Laws in Emerging Economies 1

Dan Wei *Editor*

Settlements of Trade Disputes between China and Latin American Countries

Springer

Laws in Emerging Economies

Volume 1

Emerging economies have become among the most dynamic, most influential, most watched components of the global economy. Large emerging countries like BRICS have recently been occupying a strong role in the international scenario. Foreign investors have mostly perceived emerging economies as the sought-after places with great potentialities and attractiveness. China and Brazil, for example, are the one of the most favored places for multinational companies.

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Chapter 1
Brazil and China: Trade in the Twenty-First Century

Welber Barral

1.1 Introduction

It is difficult to talk about the economic relations between Brazil and China without taking into account the relation between all the Latin American regions and China.

In fact, China has a growing role in Latin America as a whole, with the region being the second major recipient of Chinese investment, after Asia (Ren 2011). China's direct investment in Latin America in 2010 was US$ 11 billion, 24 % more than the US$ 8.9 billion invested in 2009. Both trade and investment between China and Latin America have increased exponentially in the past few years. From 2006 to 2010, exports from Latin America and the Caribbean to China had an annual growth rate of almost 34 %, going from US$ 22.6 billion to US$ 72 billion. China is Latin America's third most important trade partner and, according to the Economic Commission for Latin America and the Caribbean (ECLAC), is expected to be its second biggest trade partner by 2014. By 2015, China should surpass the European Union to become Latin America's second largest export market after the US (ECLAC 2011a, b).

The increase in China's demand for raw materials and a search for markets that have been less affected in the economic crisis give reason to believe that this trend will continue. China is a major buyer in the commodity sectors of mining, agriculture and forestry, especially in Brazil, Chile, Peru and Argentina. At the same time, China's "going global" strategy is encouraging Chinese companies to invest overseas and to increase cooperation with other emerging economies (Blackmore et al. 2013).

Brazil and China are not recent trade partners since imports and exports between both countries have a long history. In the last 10 years, such relationship has increased exponentially, and China became Brazil's major trade partner, displacing

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the United States after many years. On the other hand, Brazil did not rise substantially as China's trade partner.

It is, to say the least, a complex relationship. In order to better understand it, at least from the Brazilian perspective, it is important to analyze Brazil's trade and its recent developments and see where the country stands in the current international context. After that, the evolution of Brazil–China trade relation will be discussed, identifying how its particulars may influence this relationship in the future. With this background in mind, the trade remedies adopted by Brazil in general, and specifically against China, will be analyzed, trying to understand its rationale and impacts, and what the perspective is of Brazil–China trade relation.

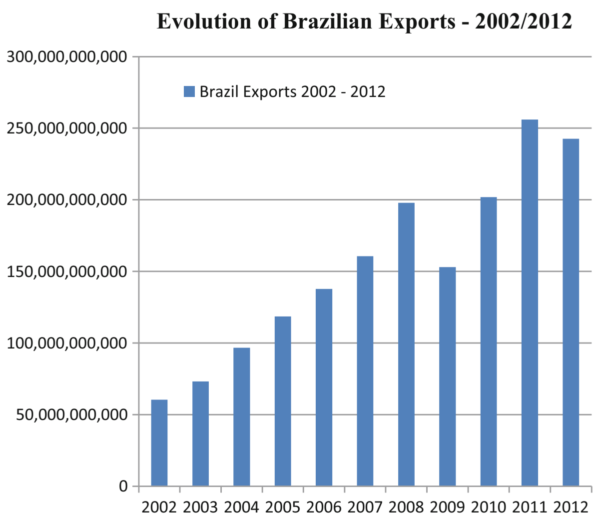
1.2 International Trade and Brazil

To understand the Brazilian macroeconomic situation today, it is necessary to analyze its response to the 2008 financial crisis. Measures adopted by the Brazilian government, such as massive tax cuts, made it possible to emerge from the crisis smoothly and, compared to other countries, without significant impact. This is borne out by data on Brazil's net exports over the last 4 years (see Fig. 1.1).

In 2010, Brazil's international trade resumed its growth and approached the precrisis levels. But in the following years, the international economic crisis has affected the country's ability to keep increasing its foreign trade.

In 2011, Brazilian foreign trade registered a peak mark of US$ 482.3 billion in its flow, a growth by 25.7 % over 2010, when US$ 383.7 billion were traded. Exports reached US$ 256.0 billion, and imports were US$ 226.2 billion, with a surplus of US$ 29.8 billion, against US$ 20.1 billion in 2010. Compared to 2010,

Fig. 1.1 Evolution of Brazilian exports—2002/2012. *Source*: MDIC



the exports of basic goods increased by 36.1 %, and semimanufactured goods and manufactured goods exports increased, respectively 27.7 % and 16.0 %. Industrialized goods represented 50 % of the export composition in the period. In the import side, the acquisitions of raw materials and industrial supplies and materials represented 45.1 % of the total, and capital goods imports, 21.2 %, showing strong correlation with productive investments. Considering destination markets, sales increase of 36.3 % to Asia placed the region in the first position of buyer for Brazilian products in 2011 (MDIC).

In 2012, trade flow was US$ 465.7 billion, with exports reaching US$ 242.6 billion and imports US$ 223.1 billion and a US$ 19.4 billion trade surplus. Considering 2011, exports shrank 5.3 %, while imports decreased 1.4 %. The decrease in export revenues is due to the 4.9 % drop in the price index, caused by a decrease in commodities prices, especially iron ore, due to the reduced dynamism of the advanced economies. Compared to 2011, the exports of basic goods decreased 7.4 %; semimanufactured goods, 8.3 %; and manufactured goods, 1.7 %. The sum of industrialized goods represented 51.0 % of the total exports in the period. On the import side, the acquisitions of raw materials and industrial supplies and materials represented 44.7 % of the total, and the imports of capital goods, 21.8 %, showing strong correlation with productive investments. Considering the destination markets, although sales for the United States registered a 3.5 % growth, placing the country in the second position as buyer of Brazilian products in 2012, China remained as first (MDIC).

With this, Brazil was the 22nd in the main world exporter countries ranking in 2012, with a 1.4 % share, while China was the 1st, with a 10.4 % share, according to the WTO (WTO 2012).

Up to 2009, the US was Brazil's main trade partner, but since then it was replaced by China, which in 2012 had a 15.4 % share of Brazilian imports, while the US had 14.6 %, followed by Argentina (7.4 %), Germany (6.4 %) and South Korea (4.1 %) (see Tables 1.1 and 1.2).

Although Brazil has recovered—or even increased—the volume of business transactions that had decreased during the 2008 crisis, the latter contributed to Brazil's trend of exporting more commodities than manufactured goods. This is primarily due to the weaker performance of countries, such as the United States, that are Brazil's main importers of manufactured goods. Fierce competition in the world market also affected its performance. Large inventories of industrial products pushed their prices down, making them more suitable to take over new markets. Between 2003 and 2007, manufactured goods accounted for 52–55 % of Brazil's exports. While in 2008 these products represented 46.82 % of exports, their share fell to 37.4 % in 2012, while primary products' share was 46.8 % (MDIC 2012).

The competition faced by Brazilian manufactured goods is not limited to the international market. The threat of recession in rich countries and the strength that Brazil's economy has shown during the peak of the crisis turned the Brazilian domestic market into a priority for companies around the world. This scenario is reinforced by the appreciation of the Brazilian currency, which not only affects the

Table 1.1 Brazil's main trade partners—import/export—2008

Main destinations of Brazilian exports		Main origin of Brazilian imports	
2008			
Country	Value (US$)	Country	Value (US$)
United States	27,423,048,799	United States	25,627,961,850
Argentina	17,605,620,920	China	20,044,460,592
China	16,522,652,160	Argentina	13,258,441,511
Netherlands	10,482,595,244	Germany	12,026,673,088
Germany	8,850,809,527	Japan	6,807,014,081
Japan	6,114,519,602	Nigeria	6,704,379,120
Venezuela	5,150,187,992	Republic of Korea	5,413,084,430
Chile	4,791,703,200	France	4,678,470,179
Italy	4,765,047,181	Italy	4,612,918,507
Russian Federation	4,652,978,889	Chile	3,951,591,188
Belgium	4,422,185,803	India	3,564,304,236

Source: MDIC

Table 1.2 Brazil's main trade partners—import/export—2012

Main destinations of Brazilian exports		Main origin of Brazilian imports	
2012			
Country	Value (US$)	Country	Value (US$)
China	41,227,540,253	China	34,250,821,263
United States	26,700,844,268	United States	32,361,359,448
Argentina	17,997,706,375	Argentina	16,444,204,476
Netherlands	15,040,703,654	Germany	14,210,445,184
Japan	7,955,713,348	Republic of Korea	9,098,559,185
Germany	7,277,061,407	Nigeria	8,012,213,606
India	5,576,930,397	Japan	7,734,826,965
Venezuela	5,056,025,298	Italy	6,200,164,858
Chile	4,602,202,699	Mexico	6,075,172,337
Italy	4,580,695,491	France	5,910,020,002
United Kingdom	4,460,039,648	India	5,042,717,028

Source: MDIC

export capacity of the industry but also increases the competitiveness of foreign products in Brazil (Barral and Kharmandayan 2011).

While, on one hand, Brazil is facing difficulties in exporting its manufactured goods and in competing with these products in its own territory, on the other hand, commodity trade has been thriving.

In 2012, the main products exported by Brazil were ores (13.7 %), oil and fuel (12.8 %), soybeans & prods (10.8 %), transport material (10.1 %), metallurgic products (6.4 %), chemicals (6.3 %), meats (6.3 %), sugar and ethanol (6.2 %), machines and equipment (4.4 %) and paper and pulp (2.7 %) (MDIC 2012) (see Fig. 1.2).

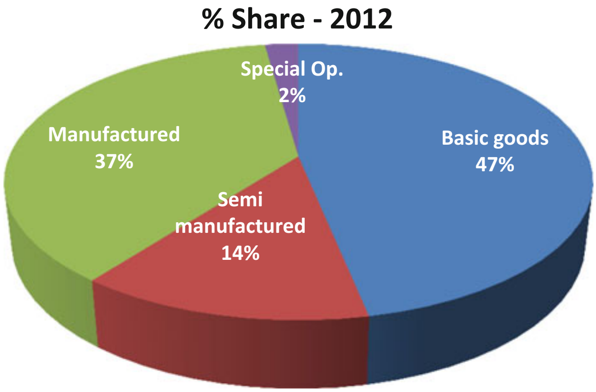


Fig. 1.2 Brazil export products by categories 2012. *Source*: MDIC

The main products imported by Brazil in 2012 were fuel and oil (18 %); mechanical equipment (15.5 %); electrical and electronic equipment (11.4 %); motor vehicles and parts (9.5 %); organic and inorganic chemicals (5.6 %); fertilizers (3.8 %); plastics and its products (3.6 %); iron, steel and its products (3.4 %); pharmaceuticals (3.1 %); and optical and precision equipment (2.9 %) (MDIC 2012).

Brazil is an active participant in the WTO and has had an active role in protecting the interests of developing countries during global trade negotiations. Recently, Roberto Azevedo, Brazil's former ambassador to the WTO, succeeded Pascal Lamy as the director-general of the organization and became the first Latin American to head the WTO since its creation in 1995. This was considered a victory since Brazil has been demanding, together with other emerging economies, a more relevant role for developing countries not only on WTO but in other Bretton Woods institutions. That does not mean, however, that it will be his job to defend Brazilian interests within the WTO. Azevedo is a seasoned trade diplomat, well liked around the developing world, and should encourage developing countries to embrace multilateral free trade and try to advance the Doha Round.

Brazil is also a frequent user of WTO's Dispute Settlement Body, appearing in 26 cases as complainant, in 14 cases as respondent and in 76 as third party. Brazil is the most active developing country user and the fourth most active user overall of the WTO's Dispute Settlement Understanding (DSU), after the US, the EU and Canada (WTO).

One of the most famous one is the cotton case, where Brazil challenged the US cotton program and had most of its claims accepted by the WTO panel and upheld by the WTO Appellate Body twice. Although the US made several changes to the program, the WTO accepted Brazil's claim that these changes were not enough to bring the US program into compliance with its international obligations. As a result, Brazil requested and was granted by the organization in 2009 trade retaliation rights against the US amounting US$ 829.3 million, the second largest amount ever authorized by the WTO (WTO).

Regarding the use of trade remedies, Brazil has also been a frequent user, as it will be further discussed below. Since 1988, the Brazilian government has adopted 432 antidumping measures, 20 countervailing duties, 8 safeguard measures and 5 circumvention measures. But just a few were challenged before the WTO, and in none of them Brazil was found in fault regarding the organization's agreements (WTO).

1.3 Brazil–China Trade Evolution: Overview

The relationship between Brazil and China has become closer since 2004, when Luis Inacio Lula da Silva, then President of Brazil, and Hu Juntao, then President of China, discussed the affinities between both countries, pledging to be equal partners in business opportunities, trade and key global issues. In the final document signed by the two presidents, there were important bilateral commitments that would help to boost trade in the following years.

According to a study conducted by the China–Brazil Business Council (CBBC), the stock of Chinese investments in Brazil has grown rapidly in the past few years, amounting to around US$ 20 billion. In 2010 alone, Chinese companies invested US$ 12.690 billion in Brazil, mostly through mergers and acquisitions. Brazilian investments in China remain stationary at around US$ 500 million, although the number of Brazilian companies in China has grown. These companies—57—are concentrated in the service sector (50.9 %), and there are some from the industrial sector (28.1 %) and processors of natural resources (21 %). Chinese companies, on the other hand, operate in various sectors of the economy. At first, investments were predominantly made in commodities and energy, then in infrastructure, and more recently in products for the internal market, such as automobiles. It must be highlighted that 93 % of the capital of Chinese investments in Brazil in 2010 came from central state-owned enterprises (CBBC 2011, 2012).

It must be noted that Brazil is the main destination of Chinese foreign direct investment flows in Latin America, followed mainly by Peru, Argentina and Chile. Furthermore, the kind of investment made by China in Brazil is different from the one made in the rest of the region. While the bulk of investment made in Latin American countries has been resource based—oil and gas, agriculture, forestry and mining—in Brazil it has included wholesale and retail manufacturing, besides agriculture and mining. This may mean that China is aiming at developing a broader economic relationship with Brazil, even if, as it will be further discussed below, this is partly related to avoiding Brazilian antidumping measures (IDB 2010).

The trade relation between China and Brazil is grounded in the latter's natural resource abundance and China's demand for commodities. This relation, however, is unbalanced in China's favor, so bilateral trade, or lack thereof, has become a growing concern. As it was already emphasized above, China displaced the US as

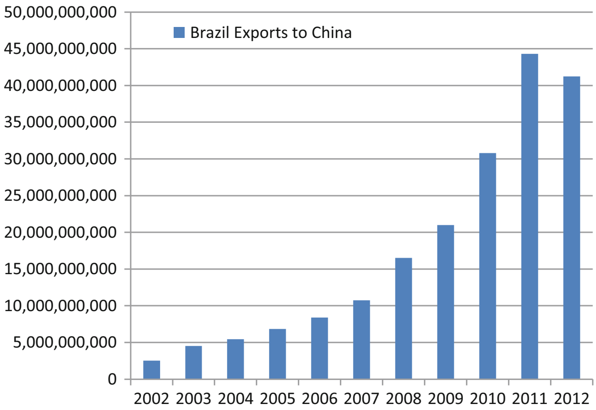


Fig. 1.3 Brazil exports to China 2002/2012. *Source*: MDIC

Fig. 1.4 Chinese participation on Brazilian exports 2002/2012. *Source*: MDIC

Brazil's major trade partner, but Brazil did not rise substantially as China's trade partner; it does not make into the top ten (see Figs. 1.3 and 1.4).

The top five products that Brazil exports to China account for almost 80 % of all Brazil's exports to that country: iron ores not agglomerated and concentrates (33.84 %); soybeans, whether or not crushed, except for sowing (28.82 %); petroleum oil, crude (11.73 %); other cane sugar (2.58 %); and chemical wood pulp of n/conif., soda/sulfate, semi/bleac (2.36 %) (MDIC). This can be a problem to Brazil for many reasons: a significant slowdown in China would impact growth, it makes the country more vulnerable to price volatility, and there is always the risk of the resource curse or Dutch disease, which diverts investment from other economic activities.

The current weakness of the rich economies, coupled with the boom in commodity prices in recent years, driven by the demand from Asian countries, explains the concentration of Brazilian exports on commodities. China, more than any other country, has played a key role in this process.

Indeed, Brazil and other Latin American countries have been profiting from the Chinese hunger for commodities. This becomes clear if we consider the evolution, in recent years, of the share of primary products in Brazilian exports. In 2006, they accounted for 43.50 % of total exports by Brazil. In 2008, this rose to 50.57 %, and in 2012, primary products represented 46.8 % of total exports by the country.

Another fact that must be stressed is that sales of only five commodities—iron ore, crude oil, soybeans complex, sugar (raw and refined) and meat—account for around 40 % of this amount. The importance of China to this trade is evident as this country alone currently demands 46.83 % of the iron ore and 70 % of the soybeans exported by Brazil. And if it was added all products of the soybean complex, this percentage reaches 80 % (MDIC 2012).

On one hand, the appreciation of commodities appears to be a very positive element for the purpose of keeping Brazil's trade surplus. On the other, the dependence on commodity prices and on the demand for raw materials of a few emerging economies can become a weakness. In both scenarios, China definitely plays a large role.

Brazil's imports from China are much more diversified than China's imports from Brazil. The top five products account for a little over 10 % of all China's exports to Brazil: other parts receivers apparatus radio-broad.televis.etc (4.7 %), other parts for appar./equip. of teleph./telegr. (1.99 %), other vapor turbines, of potency > 40 mW (1.47 %), screen for microcomputers portable, poli-chrome (1.37 %) and cards of memory f/autom.data-processing apparatus (0.92 %) (see Fig. 1.5).

Other Latin American countries face the same challenge, while Latin America in general exports mainly primary products to China; its imports from that country are primarily processed goods, with more value added and which require more inputs of labor and capital.

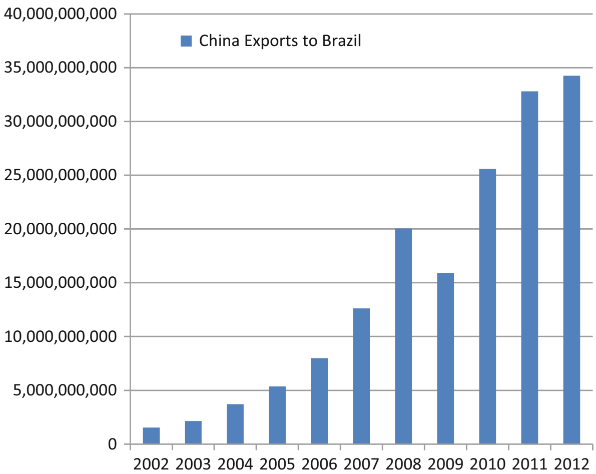


Fig. 1.5 Chinese exports to Brazil 2002/2012. *Source*: MDIC

Although it can be said that Latin America, and Brazil more to the point, has a clear comparative advantage with respect to primary products, other factors also affect the composition of trade. China imposes barriers to trade, including high tariffs that tend to increase with the degree of processing and value added to the traded good. An example is the tariff escalation that exists in China for soybean complex products. While taxes for soybeans are 3 %, taxes for the processed products are 9 %, which makes it difficult to export the oil, even if it has higher added value. And while it is true that commodity exports have catapulted Brazil's economic growth in the past decade, they have done little to help develop Brazil's long-term internal productivity and competitiveness.

At the same time, China's undervalued currency and the threat of cheap Chinese products have caused Brazilian manufacturers to suffer as they have difficulty competing with the cheaper Chinese products both at home and elsewhere. Taken together, these restrictions make it difficult to expand exports of either more processed or manufactured goods.

1.4 Trade Remedies

Data from the Department of Trade Defense (Decom) shows that from 1988, when Brazil started using antidumping measures, to the end of 2012, 465 trade defense cases had been initiated. Of these 465 cases, 432 were antidumping related (original and revisions) representing 92.9 % of the total. During this period, there were 20 countervailing duties, 8 safeguard measures and 5 circumvention measures (Decom 2012).

This preference for antidumping measures, however, is not exclusive. According to data from the WTO, by the end of 2012 there were 3,017 trade defense measures in place worldwide, of which 2,719 were antidumping measures representing 90.12 % of total (see Tables 1.3 and 1.4).

The analysis of WTO's data regarding the number of antidumping investigations and measures applied shows that Brazil, notably in recent years, is one of the more frequent users of antidumping measures, especially against Chinese products.

Since the entry into force of the WTO agreements in 1995 until the end of 2012, 4,230 antidumping investigations were initiated by 47 members. In this period, Brazil was the 5th that initiated more investigations, 279, which represents 6.8 % of the total. During this period, India was the country that initiated the largest number of investigations, 677, followed by the USA (469), the EU (451) and Argentina (303) (WTO) (see Fig. 1.6).

However, if we take into account only the last 5 years (2008–2012), Brazil initiated 13.6 % of the investigations, against 5.4 % initiated by China.

When it comes to antidumping measures, from 1995 to 2012, 2,719 were applied by 42 WTO members. Brazil was the 8th in number of antidumping measures applied, 133 or 5.4 % (see Fig. 1.7).