



Trade successfully with Brazil

Ten important principles

10 rules that can help make your sales to Brazilian buyers successful

“The two worst strategic mistakes to make are acting prematurely - and letting an opportunity slip”

Paulo Coelho, Brazilian novelist.

Brazil is the world's 6th largest economy with an impressive and diversified economy encompassing oil and gas, mining, manufacturing, agriculture and services. While its growth has slowed somewhat in 2012, as demand for its products – especially commodities – has fallen, its financial reserves are more than sufficient to cushion it during this leaner time...

...and times are lean at the moment. Atradius' latest Economic Outlook (November 2012) explains that Brazil's current weak economic growth – in comparison to its fellow BRIC nations of Russia, India and China - is a consequence of lower demand from its traditional export markets and structural weaknesses in its own economy: not least its bureaucracy and complex tax system.

Despite that current picture, Brazil is a tantalising export market, made even more so by the opportunities for trade promised by the forthcoming FIFA World Cup and the 2016 Olympic Games. Atradius' economists expect growth to rebound to 4% next year.

Although – or perhaps because - Brazil ranks fairly low in the World Bank's assessment of the 'Ease of doing business' (in 2012: 126 out of the 183 countries rated) the following ten principles, designed to help foreign businesses trade with a nation of vast potential, is a particularly valuable resource to help smooth the way to creating successful trading relationships.



1: Choose the law you feel comfortable with

In cross-border relationships between Brazilian and foreign companies, the parties are entitled to choose the law that will govern their supply relationship, although Brazilian companies may naturally feel most comfortable using Brazilian law to govern the relationship. Brazil is a civil law jurisdiction where laws and statutes provide the legal framework, with court precedents not being binding. Contractual relationships are generally

governed by the Civil Code enacted in 1916. In certain cases, depending on the nature of the obligation, the law stipulates certain formalities: for example, registration of the contract as a public document or ensuring that the document is witnessed.

Brazilian companies are becoming more familiar with regularly used international legal regimes, such as English and US law, and international

suppliers may prefer to have contracts governed by a common law jurisdiction with a history of court decisions that can interpret commercial contracts. In particular, although the Brazilian courts recognise the use of INCOTERMS, the jurisprudence is not yet very developed and this may give rise to some uncertainty of interpretation in the event of a dispute.

2: Understand the Brazilian way

Doing business in Brazil can be challenging for those who are not used to the local business environment. Relationships come first and take time to build. So when first considering entry into the Brazilian market, you may require several visits to Brazil to complete your deals. Personal contact is crucial to developing business in Brazil and can make all the difference in opening the right doors: consequently face-to-face meetings are far preferable to written communications.

Time can be a flexible concept in Brazil. Be patient and don't be surprised if

your potential client arrives late for a meeting. And meetings are generally informal – expect to be interrupted while making your presentation as a strict agenda may not always be followed. It's also advisable to check whether you'll need to arrange a Brazilian Portuguese translator to be in attendance.

Appearance – the way people dress – is important in Brazilian business meetings and indicates a person's standing. So dress well.

3: Regulation, regulation, regulation

As a general rule no import licences are required to import goods into Brazil. However, non-automatic licences must be obtained in respect of more than one third of all product lines. These are subject to special control by government agencies such as the National Petroleum Agency (ANP), the Brazilian Institute of Environment (IBAMA) or the Ministry of Science and Technology (MCT) and usually relate to products that may cause damage to human, plant or animal health or those capable of causing environmental damage.

All importers are required to have an Exporter and Importer Registration (REI) before they can enter into cross border trade transactions. Importers must also be registered with an electronic system, the Integrated Foreign Trade System (SISCOMEX): a computerised system operated by the Brazilian Federal Revenue Service that processes all customs procedures. Each import transaction must be registered in SISCOMEX in order to obtain an

import declaration for the goods to clear through customs. In addition, any transaction involving the movement of funds to or from Brazil must be subject to an exchange contract that, in many instances (including import and export transactions), has to be registered with the Brazilian Central Bank.

Finally, be aware that both individuals and legal entities (whether Brazilian or not) who manufacture, import, process, assemble or sell goods or provide services may be required to comply with technical regulations, conformity assessment and rules governing procedures or product labelling. For instance, the Brazilian Customer Protection code requires product labels to provide clear, accurate and easily readable information about the product's quality, quantity, composition, price, guarantee, shelf life, origin and any risk to the consumer's health and safety. Imported products should bear a Portuguese translation.



4: Consider local representation

As you may have gathered from Principle 3, the Brazilian legal and regulatory system can be very complicated – and unfamiliarity and the language barrier often compound the complexity. Most overseas suppliers therefore choose to have a local presence, often by appointing an agent in Brazil. This can be very helpful in dealing with the customs authorities

and invaluable in steering your products through the complex clearance procedures and out of the port. Be sure to find an agent with the right contacts and experience to suit your product.

It's also vital to ensure that you have the right tax and legal advice in Brazil, particularly in relation to Brazilian labour laws. Speak with

your international adviser to see what representation they can offer in Brazil – increasingly, global firms have Brazilian offices and can offer advice 'on the ground' to your local office.

5: Comply with competition laws

As Brazilian antitrust law is effects-based, it is extra-territorial in application and applies to conduct and agreements which, even if not executed in Brazil or governed by Brazilian law, may have an effect in Brazil. In brief, any behaviour which has the object or effect of:

- restricting, distorting or in any other way harming free competition or freedom of enterprise;
- dominating a relevant market of products or services;
- arbitrarily raising profits; or
- abusively exercising dominant position

will be in breach of the relevant laws.

Supply agreements that provide for vertical restrictions (e.g. resale price fixing, exclusive agreement and price discrimination) may have anti-

competitive effects in Brazil and thus violate the Brazilian Competition Act. However, that will not always be the case. Certain vertical restrictions may be accepted if they have a reasonable economic justification that outweighs their possible anti-competitiveness (e.g. efficiencies, protection of investments or the avoidance of opportunism by 'free riders').

Imports are also subject to anti-dumping regulations and other trade remedy regulations in Brazil. The Brazilian authorities exercise control over import prices and, in the event of an investigation, the importer must justify the price adopted in the import transaction using one of the methods provided under the Brazilian customs valuation rules. This can be a very bureaucratic process.



6: Be sure the right people approve

It is important to verify the corporate authority of the company you are dealing with before starting to supply them or even entering into a supply contract. Again, this is a simple rule that should be borne in mind in any sales relationship. However, the corporate authority of a Brazilian legal entity must be established under Brazilian law. For both a Brazilian corporation (S.A.) and a Brazilian limited liability company (Ltda.) the power to execute documents binding the company rests with the authorised officer or officers recorded in the company's corporate documents.

To this end, it is common for foreign suppliers to request, in the case of an S.A., the bylaws and the relevant resolution or resolutions appointing the officers (either the shareholders' resolution appointing the board of directors and the board resolution appointing the officers or, if the S.A. does not have a board of directors,

simply the shareholders' resolution appointing the officers). In the case of a Ltda., it is common to request the articles of incorporation, which will normally have the name of the officer or officers – if not, the officers may have been appointed by a separate act of the quota holders (similar to shareholders but specific to certain types of company), which should be requested for analysis.

It is also advisable to ensure that there are no restrictions in the bylaws/articles or any shareholders' agreement that would require approval from the board of directors or the shareholders for a particular transaction to proceed. In such cases, a resolution approving the terms of, and the transactions contemplated by, the supply contract and authorising a specified person or persons to execute the supply contract on its behalf must also be requested.

Many Brazilian companies are still owned by the founding family, which can over time include several branches of the family, whose relationships will be governed by the shareholders' agreement. It is important to ensure that all necessary approvals have been followed: particularly where management represent (or are even the same individuals as) just one branch of the family.

7: Secure your payment

There is no reason to be concerned about the risk of non-payment merely because you're supplying to Brazil. Nevertheless, a foreign supplier should seek the same level of protection as it would when selling within its home country or to other parts of the world. So the first essential is to check the creditworthiness of the Brazilian customer. In addition, it is not uncommon for payments that are to be made by Brazilian buyers to suppliers abroad to be secured. The main types of security available in Brazil are the same as those which most suppliers will be familiar with in their home market. These include a guarantee from the parent company or

the promoters of the Brazilian buyer, bank guarantees, irrevocable letters of credit and collateral in the form of mortgage over immovable property or a pledge over movable property.

Whatever type of security the parties ultimately agree to, it is essential to specify the payment obligations in the underlying supply agreement to ensure that the secured obligations are defined in sufficiently clear terms. This is particularly important where the supply agreement takes the form of a framework agreement and deliveries and payments are to be made on the basis of separate orders.



8: Seek good tax advice

Supply relationships with foreign suppliers other than from the Mercosur countries (full members: Argentina, Brazil, Paraguay, Uruguay and Venezuela; associate members: Bolivia, Chile, Columbia, Ecuador and Peru) are subject to the normal Common External Tariff applied by Brazil. The current average rate is 15%, levied on the customs value of the goods: generally based on cost plus insurance and freight. Be aware that the supply of goods to Brazil may also be subject to federal and

state value added taxes, as well as social contribution taxes (PIS and COFINS).

Some of these taxes may be reduced or credited against other local tax liabilities and exemptions or reductions may be available, depending on tax incentive programmes or the nature of the goods to be imported, their destination, origin and value. Brazil is not a party to many free trade agreements outside the Mercosur area but some structural solutions may be available to optimise import duties. For

all of these reasons, it is essential to seek good tax advice when considering selling to Brazil.

Brazil is also party to only a limited number of bilateral agreements on the avoidance of double taxation. It is therefore normally advisable for suppliers to verify tax risks in advance and to include appropriate contractual tax gross-up and indemnity provisions in their supply agreements.

9: Consider where you want to resolve any disputes

Resolving a dispute in the Brazilian courts can be time-consuming and expensive, and overseas suppliers may be understandably wary of submitting to the jurisdiction of an unknown court system. However, judgements rendered by a foreign court or decisions of an overseas arbitral tribunal cannot be enforced directly in Brazil but must first be approved by the Brazilian Supreme Court to render them binding in Brazil. Not surprisingly, this process can take a long time.

The situation is different for decisions rendered by an arbitral tribunal in Brazil, which are usually upheld by the Brazilian courts without any need for discussion of the merits of the case. For any cross-border supply agreement involving Brazil, it is therefore advisable for the parties to include an arbitration clause in their agreement, using the rules of a recognised international arbitration body, such as the ICC or the Brazil-Canada Chamber of Commerce, and with the seat of the arbitration in Brazil: usually São Paulo or Rio de Janeiro.



10: Get covered

As is true with any sales contract made on credit terms and to any country, even if all the above rules are followed and due diligence exercised, there will always be a certain level of risk of non-payment and unpredictability that cannot be avoided. Such risks include the unforeseen insolvency or protracted default of the buyer or external factors beyond either party's control, such as political decisions

or natural disasters that prevent the successful conclusion of the sale. Credit insurance mitigates such risks, allowing the supplier to concentrate on future sales rather than past debt. It also provides the reassurance to offer competitive terms of payment, safe in the knowledge that sales are protected.

“A successful deal is rarely achieved without face-to-face contact”

Paulo Gonçalves De Morais, Regional Director for CyC, Atradius' partner in Brazil, gives his observations:

“Today, Brazil is a mature democracy and is at once stable, diversified and successful on a macroeconomic level. The planned investment in a wide range of infrastructure projects as well as services and tourism, together with the benefits that have accrued to the Brazilian people in the form of job security and increased purchasing power, make Brazil an attractive prospect for foreign exporters and investors alike.

To echo the principles already outlined in this report, understanding the Brazilian business culture is essential, as are personal relationships and trust: a successful deal is rarely achieved without face-to-face contact with the decision maker.

“Veni, vidi, vici” may have worked for Julius Caesar, but in Brazil that approach will never bear fruit: negotiations take time but are well worth the effort.”

Atradius would like to thank international law firm Clifford Chance for their contribution to this publication. They have asked us to point out that the ten principles in this overview are intended as general guidance on the legal framework applicable to supply relationships with Brazilian customers and are not intended as legal advice, nor can they replace a thorough analysis of specific supply arrangements.

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