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ELECTRONIC SUBMISSION TO <https://www.regulations.gov>

Alexander Peacher
Director
Office of Latin America & the Caribbean
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Re: Proposed Topics for U.S.-Brazil Commercial Dialogue Agenda (89 FR 47522; Docket No. 2024-12105)

Dear Mr. Peacher:

The Consumer Technology Association (“CTA”) submits these comments in response to the International Trade Administration (“ITA”) June 3, 2024 request for comments on topics for the agenda of the 22nd Plenary of the U.S.-Brazil Commercial Dialogue (Dialogue).

CTA represents over 1,300 companies from every facet of the consumer technology industry, which supports 18 million U.S. jobs and relies on broader supply chains built upon strategic arrangements with trusted U.S. trading partners. We also own and produce CES®, the world’s most powerful technology event and in 2024, attracted more than 145,000 people, including 50,000-plus international visitors. Throughout its 100-year existence, CTA has remained steadfast in its mission to promote American innovation and the adoption of new technologies that address significant global challenges. CTA partners with the United Nations to catalyze technologies that can meet fundamental human securities, including access to health care, food, and clear air and water.

CTA recognizes the importance of this Dialogue due to Brazil’s role in the global technology value chain. Brazil has emerged as a notable innovation adopter, as shown by its ranking on

the 2023 CTA International Innovation Scorecard. While the country demonstrates strong pro-innovation policies and trends in some categories, it has yet to lead in most areas. The presence of 416 attendees from Brazil at CES 2024 underscores the nation's growing interest and participation in technological advancements.¹ As a crucial player in the Latin American economy and the 2024 host of the G20, Brazil's influence extends beyond its borders, including its vocal role in trade discussions at the World Trade Organization (WTO). Therefore, Brazil's actions and policies are of great interest to CTA and the broader consumer tech community.

We recommend the agenda focus on the following topics:

The Dialogue should ensure harmonization on artificial intelligence governance.

We appreciate the United States' adoption of a risk-based approach to artificial intelligence (AI) and recommend that Brazil follow this lead for a more balanced AI policy. Aligning with the U.S. framework would ensure a more proportionate and effective regulatory environment, fostering innovation while addressing potential risks associated with AI.

During the Dialogue, the U.S. government should advocate for Brazil to adopt an innovation-friendly approach to AI governance that aligns with the U.S.-led risk-based framework. This alignment would ensure interoperability for U.S.-based companies, encouraging trade and investment. While acknowledging Brazil's G20 aspirations in AI, the U.S. should emphasize that adopting a controversial and restrictive AI law will likely harm Brazil's global competitiveness and leadership standing rather than enhance it.

In particular, Brazil's proposed AI bill, Bill 2338/2023, poses significant challenges by applying a blanket approach to AI regulation.² This bill does not narrowly focus on high-risk use cases and instead includes capturing low-risk applications, including everyday business functions. The impacts of the bill would potentially impede businesses of all sizes from developing innovative AI applications.

¹ CES 2024 Attendance Audit Summary, https://cdn.ces.tech/ces/media/pdfs/2024/attendeeauditsummary_2024.pdf.

² "AI Watch: Global regulatory tracker – Brazil," 13 May 2024, *White & Case*, <https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-brazil>.

The Dialogue should address how to combat the Brazilian gray market for connected devices.

Brazil maintains strict regulations on cell phones and other protectionist policies designed to throttle imports of these products. The result of the measures is that smuggled devices sold at much lower prices relative to legitimate products have flooded the Brazilian market. This gray market severely undermines companies that comply with regulations, creating a major impediment to investment and growth for consumer technology companies in Brazil. These informal economy dynamics also hinder trade by discouraging foreign companies from entering the Brazilian market. Regulatory reforms and reduction of barriers to importation are essential to address this challenge, not only for cell phones but for all connected devices, particularly televisions.

Relatedly, the prevalence of gray market devices raises significant intellectual property (IP) concerns, as these devices often bypass IP protections, leading to losses for legitimate manufacturers. The Government of Brazil must discourage retailers from carrying gray market devices to protect market share, uphold IP standards, and foster a fair competitive environment. By addressing these issues through comprehensive regulatory reform, Brazil can create a more attractive investment climate, encouraging legitimate business operations and promoting sustainable growth in the consumer technology sector. We encourage the U.S. government to include this issue on the Dialogue agenda to ensure the Brazilian government gives it the necessary attention.

The Dialogue should include a conversation about the WTO Information Technology Agreement.

Where possible, the Dialogue should be a launch pad for targeted market access negotiations, including accessions to existing plurilateral WTO agreements and the potential negotiation of new plurilateral agreements. For the consumer technology industry, greater participation in the WTO Information Technology Agreement (ITA) is a high priority. Unfortunately, Brazil is neither a participant in ITA-1 nor ITA-2.³ As one of the largest economies in the hemisphere, joining ITA-1 and ITA-2 is critical to being considered for nearshoring consumer technology supply chains.

Despite the size of its economy, Brazil is an outlier in global tech trade, highlighting the importance of joining ITA-1 and ITA-2. According to 2022 data from the UN Trade and

³ The WTO's Information Technology Agreement (ITA), https://www.wto.org/english/news_e/brief_ita_e.htm.

Development (UNCTAD), Brazil ranks 20th in imports of information and communication technology (ICT) products and 43rd in ICT product exports. These rankings are notably low compared to its GDP ranking of 11th in the world.⁴

The Dialogue should expand on issues related to technical barriers to trade, good regulatory practices, and transparency.

The Dialogue must address the myriad non-tariff measures (e.g., technical regulations, conformity assessment practices, duplicative testing requirements, and standards-based measures) that impede trade in nonagricultural products and in services. These measures are challenging for companies operating in foreign markets, growing in prevalence, and particularly difficult for small businesses to navigate and overcome. Several studies indicate that the costs of non-tariff measures are significantly more than the costs of tariffs, especially for developing economies and SMEs.⁵ This is particularly so in the consumer technology industry, where innovation is rapid and quickly outstrips the pace at which governments regulate.

Thus, at a minimum, the Dialogue should discuss provisions contained in the USMCA Technical Barriers to Trade (TBT) chapter and the related Sectoral Annexes concerning regulatory cooperation.⁶ The Dialogue could also provide opportunities for industry and government to work together to ensure greater alignment of both regulatory and nonregulatory policies for new technologies, to avoid market segmentation in the United States and Brazil, and to keep markets open. We encourage both governments to seek the elimination of local content requirements and other localization policies (e.g., requirements to locate IT infrastructure or store data locally or to create in-country joint ventures) that interfere with trade and investment in both countries.

The United States and Brazil should use the Dialogue to go further still. TBT-related challenges that frustrate goods trade also increasingly act as barriers to digital trade and services trade. The basic principles of the WTO TBT Agreement and USMCA TBT Chapter lend themselves equally well to the oversight of standards, regulations, and conformity

⁴ “Bilateral trade flows by ICT goods categories, annual,” last updated 14 February 2024, *UN Trade and Development*, <https://unctadstat.unctad.org/datacentre/dataviewer/US.IctGoodsValue>.

⁵ “Trade costs of non-tariff measures now more than double that of tariffs,” 14 October, 2019, *UN Trade and Development*, <https://unctad.org/news/trade-costs-non-tariff-measures-now-more-double-tariffs>.

⁶ USMCA – Chapter 11 – Technical barriers to trade, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/11_Technical_Barriers_to_Trade.pdf.
USMCA – Chapter 12 – Sectoral annexes, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/12_Sectoral_Annexes.pdf.

assessment procedures for services. Thus, good governance principles developed in the trade in goods context (e.g., opportunities for stakeholder participation, nondiscriminatory participation, and incorporation of standards developed through inclusive international processes) should be extended to all areas of trade and activity, including the digital economy.

We applaud the Good Regulatory Practices Annex of the U.S.-Brazil Protocol Relating to Trade Rules and Transparency for promoting transparency and accountability in the development and implementation of regulations. We urge the United States to now explore how those commitments can reach the high standards of USMCA. The Good Regulatory Practices Annex should also include services-specific “good governance” provisions that supplement the provisions in USMCA Chapter 28.⁷ In the USMCA, the former provisions are found in the “development and administration of measures” article of the Services chapter (e.g., USMCA Art. 15.8), and address matters such as fair administration of licensing procedures, and transparency and timeliness in regulatory processes.⁸

For the Good Regulatory Practices Annex to be at least as ambitious as other agreements, both countries should also ensure that it incorporates the results of the WTO Joint Initiative on Services Domestic Regulation, which the United States, Brazil, and 65 other participants concluded in December 2021.⁹ Importantly, the Joint Initiative was one of the first trade agreements to address gender-based discrimination.

The Dialogue should continue to foster increased collaboration on standards, metrology, and conformity assessment.

Continued collaboration between the Standards & Metrology Working Group of Brazil’s National Institute of Metrology, Standardization and Industrial Quality (INMETRO) and the U.S. Department of Commerce National Institute of Standards and Technology (NIST) will enforce the importance of standards, conformity assessment, and accreditation practices, as they support industry and avoid technical barriers to trade. As NIST develops its roadmap to implementation of the U.S. Government National Standards Strategy for Critical and Emerging Technologies (NSSCET), continued cooperation between the Brazilian Ministry of Development, Industry, Trade and Services (MDIC) and the U.S.

⁷ USMCA – Chapter 28 – Good Regulatory Practices, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/28_Good_Regulatory_Practices.pdf.

⁸ USMCA – Chapter 15 – Cross-border trade in services, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/15-Cross-Border-Trade-in-Services.pdf>.

⁹ WTO Joint Initiative on Services Domestic Regulation, https://www.wto.org/english/tratop_e/serv_e/jsdomreg_e.htm.

Department of Commerce on international standardization during early and precompetitive stages will enhance global technological advancement.

The Dialogue should address the 2024 joint action plan of MDIC and the U.S. Department of Commerce on standards issues, including how both countries will support standardization and post-market surveillance practices on CETs.

The Dialogue should also reinforce the importance of the Committee Decision on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the WTO Agreement on Technical Barriers to Trade.¹⁰

The Dialogue should aid in reducing barriers to trade for innovative technologies in the digital economy.

To realize the benefits of emerging technologies, the Dialogue should foster collaboration and reduce regulatory/technical barriers to trade for innovative technologies beyond AI and include the Internet of Things (IoT), 3D printing, blockchain, and quantum information science.

The global environment for digital trade is becoming increasingly challenging, however, in no small part due to foreign government efforts to onshore more of the economic benefits of this growing trade. Government measures that create these challenges and could be explored as topics include:

- Network fees or related schemes, which are harmful to Brazil's own digital economy;
- Sectoral regulation that targets specific economic actors rather than business conduct generally, or that identifies sectors, services, or specific technologies for regulation based on the nationality of predominant service suppliers;
- Restrictive data practices that mandate local storage and/or restrict overseas transfer or access; and
- Rules that restrict the digital activities in which foreign companies can engage, or that compel the establishment of local presence to provide digital service.

¹⁰ Principles for the Development of International Standards, Guides and Recommendations, https://www.wto.org/english/tratop_e/tbt_e/principles_standards_tbt_e.htm.

The Dialogue should maintain and strengthen commitments on customs and trade facilitation.

U.S. and Brazilian businesses, particularly SMEs, benefit when the movement of goods across international borders is simple and streamlined. In this regard, the Dialogue should maintain these topics for the agenda related to Annex I of the U.S.-Brazil Protocol on Trade Rules and Transparency including:

- Avoiding unnecessary trade import licenses for imports of digital hardware and software;
- Sharing information on seizures between governments and the private sector;
- Creating a green lane for de minimis shipments that arrive with greater advance data;
- Improving a unified entry process through a Single Window from all government PGAs;
- Advancing authorized economic operator (AEO) programs (and, ideally, expand them to include trusted trader programs for individual sellers that do business via trusted ecommerce marketplaces); and
- Allowing entities to secure advanced rulings for supply chains free of forced labor.

The Dialogue should support the circular economy by encouraging sustainability throughout supply chains

The Trade and Sustainable Development Working Group provides an opportunity for the United States and Brazil to advance several objectives it has set out for the Dialogue, especially the intention to support both countries' efforts to enhance resilient supply chains.

Used goods generally – and used technology products in particular – provide an important source of raw materials that can be recovered and returned into the production process for new goods. Doing so reduces the need for mining, processing, and production of virgin materials, reduces waste, and enhances supply chain resiliency by capitalizing on the supply of critical materials already embedded in ubiquitous consumer products. Resource recovery like this does not occur at scale today, due largely to regulatory impediments. The Dialogue is a forum that could offer new collaborative opportunities to address such impediments for the benefit of the United States and Brazil.

The United States and Brazil should also leverage the Dialogue to collaborate on building sustainability throughout supply chains, by prioritizing clean/renewable energy, reducing waste, improving recyclability, and encouraging responsible product design. For example, the Dialogue could address international rules that limit the cross-border movement of both used consumer technologies and resources recovered from them serve as a primary impediment to greater extraction and use of recoverable materials. While these rules are designed to safeguard against the potential harms of uncontrolled trade in waste products, they lack efficient mechanisms to allow safe and lawful movement of materials even among trusted entities.

The Dialogue also provides an opportunity to explore the creation of “resource recovery lanes” between the United States and Brazil, within which individual companies could be certified to operate based on their willingness to adhere to standards set out by participating governments. Such a program could be developed in stages, for example, by initially covering only certain materials and by expanding over time to include other materials, with a long-term objective of creating cost parity between the use of recovered vs. virgin raw materials.

Conclusion

CTA is pleased to provide the above specific recommendations on proposed topics for the agenda of the 22nd Plenary of the U.S.-Brazil Commercial Dialogue. We look forward to serving as a resource for the Office of Latin America & the Caribbean during this Dialogue.

Sincerely,



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Michael Petricone
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