.31	4.01	2.57
Brazil	**0.04**	**0.05**	**0.05**	**0.05**	**0.13**	**0.15**	**0.26**	**0.04**	**0.11**	**0.18**	**0.19**	**0.12**
Canada	1.11	0.97	2.07	0.79	0.84	0.83	0.97	0.65	1.06	1.37	1.03	1.31
Czech Republic	..	..	..	..	..	..	..	0.07	0.32	0.33	0.08	..
Denmark	0.52	0.78	0.60	0.66	1.93	1.17	1.43	1.57	1.02	2.77	1.74	1.63
Finland	0.66	1.16	1.30	2.51	2.74	2.01	–0.10	–0.71	1.67	4.40	1.35	2.86
France[2]	0.43	0.71	0.98	1.73	2.14	3.03	2.09	2.30	1.58	1.83	1.03	1.84
Germany	0.74	1.01	0.78	0.90	1.15	1.46	1.38	0.99	0.80	0.84	1.60	1.18
Hungary	..	..	..	..	..	..	..	..	0.03	0.12	0.11	..
Iceland	..	0.05	0.13	0.02	0.11	0.16	0.40	0.04	0.18	0.37	0.34	0.07
Italy	0.43	0.44	0.31	0.66	0.25	0.70	0.64	0.49	0.73	0.50	0.53	0.45
Japan	0.48	0.73	0.81	1.17	1.52	1.62	0.90	0.46	0.32	0.38	0.44	0.51
Korea	0.07	0.15	0.24	0.09	0.18	0.32	0.46	0.34	0.32	0.54	0.68	..
Netherlands	2.09	2.26	3.94	3.09	6.48	5.38	4.68	4.44	3.42	5.07	3.14	2.55
New Zealand[3]	0.78	0.30	1.55	1.41	0.32	5.50	3.54	0.98	–3.35	4.00	–0.28	2.35
Norway	1.92	2.11	0.97	0.99	1.37	1.28	1.56	–0.06	0.68	1.74	1.95	3.42
Poland	..	..	..	..	..	..	..	0.02	0.02	0.03	0.04	..
Portugal	0.06	–0.01	–0.04	0.16	0.16	0.24	0.62	0.75	0.17	0.33	0.69	0.74
Spain	0.15	0.16	0.26	0.36	0.39	0.58	0.84	0.38	0.55	0.81	0.64	0.80
Sweden	1.77	2.97	2.97	4.11	5.38	6.42	2.95	0.17	0.73	3.40	4.86	1.79
Switzerland	4.93	1.08	0.75	4.74	4.42	2.82	2.83	2.35	3.78	4.18	3.98	..
Turkey	..	..	0.01	–	–	–0.01	0.02	0.08	0.10	0.06	0.10	0.16
United Kingdom	2.37	3.04	4.54	4.44	4.18	1.91	1.58	1.83	2.71	2.77	3.87	3.82
United States	0.32	0.42	0.64	0.37	0.72	0.56	0.58	0.72	1.25	0.82	1.37	1.16

Note: Most data for 1996 are provisional.
1. Greece, Ireland and Mexico do not report figures for outflows.
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