U.S. Chamber of Commerce

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August 18, 2025

Ambassador Jamieson Greer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20509

RE: "Initiation of Section 301 Investigation: Brazil's Acts, Policies, and Practices Related to Digital Trade and Electronic Payment Services; Unfair, Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access; and Illegal Deforestation; Hearing; and Request for Public Comments," Federal Register docket number USTR-2025-0043.

Dear Ambassador Greer:

The U.S. Chamber of Commerce ("the Chamber") appreciates the opportunity to present the following comments to the Office of the U.S. Trade Representative ("USTR") in response to the Federal Register notice cited above. The administration has stated its intent to use these comments as part of its investigation under Section 301 of the Trade Act of 1974 "to examine whether Brazil's acts, policies, and practices related to digital trade and electronic payment services; unfair, preferential tariffs; anti-corruption enforcement; intellectual property protection; ethanol market access; and illegal deforestation are unreasonable or discriminatory and burden or restrict U.S. commerce." The Chamber welcomes the opportunity to address a number of barriers within the remit of this investigation affecting U.S.-Brazil trade.

Brazil is an important commercial partner for a broad range of U.S. companies of every size, sector, and state. It represents a dynamic market that is full of potential for continued growth that will benefit American workers, farmers, and companies. Realizing this potential requires concrete steps to ensure fair market access and enhance regulatory transparency.

Addressing these trade barriers is not only in the strategic interest of the United States but also stands to benefit the Brazilian people. Greater openness to U.S. imports and investment would provide Brazilian consumers with access to world-class technologies, essential aerospace components, and greater access to competitive biofuels such as ethanol and sustainable aviation fuel, to name just a few products. At the same time, a more stable and transparent trade environment will support growth and innovation in Brazil, to the benefit of both Brazilian and U.S. firms.

The Chamber supports a deliberative, evidence-based approach to addressing concerns relating to Brazil's trade policies and practices. We are concerned that the recent imposition of a 50% tariff on a significant percentage of U.S. imports from Brazil will have far-reaching negative implications for U.S. businesses and workers, will jeopardize efforts to achieve resolution of the legitimate commercial concerns at the focus of the present investigation, and will have unintended consequences that negatively impact other administration policy priorities on issues from energy to AI.

The decision to levy these tariffs also risks adversely impacting supply chains for U.S. manufacturers and U.S. consumers that have links into Brazil and puts U.S. businesses at significant risk of retaliatory measures. It will also punish U.S. consumers by exacerbating inflationary pressures as seen already with products such as coffee. For the same reasons, we urge careful deliberation before USTR imposes additional tariffs on products of Brazil pursuant to this investigation.

We also urge that tariff stacking should be avoided for all products subject to sectoral tariffs under Section 232 as this would result in cumulative tariff burdens on U.S. companies and consumers. Ideally, the Section 301 process leads to comprehensive negotiations to place the bilateral economic relationship on a more stable, predictable, and prosperous footing.

Indeed, international trade thrives on cooperation as much as competition, and the free exchange of goods and services depends on a shared recognition of mutual benefit. Bilateral trade with Brazil supports hundreds of thousands of American jobs, with trade in goods and services exceeding $127 billion last year and a U.S. trade surplus nearing $30 billion. Nearly 6,500 American small businesses rely on imports from Brazil and close to 4,000 American companies operate in Brazil.

Securing improvements in the U.S.–Brazil trade relationship by lowering tariff and non-tariff trade barriers in a reciprocal manner and ending unfair discrimination is a worthy goal that will enjoy broad support from the U.S. business and agricultural communities. To this end, we urge USTR to pursue structured and enforceable pathways that promote long-term stability and joint prosperity. The U.S. Chamber welcomed the first Trump administration's signing of the U.S.-Brazil Protocol Relating to Trade Rules and Transparency in October 2020 ("the Protocol"), which updated the 2011 Agreement on Trade and Cooperation (ATEC) with the inclusion of commitments on certain trade facilitation, good regulatory practices, and anti-corruption measures modeled on the high-standard United States-Mexico-Canada Agreement (USMCA). The Chamber has also urged both governments to build on the Protocol by expanding it to new areas. As USTR considers its approach to Brazil, we encourage the adoption of similarly comprehensive, enforceable, and durable mechanisms that eliminate tariffs and other trade barriers and ensure reciprocal market access.

In sum, pro-growth reforms should be the objective of U.S. trade negotiations with Brazil. U.S. officials should engage with their Brazilian counterparts to dismantle barriers and expand opportunities for U.S. companies to realize the full potential of U.S. trade with Brazil, while avoiding tariffs that raise the cost of living, harm small businesses, and undermine manufacturing in the United States. As such, the Section 301 review provides an important platform to work with Brazil to address not only longstanding challenges such as ethanol market access and intellectual property protection but also budding regulatory irritants in areas such as digital trade that are still in the proposal phase.

Detailed below are the Chamber's comments on Brazil's trade policies and practices, including unfair trade barriers that we have highlighted in the past, along with recommendations to help ensure this investigation leads to the successful remediation of legitimate commercial concerns though negotiated solutions that avert new tariffs, roll back existing ones, and support a pro-growth bilateral trade agenda.

Digital Trade and Electronic Payment Services

The U.S. Chamber is closely following Brazil's evolving digital policy landscape. Recent court decisions have imposed extraterritorial content moderation that expands corporate liability in ways that disproportionately impact U.S. companies. The Chamber encourages USTR to press for a predictable, transparent, and non-discriminatory digital regulatory environment.

Content Moderation

U.S. companies have been impacted by decisions that appear to exceed the sovereign and legal jurisdiction of Brazil's judiciary. While Brazil's authority over content transmitted or hosted within its borders is not contested, these orders require U.S. companies to remove content not just in Brazil but globally, including within the United States. If Brazil continues to issue orders with extraterritorial applicability, it will inappropriately interfere with the rights of U.S. companies and consumers outside Brazil. The scope of its judicial decrees should apply only to content transmitted within the sovereign boundaries of Brazil's territory.

Electronic Payment Services

PIX has been successful in expanding financial inclusion and digital access in Brazil since its launch by the Central Bank of Brazil (BCB) in November 2020. American firms partner with PIX, laud its success, and consider the continued success of PIX to be a priority. However, we maintain concerns around the fact that BCB both regulates and competes with payment arrangements (PAs). While it is not uncommon

for central banks to operate one or more payment systems and supervise the private sector, the BCB has failed to establish governance procedures that avoid conflicts of interest and crowding out the private sector.

The BCB is the sole *systemic regulator* of Brazil's financial sector, setting market entry conditions, operational standards, and pricing frameworks for all PAs. At the same time, it operates PIX, a Central Bank-run retail payment network, which is itself a PA and a direct competitor in the marketplace. As such, U.S. electronic payment system companies must compete against their own regulator. This contradicts international best practices and guidance from the OECD, World Bank, CPMI, BIS, and WTO, all of which call for a clear separation between oversight functions and commercial activities.

Further, PIX is not subject to regulation and supervision from a third-party regulator and overseer or price or budget controls in a way that would be materially equivalent to the kind of regulation and supervision that private players face. Specifically:

- The BCB has access to confidential and sensitive information from its private competitors (including pricing, product development, and commercialization plans) and also manages the development and operation of PIX. Without effective governance safeguards, this structure enables the BCB to shape both market dynamics and regulatory standards in ways that advantage its own platform.
- Mandated bank investments in PIX improvements, new features, and products—and guidance that banks should prioritize PIX—without equivalent obligations for private platforms disadvantage the latter.
- Regulation dictating priority placement of the PIX icon within bank apps ensures prominent PIX exposure.
- Mandatory network integration with PIX channels retailer and consumer behavior toward the government platform, constraining growth opportunities for U.S. companies in Brazil's payments ecosystem.
- PAs are also subject to technical standards, tax collection requirements, and supervisory costs that do not apply to PIX.
- U.S. card networks are not authorized to use their credentials to initiate payments via PIX. The BCB should promptly authorize all card networks for payments initiation. Such a measure would complement—not replace—existing PIX offerings and support broader adoption.

Brazil should commit to implementing effective measures that address the regulatory conflict of interest and anticompetitive practices described above. PIX should comply with the same regulatory, cybersecurity, and operational standards

imposed on private-sector platforms and be subject to independent third-party regulation and supervision. Brazil should also ensure a clear separation between PIX's operational and regulatory/supervisory functions within the BCB to safeguard regulatory neutrality, mitigate conflicts of interest, and align with international best practices.

Platform Joint Liability for Telecom Products Conformity

On August 1, 2025, Brazil's National Telecommunications Agency (ANATEL) issued its new Regulation for Conformity Assessment of Telecommunications Products (ANATEL Resolution No. 780/2025), with rules that extend joint liability with sellers to marketplaces and notably to any digital platform involved in the commercialization chain (even if only through advertising or promotion). Under the new rules, these entities are now held jointly liable for offering non-certified or non-compliant telecom products, and this includes an obligation to display certification codes and verify product compliance. Non-compliance may lead to fines of up to BRL 50 million. By holding digital platforms and marketplaces liable for ensuring third-party product conformity, Brazil's conformity assessment regime for telecommunications products establishes disproportionate burdens on all actors in the sales chain.

Brazilian Advisory Rating System – ClassInd

The Brazilian Advisory Rating System, "*Classificação Indicativa*" (ClassInd), is a content rating system utilized in Brazil for the classification of various forms of media and entertainment, including streaming services, electronic games, applications, and public performances, as well as films and television programs. The Chamber does not object to age-appropriate ratings but underscores the importance of clarity for compliance purposes and the need to apply them consistently across various platforms. Brazil's Ministry of Justice has in a discretionary manner changed the age classification for U.S. social media companies to 16+, while non-U.S. companies remain at 14+. The government cites age-inappropriate content for this change but uses a non-standardized process that makes it challenging for companies to fully address their concerns (e.g., not collecting or sending companies URLs, not accounting for Community Standards or existing review processes, etc.).

The lack of clarity and transparency in the Brazilian Advisory Rating System has resulted in discrimination against U.S. digital platforms, which have taken proactive and concrete action towards improving child and youth safety online (such as with "Teen Accounts"), while competitors have been given preferential treatment. We encourage Brazilian authorities to uphold transparent and nondiscriminatory

treatment for digital platforms, ensuring a welcoming and predictable environment for new investments.

Data Center Obligations

ANATEL's Resolution No. 780/2025 revises the Regulation on Conformity Assessment and Homologation of Telecommunications Products (RACPT). Among other changes, the new regulation introduces mandatory conformity assessment and homologation for data centers that are part of telecommunications networks, creating a new layer of compliance obligations. Although impactful to the data center landscape in Brazil, these new obligations were not subject to public consultation nor supported by a regulatory impact assessment — as would ordinarily be required under ANATEL's own rules. The measure was proposed directly by ANATEL's Board of Directors during the decision-making process, raising concerns regarding its legality and predictability. This creates an opening for administrative or judicial challenges, particularly for affected stakeholders who were not previously consulted. Key new requirements for data centers that are considered by ANATEL to be part of telecom networks include:

- Mandatory conformity assessment and homologation, as a precondition for installation or contracting by telecom service providers;
- Operational resilience, ensuring continuous service even in the event of failures or disasters;
- Physical security, to prevent unauthorized access and mitigate internal and external threats;
- Cybersecurity, with robust systems to protect against intrusions and attacks; and
- Energy efficiency and environmental sustainability, including the use of best practices and technologies to reduce energy consumption.

The regulation also mandates the publication by the Agency's technical staff of a new operational procedure within 240 days, detailing the conformity assessment process and establishing deadlines for both new and existing data centers to comply (the latter having a 3-year transition period).

The new regulation's mandatory conformity assessment and homologation requirements for data centers, particularly those integrated into telecommunications networks, may be seen as creating barriers to U.S. companies operating in Brazil's digital infrastructure sector. The fact that these new obligations were implemented without public consultation or a regulatory impact assessment raises concerns about transparency and fairness in the regulatory process. This could be interpreted as an unfair trade practice that burdens U.S. commerce, especially given the significant

presence of U.S. tech companies in Brazil's cloud and data center market. The specific requirements for operational resilience, physical security, cybersecurity, and environmental sustainability, while important, could be viewed as potential non-tariff barriers if they disproportionately affect foreign companies or are applied in a discriminatory manner.

Proposed Regulations

Brazil is pursuing regulation in a number of areas, including AI, platform regulation, and local content requirements that have yet to be finalized and therefore have not yet had a clear and disparate impact on American companies doing business in Brazil. The Chamber is closely tracking these proposals. USTR should seek commitments from Brazil confirming that it will not proceed with digital economy regulations that target or discriminate against U.S. companies. Details on these proposals follow.

AI Regulation: The Chamber is actively advocating on the bill to regulate Artificial Intelligence (Bill 2338/2023). This includes language that would broadly classify AI activities as "high-risk" and grant wide-ranging jurisdiction to Brazil's central regulatory agency without sufficient oversight. Additionally, obligations for General Purpose AI (GPAI) developers would undermine the services offered in Brazil as they would apply significant compliance costs to low-risk uses. These proposals would likely have an outsized impact on American companies, including by imposing significant compliance costs. Brazil should refrain from pursuing AI legislation that would result in disparate treatment of American companies. Finally, the Bill makes the Brazilian Data Protection Authority (ANPD) the main AI regulator in the country, in charge of coordinating different sectorial regulators and adopting and enforcing secondary regulation for "unregulated sectors". This would introduce a great degree of uncertainty due to the overlap between the General Data Protection Law (LGPD) and the proposed AI regulation as it stands today. In 2024, ANPD initiated AI-related investigations against US and foreign tech firms (including by issuing preemptive blocking orders), interpreting the Brazilian law in a way that can be considered as stifling innovation, largely inspired by similarly restrictive approaches adopted by regulators in the EU.

Platform Regulation: Brazil has advanced proposals for platform regulation on two separate tracks: a bill with ex-ante rules that is closely modeled on the EU Digital Markets Act (DMA) via Bill 2768/2022, and a comprehensive government-authored bill based on a Ministry of Finance report[1] that draws on elements of EU, UK, and other

[1] *Digital Platforms: Competition Aspects and Regulatory Recommendations for Brazil*, Secretariat of Economic Reforms, Ministry of Finance (2024), available at https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-consolidado-traducao-26122024.pdf.

regulatory regimes. The Chamber has repeatedly raised concerns that ex-ante platform regulation should not target foreign, primarily U.S.-headquartered companies. Similarly, we have expressed concerns about how these regulatory approaches can negatively impact cybersecurity, data privacy, and consumer choice. [2] The EU's DMA overwhelmingly targets U.S. companies and includes provisions prohibiting business practices by U.S. companies that competitors would remain free to use, requirements to disclose information and provide support to competitors, and an enforcement regime featuring excessive fines and penalties. Brazil's proposed measures are expected to have a similar effect. Like the EU's DMA, Brazil's proposed measures would likely apply only to a small group of U.S. companies, while sparing Brazilian incumbents and Chinese companies. By contrast, India recently decided against moving forward with similar platform regulation, underscoring the importance of avoiding measures that could stifle innovation and deter investment. The U.S. should secure a commitment from Brazil to avoid moving forward with platform regulation that applies to only certain industry participants.

Local Content Requirements: Video on Demand (VOD) bills (Bill 2331/2022 and Bill 8889/2017) are being considered that would disproportionately target U.S. video platforms while favoring Brazilian broadcasters. These bills would additionally impose a platform-wide tax to fund Brazilian content development. The same provisions are expected to be published in a Presidential decree. Mandatory content quotas could have unintended negative effects on the digital economy and consumer choice. They create a compliance burden for companies that need to identify and prominently display local content. They also increase costs for platforms, which are typically passed down to consumers in the form of higher fees. While we support the goal of promoting local culture and content, mandatory quotas or similar regulations limit consumer choice and the ability of companies to innovate. Brazil should prioritize collaboration over regulation in the content space by incentivizing voluntary investment in local productions rather than relying on content controls.

Network Usage Fee: Brazil is considering imposing a network fee or related scheme that would force U.S. content providers and technology companies to directly or indirectly pay large local internet service providers (ISPs) to fund telecommunications infrastructure. In 2023, ANATEL opened a public consultation that included questions on the topic of "cost-sharing," which is the idea that some networks or services send disproportionate amounts of data traffic and should therefore pay more to network operators. The proposed network usage fees would likely fall disproportionately on U.S. tech companies and would thereby undermine the

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[2] Secretariat of Economic Reforms proposes 12 competitive measures for digital platforms in report - Digital Council, https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-plataformas-consolidado.pdf

significant investments made by U.S. companies in Brazil's telecommunications infrastructure. In addition, the proposed fees would burden U.S. commerce by forcing U.S. companies to pay the highest fees compared to fees paid by smaller non-U.S. companies. The effective outcome would be to force U.S. companies to subsidize their competitors.

Digital Services Tax: Despite multilateral efforts to align international taxation rules, the Brazilian Congress continues to introduce bills aimed at creating unilateral Digital Services Taxes (DSTs) that would directly affect U.S. companies operating in the country. Similar measures, such as France's DST, have been found to be actionable under Section 301. The implementation of these unilateral tax measures not only risks jeopardizing multilateral negotiations but also threatens U.S. businesses that fully comply with Brazil's tax laws and should receive equal treatment compared to local companies. The Brazilian Congress is currently considering seven DST bills and Brazil's president has been open to initiatives that tax U.S. digital service providers. The seven DST proposals in Congress would conflict with Brazil's existing tax system, which already taxes profit remittances abroad, and contradict Brazil's ongoing tax reform efforts that aim to tax both digital and physical products and services equally. An additional tax aimed exclusively at the revenues of multinational enterprises would disproportionately burden U.S. companies and increase the incidence of double taxation thereon, placing U.S. firms at a competitive disadvantage in competing with local firms offering identical services to Brazilian customers. The differential nature of these bills is evident in data from Brazil's Federal Tax Authority from 2018 to 2022, which shows that digital services in Brazil generated average tax revenue of 16.4%, while non-digital private sector services contributed only 6.1% on average. Beyond being incompatible with Brazil's economic reality, the effects of these DST bills will be compounded as more jurisdictions adopt divergent and overlapping DST measures. The Brazilian government should be encouraged to focus its efforts and resources on achieving consensus through multilateral fora rather than implementing unilateral taxes that will discriminate against U.S. companies doing business in Brazil.

Tariffs and Taxes

Pharmaceutical Tariffs

Brazil imposes most-favored nation tariffs averaging 6.8% on pharmaceutical products. This differential creates a notable competitive disadvantage for U.S. pharmaceutical exporters in Brazil. The United States should negotiate with Brazil to lower pharmaceutical tariffs for U.S. exports. This would improve access to lifesaving innovations and strengthen bilateral trade in the life sciences sector.

Polyethylene Tariffs

In 2024, the U.S. accounted for approximately 70% of all polyethylene (PE) imports to the Brazilian market, making it the largest foreign supplier of PE to Brazil. PE is a key component in critical sectors including automotive, packaging, construction, healthcare, agriculture, and infrastructure among others. PE is also a broad category of chemicals that covers a wide range of grades and qualities of material, many of which are not domestically available in Brazil. However, Brazilian buyers can source from other regions such as Asia and the Middle East. In October 2024, Brazil increased tariffs on chemical imports from 11.5% to 20%, including PE. Brazil is also in the midst of an anti-dumping investigation into U.S. and Canadian PE, which could result in the imposition of an additional tariff of 21.4%, bringing the total to 41.4%. No such duty has yet been applied, but the investigation is ongoing.

Brazil's recent increase in its PE tariff to 20% not only harms U.S. chemical exporters but also leads to higher prices for domestic consumers. As the investigation continues, the U.S. and Brazil should engage to ensure the investigation remains narrowly focused to address Brazil's domestic concerns without straining bilateral relations or driving up input costs for Brazilian manufacturers.

Express Shipments Import Duties

Brazil's current import duty structure for express shipments of a flat 60% rate, which applies to goods valued between $50 and $3,000, is substantially higher than other countries. This creates a structural disadvantage for U.S. exporters and express logistics providers operating in the Brazilian market. Lowering this import duty rate on express shipments would not only help level the playing field for U.S. exporters but also support Brazil's domestic economic goals.

Brazilian Taxation

Brazil is currently undergoing one of the most ambitious consumption tax reforms in the world, with further reforms to its income and payroll tax systems on the horizon. These reforms come on the heels of major legislation approved in 2023 to realign Brazil's transfer pricing rules with international taxing norms by adopting the arm's length standard in full alignment with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Brazil's Congress also approved legislation late last year to introduce a Qualified Domestic Minimum Top-up Tax (QDMTT) in alignment with OECD Pillar Two standards.

The current consumption tax reform comes with a seven-year transition period, during which Brazil's old and new tax systems will run in parallel for seven years—a

lengthy and complex transition period for businesses with Brazilian operations. The new consumption tax system, based on a value-added tax (VAT) model, will apply where goods or services are consumed—not where they are produced—and does not contemplate different or special treatment for digital services businesses. Thus, technology and digital services businesses will be subject to the same VAT burdens as businesses in other sectors.

The “CIDE Royalties” (Law 10168/2000), currently at 10% rate on payments, credits, use or remittances made by a Brazilian source for royalties, license and technical services provided by non-residents, is a practice that raises cost of US companies operating in Brazil, creating barriers for cross-border technological transfers, that are paramount for tech companies. A case involving this tax has been filed at Brazil’s Supreme Court, questioning the validity of this tax, since the purpose for which it was created (“support technological development in Brazil”) is not reflected by the destination of the tax collected. Noteworthy is that this tax has also been listed in the Economic Reciprocity Law (15122/2025, Art. 10) as one of the possible retaliations that can be used by the Government of Brazil against companies from countries which adopt unilateral measures against Brazil.

Moreover, the Withholding Income Tax (WHT) is levied on all cross-border remittances, including payments for technical services and technical assistance - also relevant for high technology services. The WHT rates for these services typically range from 15% to 25%, depending on the nature of the service and applicable tax treaties. For tech companies operating in Brazil, the WHT represents a significant tax burden on cross-border payments related to software licensing, cloud services, technical support, and other digital services.

Introducing additional taxes, such as the recent abrupt raise to 3.5% in *“Imposto sobre Operações Financeiras”*—IOF tax, on these same revenue streams would in effect result in the triplication—and, in some cases, the quadrupling—of taxes on digital operations, creating an excessively burdensome and layered tax environment. Such overlapping of taxes on a single transaction undermines the principles of tax equity and neutrality, placing the digital economy at a competitive disadvantage compared to other industries. Furthermore, such a measure risks stifling innovation, deterring foreign investment, and ultimately hindering job creation and the overall growth of the tech sector. As such, any new taxation initiatives should carefully consider the existing fiscal landscape to avoid inefficiency, double—or even triple—taxation, and the detrimental effects on the economy.

Intellectual Property Protection

Intellectual property (IP) protections provide innovative companies with the legal certainty needed to make high-risk, high-capital investments into the next generation of innovative medicines, technologies, and creative and content-based output. The United States has been a long-standing leader in IP protection, ranking atop the U.S. Chamber's International IP Index in all 13 editions of this annual report. American-based companies seeking to diversify investment in other jurisdictions rely on baseline, global best practices to secure their investments and promote fair market access and commercialization of their innovations and creations.

Inadequate Patent Protection and Lack of Regulatory Data Protection for Biopharmaceuticals

Recent judicial decisions, systemic delays, and an expansive compulsory licensing regime have created legal uncertainty and undermined the value of intellectual property rights, raising concerns under international trade and IP agreements.

Specifically, in the spring of 2021, Brazil's Supreme Court issued a landmark ruling that shook the foundations of the country's patent system. Declaring Article 40 of the Industrial Property Law (Law No. 9.279/96) unconstitutional, the Court eliminated the provision that guaranteed a minimum patent term of 10 years for inventions and 7 years for utility models. This decision disproportionately impacted the biopharmaceutical and health sectors by applying the ruling retroactively—an approach that raised serious concerns under international law.

By singling out one field of technology for retroactive treatment, the Court's decision appeared to violate Article 27(1) of the TRIPS Agreement, which mandates non-discrimination in patent rights across different technologies. The uncertainty deepened in January 2023, when a Supreme Court panel reaffirmed that patent terms in Brazil could not exceed 20 years from the date of filing, regardless of how long the patent office took to grant the patent. This left innovators, especially in sectors with long development timelines, without assurance of a meaningful period of market exclusivity.

To address this ongoing uncertainty and restore investor confidence, it is essential to establish a clear legal provision that defines the applicable patent term in Brazil, particularly in situations involving administrative delays. Such a provision would align domestic law with international commitments, provide predictability for innovators, and ensure that sectors with long development timelines can rely on a meaningful and consistent period of market exclusivity. Establishing this legal clarity

would not only strengthen Brazil's innovation ecosystem but also promote a stable and transparent environment for bilateral trade and investment.

Despite efforts by Brazil's National Institute of Industrial Property (INPI) to streamline patent examination, the lack of a Patent Term Adjustment (PTA) mechanism means that innovators are often left unprotected against unreasonable delays. In contrast to OECD economies where patent examination typically takes 2-4 years, Brazil continues to face a significant patent backlog. The Chamber's January 2025 submission to USTR for its 2025 Special 301 Review recommended that the Brazilian Government and lawmakers immediately address these issues through the introduction of a new statutory defined PTA mechanism to compensate for unreasonable grant delays at INPI. While complementary initiatives, including expanding the Patent Prosecution Highway, hiring needed personnel, and appropriately funding INPI are also important, PTA remains the central structural reform needed to guarantee certainty and predictability for right holders.

Additionally, Brazilian law currently does not provide regulatory data protection (RDP) for pharmaceuticals made for human use, despite providing RDP for veterinary, fertilizer and agrochemical products. The lack of RDP for biopharmaceuticals is inconsistent with Brazil's obligations under the TRIPS Agreement. Moreover, the lack of an appropriate protection term for data supporting the marketing approval of pharmaceuticals for human use exacerbates the challenges regarding unpredictability of IP for biotechnology companies operating in Brazil. Brazilian authorities, including Brazil's National Health Regulatory Agency (ANVISA), and the National Data Protection Authority (ANPD) must ensure adequate and effective regulatory data protection for technologies from across all sectors of the economy.

Finally, the Industrial Property Law 9.279/96 provides a broad basis for compulsory licensing (CL) beyond the use of this mechanism solely for public health emergencies that do not involve commercial consideration. Moreover, this mechanism also includes a domestic manufacturing criterion that can form the basis for the issuing of a compulsory license. These sections have been used in the past during price negotiations with foreign biopharmaceutical innovators to reduce their prices considering the threat of approving the manufacturing of local generic versions of patented medicines. In late 2021, several amendments to the Industrial Property Law were enacted, including provisions broadening the Government's emergency powers and authority to issue compulsory licenses, setting the percentage of royalties to be paid in licensing fees and expanding the compulsory licensing mechanism to also cover patent applications.

To this end, the Brazilian government must ensure that its CL rules are compatible with its WTO obligations and, if so, that the CL framework provides legal

certainty and due process for innovators and sustains our shared global competitiveness.

Copyright Enforcement

Brazil is considering significant amendments to its copyright framework through legislative proposals such as Bill 2370/2019 and Bill 4968/2024. These bills aim to introduce new remuneration obligations for the use of copyrighted works and sound recordings in digital streaming environments. Among the proposed changes are mandatory collective management of rights, contract override provisions, and expanded definitions of broadcasting and public performance. These measures would apply to digital platforms operating in Brazil, including those offering interactive streaming services.

The proposals also introduce legal ambiguity by equating interactive digital uses (e.g., on-demand streaming) with public performance, potentially subjecting them to collective licensing regimes. This could alter the nature of exclusive rights under Brazilian law and affect how rights holders negotiate and enforce their rights in the digital marketplace.

The proposed reforms would have a direct impact on U.S.-based digital service providers (DSPs), particularly those operating large-scale streaming platforms. The introduction of mandatory remuneration obligations and collective management requirements could significantly increase compliance costs and operational complexity. U.S. companies may face limitations on their ability to negotiate individual licensing agreements, undermining contractual freedom and business models based on direct licensing.

Additionally, the bills' vague definitions and broad scoping of rights could create legal uncertainty, making it difficult for U.S. platforms to assess liability and structure their services in Brazil. The risk of overlapping or duplicative payment obligations—especially in the absence of clear legal mandates—could deter investment and innovation in Brazil's digital content market.

To address the challenges, Brazil must align its legal definitions with international standards, particularly those in the World Intellectual Property Organization (WIPO) Internet Treaties, to ensure clarity around rights such as "making available" and "public performance." The legal framework should preserve the ability of rights holders and digital platforms to negotiate licensing terms freely, without mandatory collective management or contract override provisions. Additionally, Brazil should modernize its collective rights management system to promote transparency,

fair representation, and competition, and conduct thorough consultations and impact assessments before implementing major legislative changes.

Trademark and Protection and Enforcement

The sale of counterfeit goods has flourished in many Brazilian cities due to lack of criminal prosecution and coordinated enforcement. In recent years however, the Chamber has observed successful enforcement actions through a taskforce of the City Hall of São Paulo, Customs, Federal Revenue Service (DIREP) and State Police.

Brazil's National Congress should approve legislation that would bring criminal penalties and fines for trademark infringement in line with those already established for copyright infringement, as well as legislation that allows for the *ex officio* seizure and destruction of infringing goods, which would represent a major advancement in Brazil's enforcement regime.

Ethanol Market Access

Prior to February 2023, U.S. ethanol entered the Brazilian market tariff-free under a tariff-rate quota program. However, in February 2023, the Brazilian Foreign Trade Chamber (Camex) established a 16% tariff on ethanol imports from the U.S., later increasing it to 18% in 2024, compared to the 2.5% tariff the U.S. applied to Brazilian ethanol prior to August 2025. Non-tariff barriers further complicate bilateral ethanol trade. While Brazilian ethanol producers benefit from access to the Renewable Fuels Standard and California's Low Carbon Fuel Standard program, similar preferential treatment is not extended to U.S. producers in Brazil. Brazil's RenovaBio and RenovaCalc programs, which seek to promote low-carbon biofuels and measure their environmental impact, have created significant market access barriers for U.S. ethanol producers. Renovabio's eligibility criteria does not recognize the U.S. Environmental Protection Agency's "aggregate compliance" approach and therefore creates a technical barrier that has prevented U.S. ethanol producers from qualifying for the program. Moreover, RenovaCalc's carbon accounting model unfairly inflates the carbon score of U.S. corn ethanol which results in a 300% penalty to U.S. producers. This limits access to CBio carbon credits, reducing both competitiveness and potential revenue for U.S. ethanol in the Brazilian market.

U.S. companies exporting biofuels to Brazil—particularly ethanol and sustainable aviation fuel (SAF)—could face mounting challenges should Brazil implement reciprocal tariffs. In response to the U.S. tariff of 50% announced on July 31, 2025, Brazil could retaliate and increase its tariff beyond 18% which could severely restrict market access for American biofuel producers.

The tariffs could disrupt the emerging SAF trade, complicating efforts to build the global clean fuel supply chain. Overall, these measures threaten to reduce export volumes, increase costs, and undermine competitiveness for U.S. biofuel companies in one of Latin America's largest markets.

To promote fair and reciprocal ethanol trade, USTR should work with Brazil to improve the implementation of RenovaBio and RenovaCalc by promoting mutual recognition of environmental standards—highlighting the U.S. EPA's "aggregate compliance" approach and Canada's acceptance of it as a model. Brazil should adopt transparent, science-based carbon accounting to ensure fair treatment of U.S. ethanol producers and support equitable market access.

The imbalance in tariffs coupled with challenges in accessing RenovaBio and RenovaCalc not only puts U.S. producers at a competitive disadvantage but also impacts price stability and hinders energy cooperation between the two largest ethanol-producing nations. Additionally, Brazil and the U.S. should explore collaboration in expanding the SAF market, an area where U.S. companies are making significant advancements, and which holds promise for joint innovation and expanded biofuel market access.

Illegal Deforestation

Current Brazilian Law, including the Brazilian Forest Code (Law No. 12,651/2012) and a number of international certifications, serve to protect key Amazonian resources and provide transparency and product traceability to ensure a level playing field for U.S. companies that depend on Brazilian suppliers. We urge their recognition by U.S. regulatory systems to promote legal certainty, reduce bureaucratic burdens, and support voluntary compliance with high sustainability standards that will enable U.S. agribusiness and forestry companies access to important Brazilian markets.

In addition, the Lacey Act amendments of 2008, which passed with overwhelming support from Congress, industry, labor and environmental organizations, make it unlawful to trade wood, wood products or other plant materials taken in violation of the laws of either a U.S. state or a foreign country. Trade negotiations with Brazil should support the Lacey Act and its enforcement because it enables American forest product companies to compete fairly in the global marketplace, supports U.S. jobs, and deters the destructive impacts of illegal logging on forests and forest-dependent communities in developing countries.

Overall, policies that recognize global trade flows and are geared at improving livelihoods for farmers of all sizes should be promoted. Farmer and rural prosperity are key for a safe, secure, and affordable food supply. For any action to endure in

preventing deforestation, it must include a “smart mix of tools” and actions that address the local social and economic issues, with specific consideration to the inclusion of smallholders.

It is also imperative to enable and incentivize forest protection, within sustainable and inclusive development. Solutions for forest protection must promote farmers’ economic livelihoods, smallholder and community wellbeing and global food security needs.

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The U.S. Chamber appreciates the opportunity to share these comments and looks forward to participating in the upcoming hearing to address these important issues.

Sincerely,

Neil Herrington
Senior Vice-President, Americas
U.S. Chamber of Commerce