

# NATIONAL FOREIGN TRADE COUNCIL, INC.

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February 2, 2009

The Honorable Richard G. Lugar  
United States Senate  
306 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Lugar:

I am writing to thank you for your continued leadership in the tax treaty ratification process. We understand that you are considering offering a Sense of the Senate Resolution to encourage Brazil to make the necessary changes in its tax laws so that a successful tax treaty can be negotiated between the U.S. and Brazil.

On behalf of the member companies of the National Foreign Trade Council (NFTC), I am writing to support the effort by the Senate to encourage Brazil to conclude successfully a new tax treaty between the U.S. and Brazil. In surveys completed by NFTC members, Brazil has repeatedly been identified as the highest priority tax treaty negotiation desired by U.S. multi-national companies. We welcome your efforts to secure a tax treaty with Brazil, and respect your realistic outlook that in the face of the current Brazil tax policies, this may be a difficult effort in the short term. The NFTC stands ready to work with you to secure an income tax agreement with Brazil which will be mutually beneficial to both countries.

The National Foreign Trade Council, organized in 1914, is an association of some 300 U.S. business enterprises engaged in all aspects of international trade and investment. Its membership covers the full spectrum of industrial, commercial, financial, and service activities. The NFTC, therefore, seeks to foster an environment in which U.S. companies, like their foreign counterparts, can be dynamic and effective competitors in the international business arena.

Given that the NFTC's membership base includes global companies with significant investments in Brazil, our member companies seek a treaty with Brazil that relieves the double-taxation that arises from doing business in Brazil. Enhancing trade and investment with Brazil is of paramount importance to NFTC member companies. As cross-border trade and investment expand, tax treaties are playing an increasingly important role in preventing the imposition of excessive or inappropriate taxes on global businesses and in ensuring even-handed application of the tax laws. To continue to serve their intended purposes, treaties must keep pace with developments in today's global economy.

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We have reviewed several of the tax treaties recently ratified between Brazil and other countries. Many of the provisions included in those treaties would not be helpful to U.S. companies if they were included in a U.S.-Brazil tax treaty.

On the other hand, if the precedents set in most recent U.S. tax treaties were adopted, it would enhance the free flow of capital between Brazil and the United States, while allowing taxpayers from both countries to work within a framework that is most conducive to resolving tax disputes. Provisions of greatest interest to NFTC members include:

- Reduction of the parent-subsidiary dividend withholding rate to zero.
- Reduction of the interest withholding rate from 15% to zero. This rate should also apply for loans by banks and financial institutions. Non-bank finance companies (as generally defined in section 954(h) of the Internal Revenue Code) should be explicitly included in the definition of “financial institutions.”
- Reduction of the royalty and services withholding rate from 25% to 0%.
- A strong arms-length standard for transfer pricing and a program for bilateral advance pricing agreements.
- A mutual agreement procedure that allows for the two countries’ competent authorities to negotiate settlements of tax disputes.
- Permanent establishment and business profits provisions reflecting the traditional position of the United States and other OECD member countries, which is that a foreign company may be taxed on its business profits only if they are attributable to a permanent establishment in that country, and this requires a specified level of physical presence. Apart from narrow cases where employees or other agents conduct certain significant activities in Brazil, a permanent establishment requires a fixed place of business through which the business of the foreign company is wholly or partly carried on, which must be a “fixed” geographical location and used by the foreign company for an adequate period of time. Erosion of this permanent establishment threshold for the provision of services, such as engineering, architectural, accounting and legal or other services, for activities performed elsewhere, or otherwise would not be a welcome development.
- A reduction in the capital gains tax on long-term investments.

We believe that an income tax agreement with Brazil could be of mutual benefit if it results in the elimination or reduction in the high rates of withholding taxes on cross-border payments of dividends, royalties, and interest. This would increase the flow of equity investment between the United States and Brazil. A treaty without reasonable accommodations similar to recent U.S. tax treaty practice on the points outlined above, however, could be a step backward. Such a conclusion would work to the detriment of U.S. business and we would regard that as an unsuccessful outcome.

While the focus of the NFTC and its member companies is primarily investment and trade into Brazil, we note that Brazil is rapidly developing world-class companies that compete outside of Brazil. Out-bound investment and trade from Brazil are growing. It is in the best interest of these Brazil-based multinationals to conclude a treaty with the U.S. that reflects balanced principles as reflected in U.S. tax treaties generally. We believe this is an opportune time to couple the interest and support of these Brazil-based multinationals with the interests of U.S.-based companies to finally achieve a tax treaty between the U.S. and Brazil that advances the interests of both countries.

The NFTC looks forward to working with you to achieve a successful and timely conclusion to these important negotiations with Brazil.

Sincerely,



William A. Reinsch  
President