University of Miami Law School
Institutional Repository

University of Miami Inter-American Law Review

4-1-2004

Long-Term Direct Investment in Brazil

Charles W. Cookson II

Follow this and additional works at: http://repository.law.miami.edu/umialr

Part of the International Law Commons

Recommended Citation

Charles W. Cookson II, *Long-Term Direct Investment in Brazil*, 35 U. Miami Inter-Am. L. Rev. 345 (2004)
Available at: http://repository.law.miami.edu/umialr/vol35/iss2/5

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

LONG-TERM DIRECT INVESTMENT IN BRAZIL

CHARLES W. COOKSON II*

The residents and visitors to the Brazilian city of São Paulo, the country's major financial and industrial center, drive around the surrounding regions of the state in a patchwork of highways that are referred to in everyday conversation not by their numbers, but instead by their names. Interstates Anhangüera, Raposo Tavares, Bandeirantes and Fernão Dias, honoring the rugged and fearless leaders of the seventeenth and eighteenth century *bandeiras*, radiate like spokes from the city, stretching north, south and west across the state's outback. The *bandeiras* were the armed posses that searched the hinterlands seeking to acquire gold on behalf of the Portuguese crown and to apprehend scores of native Brazilians for enslavement in the plantations.[1] As a direct result of the *bandeiras*, the borders of colonial Brazil were greatly expanded beyond the geographic limits imposed by a papal bull, that led to the 1494 Treaty of Tordesillas.[2] which, in turn, split the unclaimed territory of the New World between the rival colonizing powers of Spain and Portugal. Today, the members of the *bandeiras*, known as the *bandeirantes*, are revered in song and story for staking claims to land that tripled the country's size.

However, despite the praise over the *bandeiras*, the impact of their performance in Brazil's long-term economic well-being can be reviewed in light of local availability of the world's most important commodity —- energy. Despite the actions of the *bandeiras*, Brazil pays dearly for natural gas piped in from Bolivia, for electricity transmitted from the joint hydro power plant it built along with the government of Paraguay, and for petroleum shipped from Argentina. The high cost of dollar-priced energy has a substantial impact on the country's current financial account, and has been one of the causes of Brazil's persistent economic weakness and inability to put its economy on a stable and solid growth track. Growth always accompanies a rise in the demand for power, yet

---

* J.D., American University, 1992; M.A., American University, 1995; LL.B. (Rev.), Universidade de São Paulo, 1999.

1. *See* CHARLES WAGLEY, AN INTRODUCTION TO BRAZIL 28, 67-68 (Revised ed. 1971). *See* also VIANNA MOOG, BANDEIRANTES E PIONEIROS 180-83 (7th ed.) (a different perspective on the impact of the *bandeiras* on colonial Brazil's history)

2. *See* WAGLEY, *supra* note 1, at 67-8; MOOG, *supra* note 1, at 181-82.

Brazil has been unable to create reliable market structures to meet the increased energy needs in times of such brisk economic activity. Although the *bandeiras* were relentless and tenacious, had they pursued further and farther, contemporary Brazil would certainly have an improved energy infrastructure than that in which it currently finds itself, which could have meant the ability to provide a higher standard of living as well as stable economic conditions for its population, despite its many other challenges. For example, if the *bandeiras* would have forded the Paraguay-Paraná river basin and pushed further toward the Pacific Ocean into the present-day Paraguayan *chaco*, or up and over the Andes mountain range, Brazil could well have become a beneficiary of the rise in the cost of energy over the last few decades, instead of its casualty.[3]

Clearly, the benefit of hindsight makes the best course of action more focused than it may have been at the time of the *bandeiras*. Territorial aggrandizement is evidently no longer an option in the 21st century, nevertheless, there are lessons to be learned from past experiences. Since the topic of this article is direct foreign investment, the stimuli and constraints for investment are most aptly understood by viewing Brazil's history. Foreign equity investment normally requires the investor to make a long-term financial commitment in the foreign markets in which it engages in business activities. In such cases, the investor may find it difficult to shut down a production facility, divest its assets and withdraw in the face of changing circumstances that bring increasing risk. By contrast, portfolio investment requires only a short-term commitment to turn a profit. In the latter case, the investor often has the possibility of quick escape in the event of an increasing risk.

Therefore, one must ask what happened to the foreign companies who invested in Brazil during the 1970s or 1980s, and per-

3. In the 1970s, nuclear power was thought to hold the key to a reliable energy supply. Brazil is self-sufficient in uranium, the primary raw material used in nuclear power generation, which led successive governments to launch and implement a plan to construct eight nuclear plants with technology supplied by the engineering firm Siemens. Only two plants were completed and currently operate, while the equipment for a third nuclear power plant was purchased but remains idle. Thereafter, plans to build the remaining five power plants were scrapped more due to a lack of funds than to concerns about the safety of nuclear energy generation. Since then, efforts in developing new energy sources have focused on the production of ethanol for combustion engines and on deep-sea oil exploration. *See No Caminho Das Aguas*, CARTA CAPITAL, Oct. 8, 2003, at 8-11, describing Brazilian oil giant Petrobras' push to increase offshore oil production.

haps even before then, in order to have the clearest definition of the incentives and limitations on inbound direct investment in Brazil in 2004 and beyond. It is the cultural, political, and economic history of Brazil which provides some of the answers to whether one should make a long-term commitment to the future. This article points out a few of these lessons, and concludes by proposing actions that will increase the protection afforded to foreign investment which is badly needed to move the local economy forward.

Many intelligent foreign investors have studied Brazil to evaluate its market potential, and have made either a "go" or "no-go" investment decision as a result. It appears that over the years, the decisions on whether to invest have been quite cautious, due to the fact that the low percentage of direct investment to total national product has remained fairly constant. Nevertheless, data from the Brazilian Central Bank reflects an increase in the level of aggregate foreign direct investment in Brazil since 1995.[4] These were years in which large state holdings in the telecom and financial sectors were successfully sold to foreign bidders. The single exception to this trend is the investment level in 2003, which reflects an expectation that estimated foreign direct investment will only amount to a mere nine billion dollars,[5] as the world's economy takes a step back and recovers from the hangover brought about by difficult years for the business sector in 2001 and 2002. However, this trend appears to indicate renewed and sustained confidence in Brazil on the part of foreign investors. Many investors have acquired privatized state companies, paid for concessions to provide services delegated by the state, and are joint venturing with local partners or setting up companies on their own.

The incentives for foreign direct investment in Brazil are easier to isolate than the constraints. The obvious incentive of foreign direct investment is to reach one of the largest markets in the world. Brazil is a large country with a sizeable population, and consequently it offers a very large market. Brazil's population has

---

4. *See Câmbio e capitais estrangeiros*, BANCO CENTRAL DO BRASIL, *at* http://www.bcb.gov.br/?CAMBIO.

5. *See* Luciana Otoni, *Entrada de investimento é muito baixa*, GAZETA MERCANTIL, Nov. 21, 2003, at 1. Net FDI decreased to $3.5 billion in the first semester of 2003 from $9.6 billion in the first semester of 2002, for a reduction of 63%. *See* Ney Hayashi da Cruz, *Investimento externo no Brasil cai 63%*, FOLHA ONLINE, July 25, 2003, *at* http//www1.folha.vol.com.br/folha/dinheiro/ult91u70845.shtml.

expanded from 60 million in 1960, to 176 million in 2003.[6] If current population growth rates remain constant, the country's population should rival the United States' population by the mid twenty-first century. Continued westward and rural-urban migration attests to the demographic mobility of the population and an immigrant work ethic remains firmly rooted in cities, such as São Paulo, which were built by huge influxes of Italian, Lebanese and Japanese newcomers.[7] Brazilian consumers equate foreign brand names with quality products. Therefore, they are generally willing to pay a premium to purchase these goods. Moreover, in recent years, Brazilian goods have been provided favorable access to neighboring countries through its membership in the Mercosul free trade area agreement. Argentina, Uruguay and Paraguay are full signatories of the trade agreement, and the government is expected to engage in *ad hoc* consultations with the rest of the hemisphere in anticipation of widening the reach of the commercial treaty, by expanding the market through multilateral reductions in tariffs and the removal of other barriers to trade.[8]

Additionally, Brazilian history offers strong evidence that Brazil will continue as a large market and not fracture into smaller ones, as has happened in the former Soviet Union and Yugoslavia with the fall of communism. During its early history, despite liberator Simon Bolivar's wishes, Spanish South and Central America was balkanized into many States, while Portuguese South America remained one country throughout its existence. The cultural and political bonds that have kept Brazil together as a single entity for 500 years serve as a strong argument for its continuance as a single country in the future. Brazil has long enjoyed a form of social democracy which has allowed it to hold together under very trying times.

Certainly, there are increasing social tensions in areas such as race and religion. In 1960, the country was a religious monolith, with almost 95% of Brazilians classifying themselves as Roman-Catholic.[9] Even though Catholicism remains the religion

6. Carl Haub, *2003 World Population Data Sheet*, POPULATION REFERENCE BUREAU, *at* http://www.prb.org/Template.cfm?Section=PRB&template=/Content/ContentGroups/Datasheets/2003_World_Population_Data_Sheet.htm.

7. *See* WAGLEY, *supra* note 1, at 69.

8. In November 2003, representatives of 34 American states convened in Miami to discuss and negotiate the scope of a hemispheric free trade agreement. *See Acerto de cavalheiros*, ÉPOCA, Nov. 24, 2003, at 49; Editorial, *A Alca em movimento,* JORNAL DA TARDE, Nov. 23, 2003, at A3.

9. Nilza de Oliveira Martins Pereira, *A religião nos censos brasileiros:*

of choice for a majority of the population, 15% of Brazilians now consider themselves Protestants and a further 10% do not practice a religion.[10] In 1960, race-based organizations did not exist. Today, race-based movements are seeking to improve the lot of their members, and as proof of these efforts, Brazil has seen the recent introduction of racial preferences into the admissions policy of Rio de Janeiro's public universities.[11] In the wake of the implementation of these changes in public education, the need for affirmative action is undergoing a simmering debate, although it is a tame discourse when compared to the stronger reactions that erupted in the U.S. after the 1978 landmark ruling in *Regents of the University of California v. Bakke*,[12] and thereafter in the court battles over the reach of equal protection, the effects of past discrimination, and the need to promote racial diversity. Nonetheless, the flexibility Brazilians have traditionally demonstrated in dealing with their multitude of problems provides a basis for confronting problems which the future will bring.

Other relevant incentives come in the more familiar shape of tax holidays for investments in less developed regions.[13] These tax holidays have attracted assembly industries to the Brazilian Amazon and to the poor northeastern states. Beginning in the mid-1990's, the federal government's industrial policy encouraged automotive companies to invest in Brazil and household names such as Renault, Honda, Toyota, and DaimlerChrysler eagerly set up assembly plants and qualified for generous duty and tax incentives. Automotive part companies soon followed the lead of the automotive companies. Their arrival increased the level of local competition with incumbent automotive companies such as General Motors, Ford, FIAT and Volkswagen. This increase in the number of domestic car manufacturers has certainly benefited the Brazilian car buyer, but has eventually led to excess production capacity, much to the chagrin of Chrysler, which has since closed its plant in the southern state of Paraná.[14] Given current market

---

informações preliminares do Censo Demográfico 2000, at http://www.sbpcnet.org.br/eventos/54ra/TEXTOS/SBPC/SBPC%20Nilza%20Pereira.htm.

10. *Id.*

11. *See Reserva de vagas na Uerj é inconstitucional, diz Brindeiro*, TRIBUNA DA IMPRENSA, June 18, 2003 with arguments presented by Brazil's Attorney-General to defeat the quota system.

12. Regents of the University of California v. Baake, 438 U.S. 265 (1978).

13. *See* CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL [BRAZ. CONST.] art. 43, § 2°(II) (1988).

14. *See* Nicholas Winning, *DaimlerChrysler Closing Plant*, LABOURNET GERMANY, Sept. 5, 2001, *at* http://www.labournet.de/branchen/auto/cut-neu5.html.

conditions, it is likely that at least one additional automotive manufacturer will either divest or shut down and leave Brazil.[15]

In addition to the incentives delineated above, other federal incentives include eligibility for low-interest loans to qualifying projects in order to reduce the need for the investor to use its own resources as initial capital investment of start-up projects.[16] Subsidized loans have been important in a business environment where the cost of money in the local money market is prohibitive, and access to capital markets is not widespread or appealing to investors. State incentives focus on the deferral of ICMS Imposto Sobre a Circulação de Mercadorias e Pretação de Serviços - sales tax payments, a mechanism that has raised controversy among those who do not believe that competition between states for new investment is a healthy public policy tool.[17]

The long-term limitations on investment, which are rooted in Brazilian law, politics and economics, are hard to isolate and even harder to eliminate. This article provides examples of a few determinant approaches from each of these three fields. Brazil's legal culture is partially rooted in Roman and ecclesiastical law. As Gilberto Freyre, one of Brazil's leading sociologists, explained in his classic study, *Casa Grande e Senzala*, Catholic influence in colonial Brazil was so strong that ecclesiastical law determined much of the structure of early colonial times.[18] Grievous violation of the law was the failure to accept the Catholic faith. Perjury is referred to in the Brazilian Criminal Code as false testimony, a term which comes from the Eighth Commandment.[19] In contrast, civil, commercial, and criminal violations were viewed as earthly,

15. *See Audi não fará mais carro no Brasil*, JORNAL DA TARDE, January 8, 2004, at A11.

16. Because credit is scarce in Brazil, the country's federal development bank (BNDES) supplies qualifying projects with long-term loans at a cost below the domestic market interest rates, which rank among the world's highest. For more information on the bank's loan programs, *see* O BANCO DO DESENVOLVIMENTO, www.bndes.gov.br.

17. *See Guerra Fiscal (Com ela todos perdem)*, Apresentação do *Relatório da Comissão Parlamentar de Inquérito da Assembléia Legislativa do Est. de São Paulo* 14-15 (2d ed. 1997), published in the Decreto No. 33.980, de 29 de Setembro de 2003, D.O.E. em 30.09.2003. On the other hand, despite the country's historic dependence on expensive foreign energy sources discussed at the beginning of the article, governments have granted tax incentives to power-intensive sectors such as the aluminum industry, creating a distorted and inequitable tax policy. For example, the state of Rio de Janeiro has recently granted ICMS incentives to new aluminum industries through Decreto No. 33.980, published in D.O.E. 30.09.2003.

18. *See* GILBERTO FREYRE, CASA GRANDE & SENZALA 102-03 (41st ed. 2000).

19. BRAZ. CONST. art. 342.

less serious transgressions. Not surprisingly, civil law was not elevated to the same pinnacle that it reached in the United States. There is a long-standing Brazilian adage that one should do everything possible for one's friends, nothing at all for those who are neither friends nor enemies, and apply the law to one's enemies. Many foreigners hearing this aphorism for the first time are initially startled by it. On the other hand, to this day, one is less likely to hear the Lord's name taken in vain in Brazil than in America.

The restriction that Brazil's legal culture presents to a foreign investor is that commercial disputes are less likely to be resolved by legal action than they are in more mature markets. This is not to say that one should not hire good lawyers. Rather, that the dependence on the resolution of problems through the courts is somewhat less encompassing in Brazil than in other countries.[20] Perhaps part of the reason for a reliance on dispute resolution pluralism lies in the great length of time demanded by the court system to reach a final decision, which can take up to twenty years or more, an intolerable time span for many investors.

In that same vein, the proposal for a constitutional amendment to introduce the concept of the *súmula vinculante*, or 'binding holding', into Brazilian civil procedure is encouraging.[21] This concept embraces the principle of *stare decisis*, or binding legal precedent, which every U.S. law student learns in the first year of law school. Common law courts stand by good precedent, and as a matter of policy, do not disturb a settled point of law, but instead apply authoritative case law to all future cases where the facts are substantially the same. On the other hand, Brazilian civil law is codified and although case law is considered a source of law in Brazil,[22] the decisions of higher courts are not binding on lower courts except in limited circumstances.[23] This approach creates a

20. *See* Boaventura de Sousa Santos, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada*, LAW & SOC'Y REV. 5 (Fall 1977), for an example of an unofficial legal system developed to settle disputes in a squatter settlement in Rio de Janeiro.

21. *See* Art. 103A of SF PEC (Proposal for Constitutional Amendment) 29/2000.

22. *See* MARCUS CLAUDIO ACQUAVIVA, DICIONARIO JURIDICO BRASILEIRO ACQUAVIVA 750 (9th ed. 1998).

23. For example, Brazilian civil procedure allows a plaintiff with proper standing to file a direct cause of action to uphold or to challenge the constitutionality of a law. Art. 102 of the Constitution provides that the Federal Supreme Court has original jurisdiction over judicial review. If a finding of unconstitutionality is reached by the Court, the law will be declared null and void *erga omnes*, i.e., with respect to all. *See* BRAZ. CONST. art. 102.

scenario where conflicting judicial decisions benefit some parties, while withholding this same benefit from other parties standing in the same exact position. Under the proposal before the Senate, a 2/3 majority of the High Court, the *Supremo Tribunal Federal*, may publish an order that binds the courts to a holding on a legal issue that comes up for consideration on a recurring basis.[24] Detractors of the proposal point out that the implementation of the *súmula vinculante* will limit the independence of lower court judges, while proponents argue that the benefit will come in the form of greater efficiency, judicial economy and increased certainty and finality in the outcome of legal trials.[25]

On another level, a welcome development has been the availability of binding arbitration as a viable alternative method to resolve such disputes. In recent years, concerns that arose with respect to commercial arbitration's usefulness in Brazil have curtailed its unfettered use by litigating parties, and came to a head during a hearing held before the High Court to determine whether to recognize a foreign arbitration award.[26] The Chief Justice at the time expressed concern with narrow legal rules[27] in connection to the specific performance of arbitration clauses, that, if enforced, allegedly denied one's "day in court." However, this concern was cleared in 2001, when the Court sitting *en banc* held that the arbitration law as drafted by Congress passed constitutional muster.[28]

---

24. *See* Art. 103A of SF PEC (Proposal for Constitutional Amendment) 29/2000.

25. Cláudio Dias de Castro, *Súmulas Vinculantes: Uma (Dis)Solução Jurídica*, 8-9, *at* http://www.mundojuridico.adv.br/documentos/artigos/texto427.doc.

26. Brazil acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards on April 25, 2002. *See* Decreto No. 52, de 25 de abril de 2002, D.O.U. de 26.04.02. *See also* Carlos Nehring Neto, *Brazil and the New York Convention – A Case of Adherence by Osmosis*, *reprinted in* INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION, IMPROVING THE EFFICIENCY OF ARBITRATION AGREEMENTS AND AWARDS: 40 YEARS OF APPLICATION OF THE NEW YORK CONVENTION 257-60 (Albert Jan Van Den Berg ed., 2002).

27. *See* Arnoldo Wald, et al, *Some Controversial Aspects of the New Brazilian Arbitration Law*, 31 U. MIAMI INTER-AM. L. REV. 223, 228-29 (2000). *See also* ALBERTO DE ORLEANS E BRAGANÇA, ENFORCEMENT OF ARBITRATION AGREEMENTS IN LATIN AMERICA: BRAZIL 19-27 (Bernardo M. Cremades ed. 1998).

28. *See* RSTF, No. 5206-7, Relator: Ministro Sepulveda Pertence, 10.10.96. The decision to deny the motion for reconsideration reads: "O Tribunal, por unanimidade, proveu o agravo para homologar a sentença arbitral, vencidos parcialmente os Senhores Ministros Sepúlveda Pertence, Sydney Sanches, Néri da Silveirae Moreira Alves, no que declaravam a inconstitucionalidade do parágrafo único do art. 6°; do art. 7° e seus parágrafos; no art. 41, das novas redações atribuídas ao art. 267, inc. VII, e ao art. 301, inc. IX, do Código de Processo Civil; e do art. 42, todos da Lei 9.307, de 23 de setembro de 1996. Votou o Presidente, o Senhor Min. Marco Aurélio." In English, "[t]he Court voted unanimously to accept the appeal and certify the arbitration decision, having rejected arguments submitted by Justices Pertence, Sanches and

As a result, the institution is poised to gain wider acceptance given its obvious advantages, such as speed, cost efficiency, finality, use of experts as knowledgeable arbitrators, and greater confidentiality. Nonetheless, the law provides that a party may still contest the recognition of a foreign arbitration award on procedural grounds,[29] on grounds that it infringes national public policy,[30] or on grounds that it rules on a subject matter that Brazilian law places outside of the scope of arbitration.[31]

Regarding Brazil's government, the country's political culture evinces a strong paternalistic approach, different from that found in many other Western countries. Until nearly the end of the nineteenth century, Brazil had an active, powerful emperor who famously encouraged immigration of Confederate Southerners after the American Civil War.[32] Throughout the years, the Brazilian outback has been politically dominated by the *coronéis*, men who effectively controlled large tracts of territory through patronage and fear, and who, in the course of the country's early experiments with democracy, stuffed ballot boxes to ensure that they or their appointed candidates prevailed in the elections.[33] In the middle of the twentieth century, this strong undercurrent of paternalism returned in the form of the Vargas dictatorship, and later in the form of military governments. While the present political order provides for fair and open elections, it is reasonable to expect that the political culture will not eliminate its attraction to paternalism from one day to the next.

Another constraint that Brazil's political culture presents is that decision-making is often more personal than abstract. Problems are resolved more by power-holders than by legal precedent or respect for institutional decision-making. Such a process leads to delays far longer than one meets in a less paternalistic society. Even when the opinions of third parties are taken into consideration and pressures from organized groups are heeded, the executive branch has a recurring urge to meddle with the free

---

Moreira Alves which declared the unconstitutionality of the following sections of Law 9.307/96: arts. 6 and 7; art. 41, with the interpretations imputed to art. 267(VII) and to art. 301(X) of the Civil Procedure Code; and art. 42."

29. BRAZ. CONST. art. 38.

30. *Id.* at art. 39.

31. *Id.*

32. *See* Stephen Buckley, *A Taste of Dixie in Brazil*, WASHINGTON POST FOREIGN SERVICE, Aug. 22, 1999, at A23.

33. *See* Santos, *supra* note 20, at 112. An early method of influencing elections was the *voto de cabresto,* when the local *coronel* essentially dictated their choice of candidates to voters in exchange for favors or through intimidation.

workings of the economy. For example, the current administration's cabinet members have interfered with the market through misguided attempts to introduce changes they claimed would boost output or reduce industry costs. In one instance, an announcement by the Secretary of Mines and Energy that the cost of fuel would drop[34] caused a spike in the prices at the pump as gas station owners reacted to provide for what was perceived as a future contingency.[35] In a similar situation, when the Secretary of Industrial Development revealed plans for the future implementation of a government-sponsored relief program targeting the auto industry that would lower prices for new cars, buyers promptly delayed purchases, thereby causing a drop in sales.[36]

In addition to a political environment that tolerates some decisions taken by executive fiats, is the issue of political unaccountability. Brazil has a few dozen registered political parties, of which about ten have relevant congressional representation. However, party allegiance is virtually non-existent as politicians may switch back and forth between parties at will, even within days after taking office.[37] The plethora of political parties coupled with the ease of transferring one's membership from one party to another results, as one might expect, in time-consuming negotiations between them to reach a consensus for the approval of a bill.

Also, Brazil's economic culture creates volatile performance. There are many reasons that Brazil passed through sharp, and often severe, business cycles in the last half of the twentieth century. One of the main contributing factors is an excess of enthusi-

---

34. *Combustíveis mais baratos*, O GLOBO, April 29, 2003, *at* http://www.abradeco nt.org.br/290403.htm#Combustíveis; Eduardo Castro, *Governo promete fiscalizar preço da gasolina em postos e distribuidoras*, RADIO BANDEIRANTES, May 29, 2003, *at* http://www.radiobandeirantes.com.br/reporteronline/interna.asp?id_not=28910.

35. *Preço da gasolina está acima do "sugerido" em 17 Estados*, NETLIG NEWS, May 29, 2003, *at* http://www.netlignews.com/pgdetalhes.asp?ID_Categoria=1605; *Preço da gasolina vai subir na segunda*, Sincopetro, Aug. 8, 2003, *at* http://www.sincopetro.org. br/mostranoticia.asp?m=584; Humberto Medina, *Gasolina não deve cair mesmo com fim da greve na Nigéria*, FOLHA ONLINE, Jul. 9, 2003, *at* http://www1.folha.uol.com.br/ folha/dinheiro/ult91u70020.shtml; *Gasolina não baixa nos próximos dois meses*, GRUPO PRESIDENTE, July 15, 2003, *at* http://www.grupopresidente.com.br/noticias. asp?identificacao=68.

36. *See* Paula Pacheco, *Faísca no Motor*, POLITICA BRASIL, *at* http://www. politicabrasil.com.br/visualizaNoticia.cfm?cd_noticia=340.

37. 104 of the 513 congresspersons elected in 2002, or 20% of the total number, switched political parties, and 22 out of these 104 switched parties a second time during the first nine months of the current four year presidential term of office. *See* Ricardo Mignone, *Câmara Tenta Votar Polêmica Lei de Falências Nesta Semana*, FOHLA ONLINE, Oct. 13, 2003, *at* http://www1.folha.uol.com.br/folha/brasil/ult96u 54373.shtml.

asm which constantly reappears in Brazilian economic history, and stems from the Brazilian economic policy's endeavor to hurry the arrival of the future.[38] One example was the slogan of the Kubitschek administration in the 1950s: "Fifty years of progress in five."[39] Some of the subsequent military governments sought hot house double-digit annual Gross Domestic Product (GDP) growth through borrowing for public works and investment in state controlled enterprises, which eventually proved impossible to sustain. Thus, the limitation that Brazil's economic culture presents to foreign investors is how to ride the boom and bust economic cycles that such macroeconomic volatility produces.[40] Despite the fact that it is harder to make mid-term and long-term projections in the face of increased uncertainty, managers who fail to introduce flexibility into their financial planning and operations often have unexpected difficulty in developing their Brazilian markets.

Increasing and distributing wealth has been the mantra of successive governments. There is a general agreement on the need to develop economic policies which provide job opportunities for the rapidly expanding Brazilian population. Economic growth can result from: (1) getting more workers in the economy, (2) getting more capital into the economy, and (3) applying the capital in such a way that it increases the productivity of the workers. Brazil has a rapidly expanding population, but this does not mean that this growing population is solely comprised of productive workers. Clearly, members of the Brazilian population become productive workers through good education policies and opportunities. Deciding how education policies are implemented and determining where public investment in education is directed can hinder or bolster the goal of fair and universal public education. Giving free university education to upper-middle class students is one of the numerous unwise Brazilian public policies that are generally kinder to the well off than to the poor.[41]

---

38. The 1970s were paradigmatic. *See No Caminho Das Aguas, supra* note 3, at 8.

39. *See Juscelino Kubitschek,* WIKIPEDIA, *at* http://en.wikipedia.org/wiki/Juscelino_Kubitschek; *see also* David Lanegan, *Brasília, at* http://www.macalester.edu/courses/geog61/jmoersch/geography.html.

40. *See* Antonio Luiz M. C. Costa, *Não Se Ufane Tanto,* CARTA CAPITAL, Oct. 8, 2003, at 28-29, for a summary of the cyclical economic booms of the 20th Century.

41. *See* Mailson Da Nóbrega, *Pela Universidade Pública (E Paga Por Quem Pode),* O ESTADO DE SÃO PAULO, Nov. 23, 2003, at B4. The author was a beneficiary of one these skewed education policies as he attended the well-regarded undergraduate law program of the University of São Paulo for the duration of seven semesters and for a total sunk cost of $100.

In spite of these obstacles, the Brazilian worker increases his productivity mainly through improving education. The country is close to achieving universal education at the lower school level, and is now setting its sights on lifting the quality of its elementary education.[42] A twin goal is to obtain the same results for middle and high school enrollments in order to raise the country's level of education to benchmark international standards.[43] At the same time, Brazil can not just devise spending programs that allocate money to education. Money in education is definitely not the whole answer, but it helps and to get the needed capital for education, the country needs to change many of its existing spending policies in all areas which benefit a minority at the expense of all the rest. The recent discord over the retirement system for civil servants is an illustration of Brazil's existing spending policy.[44] Another example is the level of payroll taxes that inhibits hiring, and the statutory severance payments that discourage firing by the private sector, making employment opportunities harder to come by for job seekers.[45]

Perhaps where the Brazilian government can have its biggest impact on economic development is through building a strong central bank, and establishing firm controls on its fiscal policy. In the past, Brazil has not had a particularly effective central bank, and its fiscal policies have varied over time from far-too-loose to far-too-tight. Both have contributed to the economic volatility that has marked Brazil's economic development. Any direct foreign investment should be made only after a careful analysis of the present strength of the central bank, the experience of its directors, and the adequacy of Brazilian monetary policies. Notably, the interest rate policy pursued by the country's central bankers had

---

42. *A educação dez anos depois de Jomtien,* UNESCO, Oct. 1999, *at* http://www.unesco.org.br/noticias/un999/un999b.html.

43. Jorge Werthein, *A Vez do Ensino Médio*, UNESCO, *at* http://www.unesco.org.br/noticias/artigos/artigowb.asp; FUNDO DE UNIVERSALIZAÇÃO DOS SERVIÇOS DE TELECOMUNICAÇÕES, *at* http://www.proinfo.es.gov.br/fust/fust.htm; *see* Simon Schwartzman, Eunice Ribeiro Durham, & José Goldemberg, *A Educação no Brasil em uma perspectiva de transformação, at* http://www.schwartzman.org.br/simon/transform.htm.

44. Entenda a reforma da Previdência, NITERÓI, July 18, 2003, *at* http://www.ibasm.rj.gov.br/news/noticia.asp?id=297; Luciene Braga, *Desafio inadiável e impopular*, O Dia, Dec. 22, 2002, *at* http://www.unafisco-rj.org.br/Clipping/ODia20021222.htm; Reforma da Previdência – Notícias, at http://www.federativo.bndes.gov.br/destaques/refprev_noticias.htm.

45. *See* Fabiana Futema, *Brasil tem a segunda maior carga tributária sobre salários do mundo*, FOLHA ONLINE, *at* http://www1.folha.uol.com.br/folha/dinheiro/ult91u82127.shtml.

impressive success in subduing inflationary pressures in 2003,[46] albeit at the cost of reduced short-term growth and higher unemployment rates.

As for government spending, a remarkable period of brisk growth in the early 1970's referred to as the 'Brazilian economic miracle', lasted for several years and was fueled chiefly by the solid fiscal policies undertaken during the Castelo Branco presidency (1964–1967).[47] This growth was brought to an end partly due to a deterioration of the country's balance of payments, caused by a twelve-fold increase in the U.S. dollar value of Brazilian imports between 1970 and 1978, which was principally caused by the unprecedented rise in the price of the oil barrel.[48] In recent administrations, restraint has been achieved by reigning in spending and raising tax receipts, steps that were taken in order to secure a budget surplus sufficient in size which, in conjunction with emergency loans from the International Monetary Fund (IMF), worked to dispel rumblings of impending default. Notwithstanding these efforts, fears arose anew in 2002, due to the left-leaning political views of the current president in the wake of his commanding lead in the early polls, and they materialized in the decisions taken by many banks and commercial lenders to reduce their investment portfolios in Brazil.[49] A statement released in June of 2002 by the president's political party had, as its centerpiece, a commitment to respect vested with contractual and property rights, which proved to be a turning-point.[50] Since then, misgivings about prospects for the Brazilian economy have given way to renewed optimism. The implementation of confidence-building actions, continuity in sound fiscal and monetary policies,[51] and the avoidance of politically expedient expansionary solutions bodes well for the near future, in which falling interest

46. *See* Editorial, *Otimismo Crescente*, JORNAL DA TARDE, Dec. 3, 2003, at A3.

47. MARIA LUCIA TEIXEIRA WERNECK VIENNA, A ADMINISTRAÇÃO DO MILAGRE, 110-34 (Vozes ed. 1987).

48. *See* Regis Bonelli & Pedro S. Malan, *Os Limites do Possível: Notas Sobre o Balanço de Pagamentos e Indústria nos Anos 70*, PESQUISA E PLANEJAMENTO ECONOMICO, Aug. 1975 at 353-75. *But see id.* at 353-406, arguing that the balance of payments crisis coincided with a liquidity crunch and was only partially triggered by the oil crisis.

49. Simon Romero, *As Foreign Banks Take Flight, Brazil Regroups*, N.Y. TIMES, Dec. 15, 2002; Tony Smith, *U.S. Banks Trim Operations in Brazil*, N.Y. TIMES, Jan. 29, 2003, at W1; *Developing Returns*, BARRON'S, Sept. 30, 2002, at 27.

50. *See* Luiz Inácio Lula da Silva, *Carta ao povo brasileiro*, LA INSIGNIA, *at* http://www.lainsignia.org/2002/junio/ibe_117.htm.

51. *See* Editorial, *Palocci ao PT: Não Vamos Abrir as Torneiras em 2004*, JORNAL DA TARDE, Nov. 24, 2003, at A4.

rates are expected to spur growth and employment.[52]

As a coda to this brief historical overview, current developments are also helpful in determining whether a jurisdiction is business-friendly to foreign investors. To be sure, there has been marked improvement in recent years in some important segments of the political economy. Since 1994, the country's federal antitrust agencies have received additional funding for investigation and adjudication pursuant to an expansion of powers that was designed to increase the enforcement of competition in the markets.[53] Brazil did not have a law that afforded sufficient protection to many industrial patents, even though its Industrial Property Code recognized basic regulations and safeguards under the Paris Convention.[54] In 1996, Congress approved a patent law[55] that brought the country's legislation up to par with worldwide standards. Despite this tardy but commendable development in intellectual property, a measure of institutional reform remains to be done to turn Brazil into a business-friendly environment of the sort one frequently finds in developed economies. Much else has been promised, but not yet delivered, to reduce burdensome compliance costs, to correct distortions in both the country's tax codes and its outdated labor laws, to improve its political and judicial structures, and to increase efficiency in government services. Judicial reform is considered crucial because an ineffective legal system can become a significant obstacle to attracting foreign direct investment.[56] However, some steps have been taken in the direction of reducing "red tape," and reforming the antiquated bankruptcy law to allow failed corporations to reorganize.[57]

In a scenario of relative worldwide economic freedom, capital investment will naturally flow to a point in which the return of capital is at its highest and the level of risk is at its lowest. One of the factors which impacts total capital return is the level of taxation imposed on worldwide earnings and profits. As a developing country, Brazil should impose a reasonable tax burden on foreign investors' profits, but the question remains on how tax policy

52. *See* Marcelo Aguilar, *BC Contra a Recessão*, ÉPOCA, Nov. 24, 2003, at 48.

53. *See* Lei No. 8.884/94.

54. CÓDIGO DE PROPRIEDADE INDUSTRIAL, *available at* http://www.soleis.adv.br/codigopropriedadeindustrial.htm.

55. See Lei No. 9.279.

56. *See* Anthony Pecotich, et al., *Towards a Framework for Legal and Judicial Capacity Building in Developing Economies*, WORLD BANK NEWS PRESS RELEASE, 2002, at 1, 7. *See also A Alma É Mais Importante Que o Visual*, JORNAL DA TARDE, Dec. 1, 2003, at A3.

57. *See* Mignone, *supra* note 26.

should react in response to geographic investment shifting by multinationals in response to tax rate differentials between jurisdictions. No one questions that tax collections may fairly reduce the total return of capital, given that the private sector should transfer resources that are necessary for the proper functioning of the public sector and that would be taxed in the investor's home jurisdiction in any case. Nevertheless, while tax receipts have been important to meet short-term fiscal goals, the government stands to benefit from considering lowering statutory tax rates to ensure competitiveness in attracting and retaining foreign investment.

In addition, attention should be paid to tax-related aspects that indirectly reduce profitability, such as the impact on double income tax treaties of key concepts in domestic law. One of the concepts that engender conflicts of interpretation and practice is the constitutional distinction between taxes and contributions, a concept that can best be described as romantic. Within the federal tax system, taxes are charged on income and capital gains, for the purpose of funding general public expenses and a percentage of the total tax revenue is shared with state and local governments.[58] Contributions, on the other hand, are constitutionally mandated charges targeted over a number of financial and business transactions for the purpose of providing funding for areas such social security,[59] welfare,[60] public education,[61] professional and labor organizations,[62] and government regulatory activities.[63] Notably, contributions are not shared with the state and local governments. Furthermore, the federal government has residual powers to create new taxes, although this authority does not come without constitutional restrictions.[64]

Occasionally, the federal government creates a new tax in the guise of a contribution in order to circumvent constitutional restrictions, avoid sharing its revenue with state and local governments, and more importantly for foreign investors, to avoid the application of treaty language that limits the withholding income

58. *See* BRAZ. CONST. art. 159.

59. *See id.* at art. 195.

60. *See id.* at art. 235.

61. *See id.* at art. 212, §5°.

62. *See id.* at arts. 149 & 240.

63. *See id.* at art. 149.

64. A new levy may not be made to assess a taxable event or come with the same tax basis as an existing tax. *See id.* at art. 154(I).

tax rate imposed by a contracting party.[65] In some cases, even if the new "contribution" has the equivalent effect of a withholding income tax, it is not considered a creditable foreign tax in the investor's home jurisdiction. Thus, this tax cost may only be deducted from the foreign investor's worldwide income, and may not be used as a foreign tax credit against its total tax liability. This raises the cost of cross-border transactions and affects long-term financial planning, particularly in inter-company transactions. Frequently, the only course of action available for an investor is to litigate the matter in tax court, a resolution which causes friction and delays, reduces predictability, and raises the cost of doing business.

In order to further boost investor confidence, the government should restart bilateral talks with other governments to facilitate the negotiation and signing of mutual investment treaties. Such treaties, which require presentment to the legislative branch, have a common nucleus of clauses that are efficient mechanisms to drive international trade and investment. These treaties confer a most-favored nation status to the signatories (with the exception of grand-fathered rights accorded to third countries under international free trade agreements), and grant investor protections over and above what is generally available under domestic law. These protections include: the selection of a neutral forum for the resolution of disputes arising under the treaty in the shape of immediate recourse to arbitration under the rules of the International Center for Settlement of Investment Disputes;[66] likewise, parties would resort to neutral and binding arbitration for matters of interpretation of the treaty; complete freedom from capital controls that may limit, defer or block the remittance of profits and interest payments to foreign beneficiaries; and fast-track measures for the recovery of capital invested in assets that become subject to a government taking or expropriation. Given the possibility that the treaties' language may be held to be unconstitutional on some grounds and to infringe on national sover-

---

65. The majority of Brazil's double taxation treaties limit the withholding income tax on royalty and interest payments to a rate of 15%. *See e.g.,* Sec. 12(2)(b) of the Double Taxation Treaty Signed Between the Netherlands and Brazil, Legislative Decree 60/90 and Decree 355/93 and Sec. 12(2)(b) of the Double Taxation Treaty Signed Between Sweden and Brazil, Legislative Decree 93/75 and Decree 77053/76.

66. The Center was established by the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, on Oct. 14, 1966. *See* Settlement of Investment Disputes, October 14, 1966, 17 U.S.T. 1270, 575 U.N.T.S. 159.

eignty,[67] Congress has interrupted the legislative procedure for ratification of these treaties with important trading partners such as France,[68] effectively postponing the discussion on this matter indefinitely. Therefore, it is advisable that the Brazilian government's position on this important matter should be reviewed and action should be taken to reinstate both legislative scrutiny and treaty approval procedures.[69]

The jurisdiction of regulatory agencies, conceived as a bulwark against political interference in regulated industries such as energy, telecommunications and health care, has been questioned and remains contentious. Large-scale privatization in the 1990's

---

67. The Congressional Record's legislative history reflects that, for reasons of perceived ambiguities in the language of the treaties and concerns over national sovereignty, the treaty ratification process in Congress was tabled (*retirado de pauta*) for further consultation. *See* DIÁRIO DA CÂMARA DOS DEPUTADOS 10,034 (March 30, 2001). Treaties that have been signed with the governments of France (PDC-395/2000), Germany (PDC-396/2000), Switzerland (PDC-348/1996), Portugal (PDC-365/1996), Chile (PDC-366/1996) and the United Kingdom (PDC-367/1996) await ratification. Sovereignty, or the power of a State to determine the reach of its laws, is a recurring theme in Brazil's relationship with creditor and trader nations, and its impact on international relations generally hinges on whether a given governmental act pertains to the state's relative position to other states where political concerns predominate (*jure imperii*) or where the act concerns economic or commercial interests (*jure gestionis*); if sued, a state may waive sovereign immunity only in the latter case. The U.S. Congress enacted the Foreign Sovereign Immunities Act (FSIA) in 1976 and in effect codified the practice of the waiver of state immunity either explicitly or by implication. *See* 28 U.S.C. §§ 1602-11, 1605(a)(1) (1976). Brazil has no similar statute. Historically, Latin American states have resisted attempts by aggrieved foreign private parties to apply foreign law or seek recourse to their home governments, even after local remedies were exhausted. The most famous historical example of this approach was the Calvo Doctrine and its contractual corollary, which when included in international agreements, stipulated that the alien party agreed that disputes arising out of the terms of the agreement were to be settled by the national courts of the contracting state in accordance with the latter's national law.

68. *See* Decreto 395/2000, *retirado de pauta de ofício em* 29.04.2003. Recent remarks from the French Secretary of the Economy have focused on Brazil's need for clear and stable rules in order to attract further long-term inbound investment from France, overall the country's 4th largest source of foreign investment. "Ministro Francês Pede Regras Claras", O Estado de São Paulo, July 25, 2003.

69. Art. 49(I) of the Federal Constitution gives Congress the exclusive jurisdiction over the approval of government action which affects public property. *See* BRAZ. CONST. art. 49(I). The mutual investment treaties provide for payment of just compensation in case of expropriation must be made without undue delay. *See id.* Art. 184 of the Federal Constitution provides that the government may exercise its power of eminent domain to take "unproductive" rural property in cases of public "social interest" and art. 182 provides for similar powers in case of "sub-utilized or unutilized" urban property. *Id.* at art. 184, 182. Compensation for takings under Arts. 182 and 184 is tendered through public debt instruments that are redeemable over 10 or 20 years respectively, and trade at a discount in the secondary markets. *See id.* Thus, adjustments or reservations to the treaties will likely focus on whether Arts. 182 and 184 conflict with the treaty language that requires prompt payment.

has caused the diminution of the influence of the state in the economy, and since 1998, nine independent agencies have been created. As a result, regulatory activity has greatly increased in Brazil, as has openness in governmental action. Although this development has been a welcomed departure from the political tradition of decision-making behind closed doors and the absence of clear rules, it has plainly evidenced the limited utility of some cabinet-level bureaucracies. There is no need for perspicacity of the political observer to conclude that sharing power with regulatory agency officers with independent mandates would cause reactions from those who believe that more government is the solution to society's ills.

Notably, the Secretary of Communications engaged in a personal campaign to rewrite public utility contractual clauses, signed between telecommunications operators and ANATEL, the local equivalent of America's Federal Communications Commission (FCC).[70] These clauses provide for periodical adjustments of land-based telephone service charges according to an inflation index.[71] While the issue is currently being litigated in court, and the Secretary has refrained from further posturing on the matter, a court injunction has been awarded that replaces the contractual index with another inflation index.[72] This new inflation index provides for a lower adjustment, consequently raising a narrow concern among investors with respect to the government's commitment to the principle of *pacta sund servanda*, which requires compliance with contractual obligations, and a wider and more serious concern in connection with a perception that the current administration wishes to roll back the autonomy of the regulatory agencies.[73]

---

70. *See* Augusto Góes & João Carlos Pinheiro, *Novo presidente da Anatel garante: "não haverá rupturas"*, TELEBRASIL ONLINE, Dec. 1, 2003, *at* http://www.telebrasil.org.br/artigos/outros_artigos.asp?m=136; *see also Anatel autoriza aumentos apesar das reações contrárias do planalto,* TRIBUNA DO NORTE ONLINE, *at* http://www.tribunadonorte.com.br/anteriores/030705/econom/eco1.html.

71. *See* Góes & Pinheiro, *supra* note 71, *at* http://www.telebrasil.org.br/artigos/outros_artigos.asp?m=136.

72. *Miro: se Justiça der índice maior para telefonia, não poderá haver cobrança retroativa*, O GLOBO, MAR. 3, 2003, *at* http://www.mj.gov.br/DPDC/clipping/2003/julho/170703.htm#Miro.

73. Omniously, the chairman of ANATEL stepped down in January of 2004, and was replaced by a political appointee. *See O Alvo Do Golpe Na Anatel,* O ESTADO DE S.PAULO, January 8, 2004, at A3; Editorial, *A Nefasta Saída De* Schymura, JORNAL DA TARDE, January 9, 2004, at A3. Recent changes made to the rules governing the electric power sector have weakened the regulatory agency ANEEL and strengthened the Ministry of Mines and Energy. *See* Celso Ming, *O Novo Modelo Energético,*

The decision to make a foreign direct investment in Brazil is not as simple as it may seem from the outset. As far as its public accounts, the country is on firmer ground; the 1987 unilateral foreign debt payment moratorium is becoming a somewhat remote memory.[74] The same may be said of the hyperinflation that permeated business activity and caused the ubiquitous use of cost-of-living adjustments prior to the monetary reform initiative launched in 1993, and known thereafter as the *Plano Real*.[75] No longer will the local currency undergo a relentless decline in purchasing power, even though the annual inflation rate will likely remain higher than in developed economies, and daily newspapers continue to publish an array of indices that measure the inflationary impact on all walks of life.

Regarding the exchange rate, the government has in the past insisted on adjusting for chronic inflation with an incremental devaluation policy that was imperfect at best. Subsequently, the government experimented in the heady post-*Real* days with a quasi-fixed foreign exchange rate, similar but not quite as rigid as neighboring Argentina's *ley de convertibilidad*, with predictably weak results.[76] It has since adopted an approach where currency is freely traded through brokerages, which responds to market demand. Nevertheless, a differential exchange rate system remains in place, prior regulatory approval is required in certain cases, a compliance process must be followed for authorized remit-

---

JORNAL DA TARDE, Dec. 12, 2003, at A2; *Uma Ameaça, Não Uma Solução*, JORNAL DA TARDE, Dec. 15, 2003, at A3.

74. A foreign debt crisis that escalated during the 1980's, fueled by a fiscal crunch and inflationary pressures, became an impediment to Brazil's economic growth. In the first half of the decade, banking and lending institutions sought to reschedule the country's foreign debt while reducing their loan commitments to Brazil. These loans had in the past brought sizable profits to commercial lenders, at the expense of great risk exposure. SCOTT MACDONALD, THE GLOBAL DEBT CRISIS 22 (Pinter Publishers, 1990). The economic performance of the latter half of the decade came to bear that it had been wise for the banking sector to reduce their Brazilian investment portfolios, albeit a decision that was implemented too late to avoid the full brunt of the crisis. In 1987 Brazil declared a moratorium on its debt payment obligations which lasted eighteen months. The country ended 1988 with inflation at an annualized rate of 2,000%. In 1989, annual domestic growth remained low at 1% and inflation ran at 40% a month. By the end of the decade the numbers demonstrated that banks were no longer making profits in Brazil. *Id. at* 29. In early 2004, the Brady Bond (C-Bond), a collateralized instrument that is Brazil's most liquid foreign debt paper, was transacted for the first time at full face value in secondary markets, partly due to a greater appetite for risk on the part of foreign investors. *See* Paulo Pinheiro, *Alta Do C-Bond Puxa Bovespa Para Cima*, JORNAL DA TARDE, Jan. 9, 2004, at A10.

75. Law 8.880/94, *available at* http://www.societario.com.br/leis/L8880.html.

76. Jeffrey Sachs, *Self-inflicted Wounds*, FINANCIAL TIMES, Jan. 21, 1999, *at* http://www.geocities.com/Eureka/Concourse/8751/edisi03/brzl03.htm.

tances, and monetary barriers are occasionally imposed on outbound obligations as a tool to reduce the balance of payments pressures. One such restriction affected short-term financing for imported goods, also known as supplier's credit, and required Brazilian importers to anticipate the purchase of foreign currency before the due date of installment payments owed to the exporter,[77] causing cash flow problems and encouraging financing on longer terms. This restriction was repealed in 1999;[78] however, the Brazilian Central Bank has since been known to impose fines on the importing transactions that failed to comply with the restriction while it lasted.[79]

The current administration is squaring in on remaining trouble spots, such as improving the public pension system's structural and chronic deficit. One hopes it comes around to assisting the state governments in putting a stop to serial squatting in rural areas by landless peasants bearing a slight civil rights gloss and, to a lesser extent, to the urban homeless bent on occupying tenements in the inner cities. Many of these homeless people remain in inner city tenements for weeks under protective court orders. The expansion of mechanized agriculture in the country's mid-western frontier and in the farmlands of southern Brazil has uprooted thousands of day laborers and sharecroppers, and many have a legitimate claim to a roof over their heads or to a piece of land to till. The orchestration and media-grabbing attention these actions cause tend to skirt the legal and orderly mechanisms that are available for ultra low-cost financing to purchase an apartment, or to undertake land redistribution without the taking of private property by force or threats.

In conclusion, the potential upside from targeting a huge market for goods and services seems to present a sufficient condition to justify long-term investment in the face of the greater risk of exposure of invested capital than encountered in the developed world. This market has indeed proved highly profitable for many domestic and foreign investors over the past decades. But this is not a market that can be approached using the same techniques

---

77. *See* Central Bank (BACEN) Circular 2.747 (1997), *available at* http://www.bcb.gov.br.

78. Central Bank (BACEN) Circular 2.948 (1999), *available at* http://www.bcb.gov.br.

79. *See* BRAZ. CONST. art. I. *See Aplicação da Lei 9.817/99 e a Imposição de Multas Pelo Banco Central do Brasil às Empresas Importadoras*, INFORMATIVO JETRO, July 11, 2002, *available at* http://www.jetro.org.br/pt/informativos/IJ-AIN01-020711.pdf.

used in other countries. One must be as tenacious as the *bandeirantes*, erstwhile pioneers who were obstinate in course and purpose, as long as the reward was within reach. Likewise, if allowances are made to approach this market by making the adjustments that are necessary to handle the cultural restrictions to business, the challenge can be met and one can well emerge with a profitable and rewarding investment for years to come.

* * *