WRITTEN SUBMISSION OF THE NATIONAL FOREIGN TRADE COUNCIL

Request for Comments 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

Docket Number USTR-2025-0043
August 18, 2025

The National Foreign Trade Council (NFTC) appreciates the opportunity to provide input in response to the Office of the U.S. Trade Representative's (USTR) Federal Register notice, *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* ("the FR Notice") (90 FR 34069, July 18, 2025).

About NFTC

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international trade norms that reflect the critical role that an open, rules-based international economy plays in the success of American businesses, entrepreneurs, and workers, and shared global prosperity. The NFTC also supports the effective enforcement of those rules.

I. INTRODUCTION

NFTC is pleased to provide comments as part of USTR's Section 301 investigation into Brazil's acts, policies, and practices in several sectors that are unreasonable or discriminatory and burden or restrict U.S. commerce and, thus, actionable under Section 301. NFTC's comments in this submission primarily address two specific areas of the investigation: Section A covers digital trade and electronic payments, and Section B addresses intellectual property protection.

It is important to recognize that this investigation is not happening in isolation and it should be approached as part of the Administration's overall bilateral trade policy towards Brazil. The President recently acted under the International Emergency Economic Powers Act (IEEPA) to impose an additional 40 percent tariff on imports from

Brazil[1] on top of the 10 percent reciprocal tariff already announced.[2] A combined tariff of 50 percent on all imports from Brazil is likely prohibitive and will disrupt trade in many important imports from Brazil. In addition, 50 percent tariffs under Section 232 already apply to imports of steel, aluminum, and copper and many derivative products and 25 percent tariffs apply to imports of Brazilian autos and – more importantly – auto parts. Additional tariffs may yet be announced on a range of other imports as part of ongoing Section 232 investigations.

With such high tariffs already in place and more on the horizon, we urge the Administration to ensure that the focus of its policy remains removing barriers for US companies seeking to do business in Brazil, and to do so in a manner that avoids unintended harm to those very same businesses or to US supply chains. Any action taken pursuant to this Section 301 investigation should be part of a comprehensive strategy that seeks action by Brazil to address measures covered by this investigation (and any other non-reciprocal trade barriers and national security concerns) in exchange for tariff relief.

The bilateral trade relationship with Brazil is important for the success of many U.S. companies operating in both countries. The United States has consistently run a goods trade surplus with Brazil, which is a significant purchaser of advanced manufactured goods ranging from aircraft and automotive parts to sophisticated industrial machinery and specialized chemical products. Brazil's largest exports to the United States are commodities and semi-processed goods, such as wood pulp, unfinished iron and steel products, oil, and agricultural products, including coffee and sugar. The United States' trade surplus with Brazil reflects both the different industrial profiles of the two economies and Brazil's dependence on U.S. high-value inputs for its own production and infrastructure needs.

The NFTC supports a deliberative, evidence-based approach to addressing Brazil's trade policies and practices. We are concerned that the 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 the 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 (e.g., U.S. energy abundance and AI dominance). The decision to levy these tariffs will adversely impact supply chains for U.S. manufacturers and consumers, and put U.S. businesses at risk of retaliatory measures.

While aerospace equipment isn't within the current scope of this investigation, we want to underscore the importance of maintaining the longstanding zero-for-zero approach to tariffs on civil aircraft and parts, consistent with WTO's Agreement on Trade in Civil Aircraft and the approach taken in the U.S.-UK bilateral trade agreement.

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[1] Executive Order, "Addressing Threats to the United States by the Government of Brazil," (90 Fed.Reg.37739), August 5, 2025.
[2] Executive Order, "Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Trade Deficits," (90 Fed. Reg. 15041), April 7, 2025.

NFTC is pleased to provide the comments below for the sectors USTR has targeted for this investigation.

A. Digital Trade and Electronic Payments

1. Digital Trade Measures

Brazil is considering several harmful digital policy measures that would target or disproportionately affect U.S. companies, including an *ex ante* digital competition regulation, artificial intelligence ("AI") bill, network fee scheme, data center regulations, and digital services tax. These measures would harm U.S. technology and AI leadership by undermining the business models of leading U.S. technology companies and preventing fair competition in Brazil between U.S. companies and Chinese competitors.

a. *Ex-Ante* Competition Legislation

On October 10, 2024, Brazil's Ministry of Finance ("MF") issued a report proposing a number of legislative and regulatory measures targeting the digital sector.[3] One recent analysis stated that this report "is a clear sign that Brazil is taking meaningful steps toward regulating digital platforms in an *ex ante* manner."[4] The proposed measures are include concerning similarities to the Digital Markets, Competition, and Consumer Act ("DMCC") of the United Kingdom ("UK") and the Digital Markets Act ("DMA") of the European Union ("EU"). Brazil's proposed measures would create similar effects and likely would apply only to a small group of U.S. companies, while sparing Brazilian incumbents and Chinese companies.

Brazil's proposed measures would delegate authority to the Administrative Council for Economic Defense to regulate digital platforms through a newly created Digital Markets Unit ("DMU"). The DMU would have significant deference to identify those companies subject to the regulations and to impose "special obligations" on those companies. The MF has indicated that designation of companies subject to the regulations and special obligations will affect no more than ten companies, including the predominantly American companies the EU has designated as "gatekeepers" under the DMA.[5] As these facts show, the proposed Brazilian measures are intended to place U.S. companies at a disadvantage *vis-à-vis* their competitors in Brazil and other markets.

The proposed measures would also be extremely burdensome on U.S. companies. Compliance costs and potential fines for non-compliance could potentially cost U.S. companies a fortune. Meanwhile, Brazilian and Chinese companies not covered by the

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[3] *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.
[4] "Brace yourselves: Has Brazil just taken the most meaningful step towards regulating digital platforms?" (Dec. 4, 2024), available at https://centrocompetencia.com/has-brazil-just-taken-most-meaningful-step-towards-regulating-digital-platforms/
[5] On September 6, 2023, the European Commission designated six companies as gatekeepers: Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft. Five of these six companies are American. On May 13, 2024, the European Commission designated Booking – another American company – as a gatekeeper

proposed measures would avoid such costs, thus giving them an unfair advantage over U.S. companies. As a result, the proposed measures would undermine U.S. companies' ability to compete in the Brazilian market, affect U.S. based jobs in the value chain, and reduce the amount of funds available for U.S. research and development – the kind of impacts Section 301 is meant to address.

Finally, even in the absence of specific legislation, Brazil's competition authority, the Administrative Council for Economic Defense (CADE), is taking aggressive action against U.S. technology companies, seeking to force them to implement DMA requirements locally through "interim measures" that essentially try to import extractive European regulations not enacted in Brazilian law.

b. AI Bill (Bill 2338/2023)

Brazil's Congress currently is considering a bill (Bill 2338/2023), which aims to define the legal framework for regulating the use of AI systems in Brazil. This bill was approved by Brazil's Senate on December 10, 2024, but has yet to be approved by the Chamber of Deputies (Brazil's Lower House).[6]

As currently written, several provisions of the bill are unreasonable and would significantly burden U.S. commerce. Specifically, the bill would introduce significant barriers for U.S. innovators attempting to export AI tools and services to Brazil. The bill would disproportionately harm U.S. technology companies that need to scale and compete globally in the race to develop and deploy AI.

The bill also takes a blanket approach to AI regulation that is overly burdensome. Instead of narrowly focusing on high-risk use cases, the proposed legislation captures low-risk applications, including everyday business functions. In addition, the bill does not clearly differentiate between the developer of a high-risk AI system and the entity that deploys the system. This failure represents a burden on U.S. commerce because it significantly impedes the ability of U.S. companies to develop innovative AI applications. The bill further restricts U.S. innovation and commerce through copyright provisions that effectively impose extraterritorial taxes on AI developers. For example, the bill would force AI developers to pay for any Brazilian content used to train AI models, adding significant costs for U.S. AI developers and preventing generative AI features developed in the United States from being further developed or used in Brazil.

c. 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. Brazil's National Telecommunications Agency ("ANATEL")[7] opened a public consultation in 2023 that included questions on the topic of "cost-sharing" – the idea that some networks or

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[6] "Creators Celebrate Brazil's Senate Approval of AI Bill but Prepare for Tougher Battle in the Lower House," *CISAC* (Dec. 11, 2024), available at https://cisac.org/Newsroom/society-news/creators-celebrate-brazils-senate-approval-ai-bill-prepare-tougher-battle.

[7] ANATEL stands for Agência Nacional de Telecomunicações.

services send disproportionate amounts of data traffic and should therefore pay more to network operators.[8] The proposed network usage fees would likely fall disproportionately on American tech companies, and would thereby undermine the 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 – and unfair – outcome would be to force U.S. companies to subsidize their competitors.

d. Data Center Obligations

On August 1st, 2025, Brazil's ANATEL approved Resolution No. 780/2025, which 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.

These new obligations were not subject to public consultation nor were they supported by a regulatory impact assessment — as ordinarily required under ANATEL's rules. Rather, ANATEL's Board of Directors directly proposed the measure 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.

Key new requirements for data centers that ANATEL considers 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).

[8] *See* "Cost-Sharing Models Undermine the Global Internet," *Internet Society* (Dec. 1, 2023), available at https://internetsociety.org/resources/internet-fragmentation/brazils-cost-sharing-proposal/.

The recent ANATEL Resolution No. 780/2025 creates new mandatory conformity assessment and homologation requirements for data centers that could potentially discriminate against U.S. companies operating digital infrastructure in Brazil. The fact that these new obligations also were implemented without public consultation or a regulatory impact assessment raises concerns about transparency and fairness in the regulatory process and could function 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 risk disproportionately affect foreign companies and could be applied in a discriminatory manner.

e. 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. USTR has already found that similar measures, such as France’s DST, are 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 taxes and should receive equal treatment compared to local companies. The Brazilian Congress is currently considering seven DST bills, and on July 18, President Lula publicly expressed support for such initiatives to "charge taxes from U.S. digital service providers." The seven DST proposals in Brazil’s Congress 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 exclusively targeting the revenue of multinational companies, that in practice will end up burdening mostly U.S. companies, would effectively create double taxation and unfairly disadvantage American companies competing with local providers offering identical services to Brazilian customers. The disproportionate 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. The Brazilian government should focus its efforts and resources on achieving consensus through multilateral forums rather than implementing unilateral taxes that will discriminate against U.S. companies doing business in Brazil.

In addition to a potential DST, U.S.-based multinationals, especially those in the digital economy, face a complex tax environment in Brazil that includes measures that are inconsistent with generally accepted tax principles and that disproportionately affect U.S. companies. These include a 15% withholding tax on services (particularly software-as- a-service or platform-as-a-service) that are performed outside of Brazil, the IOF tax on various payments made to U.S. companies (e.g., services, royalties, and dividend distributions) which just increased from .38 percent to 3.5 percent; and the Contribution for Intervention in the Economic Domain (CIDE), a 10% federal contribution on certain payments for royalties or technical services made by Brazilian entities to offshore recipients, in particular for a license or technical services that involve a transfer of technology into Brazil.

f. Marketplace Liability

The recent adoption of the above mentioned ANATEL Resolution No. 780/2025 also introduces a framework that disproportionately burdens online marketplaces, particularly foreign-based platforms, by extending joint liability for product certification to digital intermediaries. This includes platforms that merely advertise or facilitate product listings without participating in the sale or logistics chain. U.S.-based marketplaces operating in Brazil now face heightened legal exposure for third-party sellers' compliance failures, including the obligation to verify ANATEL certification codes and ensure product conformity—tasks traditionally outside the platform's operational scope and technically difficult to implement at scale. These new provisions create significant legal uncertainty and risk and may not only restrict market access but also deter cross-border digital trade and innovation. The resolution therefore raises serious concerns regarding proportionality, operational feasibility, and alignment with global digital trade principles.

2. Electronic Payments Services

PIX has been a remarkable success 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. There is significant U.S. private sector interest in ensuring PIX provides a fluid experience for customers, remains cost-effective, and is able to innovate in the future. In fact, PIX's presence and growth has been beneficial for all players, including U.S. electronic payment services (EPS) providers, which have seen a doubling in transactions processed since its launch. Yet there is now an opportunity to address concerns around the fact that BCB both regulates and competes with payment arrangements[9] (PAs). While it is not uncommon for central banks to operate one or more payment systems and supervise the private sector, the BCB has an opportunity to strengthen governance procedures that avoid conflicts of interest and crowding out the private sector. This is not a call to change PIX's operations, ability to innovate, or cost structure, which the government should be able to safeguard while strengthening governance procedures. In this discussion, a key element of reference would be the core principle of competitive neutrality as promoted by multilateral organizations including the OECD, World Bank, CPMI, BIS and WTO.

The issue: Dual Role and Governance Concerns

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. In practice, U.S. EPS are subject to an unlevel playing field as they must compete against their own regulator. A clear separation of oversight functions from commercial activities is a core principle of competitive neutrality. Furthermore, PIX is not subject to regulation and supervision from a third-party regulator and overseer in a way that would be materially equivalent to the regulation and supervision that private players are subject to.

Anti-Competitive Considerations

Private players are required to create ecosystems where participation is voluntary, whereas PIX receives certain benefits. Examples include:

- **Access to competitive information:** 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.
- **Regulation dictating priority placement of the PIX icon** within bank apps, ensuring prominent exposure and enhanced user experience.
- **Mandatory network integration** with PIX that channels retailer and consumer behavior toward the government platform, constraining growth opportunities for U.S. companies in Brazil's payments ecosystem.
- **Not equal standards applicable to PIX as competitor:** Private-sector payment providers are expected to always deliver top level security. This means being under constant oversight from the Central Bank and investing heavily to keep systems safe and resilient. PAs are also subject to technical standards, tax collection requirements, and supervisory costs that do not apply to PIX.
- **Unequal treatment of card networks to initiate transactions on PIX:** U.S. card networks are not authorized to use their credentials to initiate payments via PIX. As a measure of good faith, 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.

International Best Practices and Recommendations

To achieve a level playing field for U.S. EPS providers, Brazil should commit to implementing effective measures to address the regulatory conflict of interest and these anticompetitive practices, while ensuring the continuation of accessible payment solutions. This also would have the benefit of preventing the risk of a crowding out effect of the private sector in payments. Numerous international organizations – including the OECD, World Bank, CPMI, BIS and WTO – have outlined the importance of competitive neutrality across sectors and recommend the adoption of policies and procedures that avoid conflicts of interest.

Among others, 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.

B. Intellectual Property Protection

Brazil continues to have challenges with intellectual property protection, which is reflected in the fact that it remained on the Watch List in the 2025 Special 301 Report. Problems with intellectual property protection in the pharmaceutical sector persist, including:

- **Patent backlogs**: Historically, patent applicants in Brazil have experienced some of the longest patent pendency times in the world. A recent analysis finds that the issue persists today, with the average patent examination timelines for biopharmaceutical patents exceeding nine years, hindering innovation and significantly raising investment risk. We are encouraged by the National Institute of Industrial Property's (INPI) efforts to tackle the examination backlog and improve the efficiency of patent prosecution in Brazil, including expansion of the Patent Prosecution Highway pilot program to all sectors. Nevertheless, it is critical for Brazil to establish a Patent Term Adjustment mechanism to offset these undue delays in Brazil's patent examination process. The need is more acute than ever following the Brazilian Supreme Court's 2021 decision to eliminate the minimum patent term, which was applied retroactively to the health innovation sector eliminating thousands of patents overnight.

- **Lack of regulatory data protection (RDP)**: Brazil does not provide RDP for biopharmaceutical products (despite applying RDP for veterinary, fertilizer, and agrochemical products).

- **Compulsory licensing**: Members of Brazil's National Congress continue to pursue efforts to expand inappropriately compulsory licensing provisions in Brazil's Industrial Property Law. Recent efforts, such as PL No. 12/2021, included several unprecedented, vague, and broad provisions that go beyond what was envisioned under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These efforts fundamentally undermine the predictability and certainty necessary for U.S. innovators from all sectors to successfully invest in and accelerate the launch of new products in Brazil.

II. CONCLUSION

NFTC appreciates the opportunity to share our perspective on Brazil's acts, polices, and practices under investigation. We look forward to working with you to make progress on these issues.

If you have questions, need additional information, or would like to discuss our input further, please reach out to Tiffany Smith at NFTC at tsmith@nftc.org.