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SUBJECT: 1986 NATIONAL TRADE ESTIMATE REPORT: BRAZIL

ATTACHED IS A COUNTRY SECTION FOR THE 1986 NATIONAL
TRADE ESTIMATE REPORT.

BRAZIL

BRAZIL ACHIEVED A TOTAL \$12.5 BILLION TRADE SURPLUS IN
1985. IT ONCE AGAIN MAXIMIZED ITS SURPLUS BY REDUCING
TOTAL IMPORTS. IN FACT BRAZIL IS LESS DEPENDENT ON
IMPORTS THAN NEARLY ANY OTHER NATION IN THE WORLD.

IN 1985 TOTAL IMPORTS AMOUNTED TO LESS THAN 6 PERCENT
OF ITS GROSS DOMESTIC PRODUCT (GDP), LOWER THAN INDIA
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OR CHINA. EXCLUDING OIL, BRAZIL'S IMPORT RATIO IS ONLY
3 PERCENT, A REMARKABLY SMALL LEVEL FOR THE FREE

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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: NORMAN M. BOUTON
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WORLD'S EIGHTH LARGEST ECONOMY. BRAZIL'S 1986 FOOD AND

RAW MATERIAL IMPORTS ARE EXPECTED TO INCREASE SLIGHTLY AS THE GOVERNMENT ATTEMPTS TO IMPROVE SUPPLIES FOR A RAPIDLY GROWING ECONOMY.

EXPORTS ARE EXPECTED TO DECLINE SOMEWHAT DUE TO A DROUGHT-CAUSED REDUCTION IN COFFEE PRODUCTION. HOWEVER, MANUFACTURED EXPORTS ARE EXPECTED TO INCREASE. ALTHOUGH THE OVERALL EFFECT OF DECLINING WORLD OIL PRICES AND HIGHER WORLD COFFEE PRICES IS NOT YET CLEAR, BRAZIL SHOULD ACHIEVE A 1986 TRADE SURPLUS SIMILAR TO 1985'S.

DESPITE BRAZIL'S SLIGHT IMPORT DECLINE, 1985 U.S. EXPORTS MANAGED TO RISE \$600 MILLION TO \$3.2 BILLION. INDUSTRIAL COMPONENTS AND COAL USED IN BRAZIL'S MANUFACTURED EXPORT INDUSTRIES ACCOUNTED FOR MOST OF THIS GAIN.

THE LEADING 1985 U.S. EXPORTS TO BRAZIL WERE AIRCRAFT EQUIPMENT, WHEAT, COAL, ORGANIC CHEMICALS, OFFICE MACHINES AND PARTS AND TELECOMMUNICATIONS EQUIPMENT. COMPARED TO 1984 THIS REPRESENTS A SLIGHT PRIORITY SHIFT AS AIRCRAFT SALES TOPPED THE LIST.

TOTAL U.S. IMPORTS FROM BRAZIL DECLINED 2 PERCENT IN 1985, REVERSING A SHARPLY INCREASING TWO-YEAR TREND. IMPORTS OF TWO PRODUCTS FELL APPRECIABLY: FROZEN CONCENTRATED ORANGE JUICE AND NONBEVERAGE ETHANOL IMPORTS. LEADING 1985 U.S. IMPORTS INCLUDED FOOTWEAR,
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COFFEE, PETROLEUM PRODUCTS, MOTOR VEHICLES AND AUTO PARTS, ORANGE JUICE AND IRON AND STEEL PRODUCTS.

TOTAL 1985 U.S. DIRECT INVESTMENT IN BRAZIL WAS \$9.5 BILLION, A SLIGHT \$100 MILLION INCREASE FROM 1984. HOWEVER, U.S. INVESTMENT IN BRAZIL HAS GENERALLY DECLINED OVER THE PAST SEVERAL YEARS, SHOWING ONLY AN AVERAGE ANNUAL .7 PERCENT INCREASE DURING 1982-85 COMPARED TO 10 PERCENT BETWEEN 1977 AND 1982. THIS TREND PARALLELS THE GENERAL DECLINE IN NET NEW FOREIGN INVESTMENT IN BRAZIL SINCE 1980.

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BRAZIL ARGUES IT MUST MAXIMIZE EXPORTS AND CUT BACK IMPORTS TO SERVICE ITS DEBT. HOWEVER, BRAZIL ALSO BASES ITS RESTRICTIVE TRADE REGIME ON SEVERAL POLICIES PRECEDING ITS BALANCE OF PAYMENTS CRISIS.

BRAZIL'S TRADE REGIME IS GUIDED BY THE "LAW OF SIMILARS" AND THE MARKET RESERVE POLICY. UNDER THE "LAW OF SIMILARS," BRAZIL CAN WITHHOLD IMPORT LICENSES

FOR ANY PRODUCT PRODUCED IN BRAZIL, WHICH IS USUALLY BROADLY DEFINED. BRAZIL'S "MARKET RESERVE" POLICY TOTALLY EXCLUDES FOREIGN INVESTMENT AND IMPORTS FROM CERTAIN MARKET SECTORS.

BRAZIL HAS TRADITIONALLY TARGETED CERTAIN HIGH TECHNOLOGY INDUSTRIES FOR ACCELERATED, GOVERNMENT-SUPPORTED NATIONAL SUPPORT. ITS PRIMARY INTENT IS TO REPLACE IMPORTED PRODUCTS AND TECHNOLOGIES WITH BRAZILIAN ONES TO FOSTER INDIGENOUS INDUSTRIES' GROWTH. SINCE THE 1970S, FOR EXAMPLE, BRAZIL HAS SELECTED ITS AIRCRAFT AND INFORMATICS SECTORS FOR DEVELOPMENT, CLOSING OUT FOREIGN IMPORTS OF THESE PRODUCTS OR REQUIRING TECHNOLOGY TRANSFERS.

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IN PREVIOUS YEARS BILATERAL TRADE ISSUES WITH BRAZIL WERE RAISED IN THE U.S.-BRAZIL TRADE SUBGROUP WHICH GENERALLY MET TWICE A YEAR. HOWEVER, NO SUBGROUP MEETINGS WERE SCHEDULED IN 1986 BECAUSE SO LITTLE PROGRESS WAS MADE IN THE LAST DECEMBER 1985 MEETING.

INSTEAD, THE UNITED STATES MET WITH BRAZILIAN OFFICIALS TO DISCUSS SELECTED TRADE PROBLEMS INCLUDING THE SECTION 301 INFORMATICS INVESTIGATION, EXPORT FINANCING, STEEL AND TEXTILES. FURTHER CONSULTATIONS WERE PLANNED IN 1986 TO DISCUSS INFORMATICS, PHARMACEUTICALS, MOTION PICTURES AND OVERALL INTELLECTUAL PROPERTY RIGHTS PROTECTION.

BECAUSE MOST BRAZILIAN IMPORT RESTRICTIONS APPLY TO A BROAD RANGE OF GOODS, IT IS IMPOSSIBLE TO ISOLATE THE EFFECT OF ANY PARTICULAR BARRIER ON U.S. TRADE. FOR

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CONCERNING THE DIFFERENTIAL EXPORT TAX. CONSULTATIONS HAVE NOT ACHIEVED A SATISFACTORY RESULT, BUT THE UNITED STATES WILL CONTINUE TO PURSUE THE ISSUE IN BILATERAL CONSULTATIONS.

6.LACK OF INTELLECTUAL PROPERTY PROTECTION

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A.DESCRPTION

1) PATENTS

BRAZIL DOES NOT PROVIDE EITHER PRODUCT OR PROCESS PATENT PROTECTION FOR METAL ALLOYS, CHEMICAL COMPOUNDS, FOOD AND CHEMICALPHARMACEUTICAL SUBSTANCES. IN ADDITION, THERE IS NO PATENT PROTECTION FOR BIOTECHNOLOGIES. METHOD OF USE CLAIMS IN PATENT APPLICATIONS ARE ALSO GENERALLY NOT ALLOWED.

BRAZIL REQUIRES A PATENT OWNER TO WORK ALL PATENT CLAIMS IN BRAZIL. A THIRD PARTY MAY REQUEST A COMPULSORY LICENSE IF A PATENT OWNER HAS FAILED TO WORK THE PATENT WITHIN THREE YEARS OF PATENT ISSUANCE OR, IF EXPLOITATION HAS BEEN DISCONTINUED, FOR MORE THAN ONE YEAR.

EVEN WHEN SUCH CLAIMS ARE PERMITTED, THERE IS NO CONCEPT OF CONTRIBUTORY INFRINGEMENT OR INDUCEMENT TO INFRINGE IN BRAZILIAN LAW THAT COULD ENABLE A PATENT OWNER TO TAKE EFFECTIVE ACTION AGAINST AN INFRINGER. BRAZILIAN PATENT EXAMINERS FREQUENTLY REQUIRE INCLUDING SUCH UNNEEDED PROCESS PARAMETERS AS THE TEMPERATURE OR PRESSURE AT WHICH A CHEMICAL REACTION OCCURS. THIS PRACTICE MAKES IT EVEN EASIER TO "INVENT AROUND" A PROCESS PATENT.

2) LICENSING

ALL LICENSING AND TECHNICAL ASSISTANCE AGREEMENTS INCLUDING TRADEMARK LICENSES MUST BE REGISTERED WITH THE NATIONAL INSTITUTE FOR INDUSTRIAL PROPERTY. FAILURE TO REGISTER WILL RESULT IN DENIAL OF LICENSE FEES, DISAPPROVAL OF DEDUCTIONS FOR FEES AS A BUSINESS

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EXPENSE, TRADEMARK REGISTRATION CANCELLATION OR LAPSE
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OF A PATENT FOR NOT WORKING.

PATENT LICENSES MUST ALSO BE REGISTERED WITH THE
 CENTRAL BANK. LICENSE FEE PAYMENTS TO RELATED FOREIGN
 COMPANIES IS PROHIBITED AND THOSE TO UNRELATED FOREIGN
 LICENSORS ARE LIMITED TO BETWEEN 1 AND 5 PERCENT.

3) COPYRIGHT PIRACY

ALTHOUGH BRAZIL HAS RELATIVELY GOOD COPYRIGHT AND
 RELATED LAWS, THESE LAWS ARE POORLY ENFORCED.
 UNAUTHORIZED PUBLIC PERFORMANCES OF MOTION PICTURES,
 VIDEO CASSETTE AND RECORD PIRACY, UNAUTHORIZED
 TRANSLATION OF LITERARY WORKS AND COMPUTER SOFTWARE
 PIRACY REMAIN SERIOUS PROBLEMS.

B. ESTIMATED IMPACT

1) PATENTS

U.S. FIRMS, PARTICULARLY AGRICULTURAL CHEMICAL AND
 PHARMACEUTICAL COMPANIES, HAVE PROVIDED EXAMPLES OF
 SPECIFIC PROBLEMS. U.S. INDUSTRY DOES FACE COMPETITION
 IN BRAZIL FROM LOCAL FIRMS THAT "INVENT AROUND" PROCESS

PATENTS OR RECEIVE COMPULSORY LICENSES TO USE THE
 TECHNOLOGY. AS BRAZIL'S INDUSTRY DEVELOPS, IT COULD
 BECOME A SIGNIFICANT SOURCE OF COPIED CHEMICALS
 INCLUDING PHARMACEUTICALS FOR OTHER COUNTRIES WHERE
 PATENT PROTECTION IS WEAK.

2) LICENSING

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RESTRICTIONS ON U.S. FIRMS' ABILITY TO NEGOTIATE
 LICENSING AGREEMENT TERMS DISCOURAGE U.S. FOREIGN

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INVESTMENT AND EXPORTS.

3) COPYRIGHT PIRACY

THE INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE ESTIMATES ANNUAL LOSSES IN BRAZIL FROM PIRACY REACH \$35 MILLION FOR MICROCOMPUTER SOFTWARE ALONE. LOSSES MAY BE SUBSTANTIALLY HIGHER FOR ALL TYPES OF COMPUTER SOFTWARE. U.S. INDUSTRY ESTIMATES IT LOSES \$75 MILLION EACH YEAR TO PIRACY, UNAUTHORIZED PUBLIC PERFORMANCES AND TRANSLATIONS OF U.S. LITERARY WORKS.

C. ACTIONS TAKEN OR TO BE TAKEN

THE UNITED STATES CONTINUES TO PRESS FOR INCREASED INTELLECTUAL PROPERTY RIGHT PROTECTION IN BRAZIL THROUGH MULTILATERAL AND BILATERAL CONSULTATIONS.

DURING THE SECTION 301 INFORMATICS CONSULTATIONS, THE UNITED STATES SOUGHT FULL COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE. A MAY 1986 STATE COURT DECISION HELD THAT COPYRIGHT PROTECTION DID APPLY TO SOFTWARE. HOWEVER, IT ALSO RULED SUCH PROTECTION DID NOT APPLY IF THE PROGRAM WAS EMBEDDED IN HARDWARE (E.G., A CHIP). IF THE DECISION TO APPLY COPYRIGHT PROTECTION TO SOFTWARE IS UPHeld, IT WILL BE AN IMPORTANT STEP IN SOFTWARE PROTECTION. AN INTERAGENCY COUNCIL IN BRAZIL ALSO ENDORSED THE CONCEPT OF COPYRIGHT PROTECTION FOR SOFTWARE ALTHOUGH THE COVERAGE TERMS HAVE NOT YET BEEN DETERMINED. LEGISLATION NOW BEING DRAFTED WILL NOT BE CONSIDERED UNTIL LATE 1986.

THIS LEGISLATION COULD BE SIGNIFICANTLY WEAKENED IF BRAZIL ALSO ADOPTS PENDING COMMERCIALIZATION
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REGULATIONS WHICH ESTABLISH A MARKET RESERVE FOR SOFTWARE AND PROHIBIT INTELLECTUAL PROPERTY RIGHTS PROTECTION.

ADEQUATE PHARMACEUTICAL PATENT PROTECTION WAS A KEY U.S. OBJECTIVE DURING OCTOBER 1986 BILATERAL CONSULTATIONS. ALTHOUGH BRAZIL HAS NOT YET RESPONDED TO THE AUGUST 1986 U.S. REQUEST FOR CONSULTATIONS ON

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MOTION PICTURE AND HOME VIDEO CASSETTE SECTOR PROBLEMS, THE UNITED STATES IS PLANNING TO RAISE ITS CONCERNS ABOUT VIDEO PIRACY AND COMMERCIAL LICENSING. THE UNITED STATES WILL ALSO PURSUE BILATERAL CONSULTATIONS ON INTELLECTUAL PROPERTY RIGHT ISSUES IN GENERAL OVER THE NEXT YEAR.

7. COUNTERTRADE AND OFFSETS

A. DESCRIPTION

BRAZIL HAS DECLINED TO ARTICULATE A FORMAL COUNTERTRADE POLICY. HOWEVER, THIS HAS NOT DECREASED BRAZIL'S RELIANCE ON COUNTERTRADE EITHER IN ITS DEVELOPING COUNTRY TRADE OR OIL TRADE.

HOWEVER, CRUDE OIL COUNTERTRADE OPPORTUNITIES HAVE DECLINED DUE TO SEVERAL FACTORS. WORLD OIL PRICES DROPPED, DOMESTIC OIL SUPPLIES ROSE AND ALCOHOL WAS INCREASINGLY USED AS A MOTOR FUEL. AT THE 1985 PEAK, 95 PERCENT OF NEW CARS USED ALCOHOL FOR FUEL. THIS RATE HAS DECLINED ALONG WITH THE COST OF OIL.

THE BRAZILIAN OIL MONOPOLY, PETROBRAS, ACTIVELY PROMOTES COUNTERTRADE THROUGH ITS SUBSIDIARY
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INTERBRAS. IT ATTEMPTS TO OBTAIN COUNTERTRADE AGREEMENTS ON FOREIGN OIL PURCHASES. BRAZILIAN EXPORTS UNDER SUCH AGREEMENTS COVER THE FULL RANGE OF MANUFACTURED AND RAW MATERIALS AND EVEN INCLUDE CONSTRUCTION SERVICES. PRODUCTS COMPETING DIRECTLY WITH U.S. EXPORTS INCLUDE POULTRY, SOYBEAN MEAL, CHEMICALS, COTTON, PAPER AND STEEL.

BRAZIL'S 1985 COUNTERTRADE WITH NIGERIA, ITS THIRD LARGEST TRADING PARTNER, REACHED SOME \$2 BILLION, LARGELY FROM EXCHANGING BRAZILIAN INDUSTRIAL PRODUCTS FOR OIL. COUNTERTRADE IS ALSO IMPORTANT IN BRAZILIAN TRADE WITH IRAQ, ITS SECOND LARGEST TRADING PARTNER. CLEARING ACCOUNTS ARE MAINTAINED WITH SEVERAL EASTERN BLOC COUNTRIES.

OFFSETS HAVE BEEN REQUESTED AS PART OF MAJOR SALES TO

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BRAZIL. BRAZILIAN IMPORT REGULATIONS PRESSURE
 MULTINATIONAL FIRM SUBSIDIARIES TO EXPORT WHETHER OR
 NOT EXPORTS ARE RELATED TO THEIR PRINCIPAL LINE OF

BUSINESS. THIS IS DONE THROUGH THE EXPORT
 INCENTIVE/PERFORMANCE PROGRAMS. BEFIEK ADDED EXPORT
 COMMITMENTS OF \$5.1 BILLION IN THE 87 NEW AGREEMENTS
 SIGNED THROUGH JUNE 1986.

B. ESTIMATED IMPACT

BRAZILIAN COUNTERTRADE HAS SUBSTANTIALLY DISPLACED U.S.
 EXPORTS TO THIRD MARKETS. BRAZIL, FOR EXAMPLE, USES ITS
 CREDITS TO PURCHASE POTASH FROM EAST GERMANY TO THE
 DETRIMENT OF U.S. SUPPLIERS. THE BILATERAL IMBALANCE
 IN U.S.-BRAZILIAN TRADE MAY BE INCREASED BY MEASURES
 THAT REDUCE BRAZILIAN DEMAND FOR U.S. PRODUCTS AND
 EXPAND INCENTIVES FOR BRAZILIAN EXPORTS TO THE UNITED
 STATES.

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C. ACTIONS TAKEN OR TO BE TAKEN

THE UNITED STATES WILL DISCOURAGE GOVERNMENT-MANDATED
 COUNTERTRADE THROUGH BILATERAL AND MULTILATERAL
 REPRESENTATIONS AS APPROPRIATE.

8. SERVICES BARRIERS

GENERAL BARRIERS

A. DESCRIPTION

RESTRICTIVE LAWS, ADMINISTRATIVE NONTRANSPARENCY,
 ARBITRARY APPLICATION OF REGULATIONS AND LAWS AND OTHER
 ADMINISTRATIVE BARRIERS TO EARNINGS TRANSFER CONTINUE
 TO LIMIT TRADE AND INVESTMENT OPPORTUNITIES. FOREIGN
 COMPANIES, PARTICULARLY CONSTRUCTION FIRMS, ARE
 PREVENTED FROM PROVIDING TECHNICAL SERVICES UNLESS
 THERE ARE BRAZILIAN FIRMS ABLE TO PERFORM THEM. THE
 INDUSTRIAL PROPERTY INSTITUTE (INPI) MUST APPROVE ALL
 TECHNICAL SERVICE CONTRACTS BUT SUBJECTS THEM TO
 SUBSTANTIAL DELAYS AND OTHER ADMINISTRATIVE

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DIFFICULTIES.

TELECOMMUNICATION AND DATA SERVICES MAY BE SUBJECT TO NEW CONTROLS UNDER THE INFORMATICS LAW'S IMPLEMENTING REGULATIONS. BRAZIL IS RECONSIDERING LIMITATIONS ON FOREIGN BANK OWNERSHIP BUT NO DEFINITE REFORM HAS YET BEEN UNDERTAKEN.

B.ESTIMATED IMPACT

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DUE TO VARIOUS DIFFICULTIES, FOREIGN COMPANIES ARE FREQUENTLY UNABLE TO COMPETE IN THE BRAZILIAN SERVICES MARKET.

C.ACTIONS TAKEN OR TO BE TAKEN.

THE UNITED STATES HELD GATT ARTICLE XXII CONSULTATIONS ON BRAZIL'S INFORMATICS LAW IN JUNE 1985. SERVICES (DATA PROCESSING AND TELECOMMUNICATIONS) HAVE BEEN RAISED IN THE CONTEXT OF THE SECTION 301 INVESTIGATION AGAINST BRAZIL'S INFORMATICS LAW WHICH SHOULD BE CONCLUDED BY THE END OF 1986.

INSURANCE

A.DESCRPTION

BRAZIL'S RESOLUTION NO. 3/71 OF THE NATIONAL PRIVATE INSURANCE COUNCIL AND OTHER GOVERNMENTAL ACTIONS EFFECTIVELY REQUIRE ALL BRAZILIAN IMPORT INSURANCE TO BE PLACED WITH BRAZILIAN FIRMS. THIS DENIES U.S. MARINE INSURERS FAIR COMPETITIVE ACCESS TO THIS CLASS OF BUSINESS.

ALL REINSURANCE IN BRAZIL MUST ALSO BE PURCHASED FROM THE GOVERNMENT REINSURANCE MONOPOLY. THIS REQUIREMENT DENIES U.S. REINSURERS FULL PARTICIPATION IN THE LOCAL REINSURANCE MARKET.

B.ESTIMATED IMPACT

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ACCORDING TO ONE ESTIMATE, INSURANCE PREMIUM VOLUME IN BRAZIL TOTALS ABOUT \$1 BILLION EACH YEAR; MARINE INSURANCE \$80 MILLION; AND REINSURANCE \$300 MILLION. BOTH U.S. LIFE AND NONLIFE INSURERS IN BRAZIL COULD UNCLASSIFIED

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SELL POLICIES WORTH \$10 MILLION EACH YEAR IF CURRENT RESTRICTIONS WERE REMOVED.

C.ACTIONS TAKEN OR TO BE TAKEN

THE UNITED STATES WILL BRING UP RULES FOR INSURANCE AND OTHER SERVICE INDUSTRIES IN THE URUGUAY ROUND NEGOTIATIONS.

DATA PROCESSING AND TELECOMMUNICATIONS

A.DESCRPTION

BRAZIL REQUIRES DATA RECEIVED FROM UNRELATED PARTIES TO BE PROCESSED WITHIN THE COUNTRY. THIS DEPRIVES MANY DATA PROCESSORS OF THE ABILITY TO COMPETE IN THAT MARKET BY USING CENTRAL PROCESSING FACILITIES ABROAD. FOREIGN EQUITY PARTICIPATION IN INFORMATION SERVICE INDUSTRIES IN BRAZIL IS LIMITED.

B.ESTIMATED IMPACT

IT IS NOT POSSIBLE TO ESTIMATE THE MARKET LOSSES DUE TO THESE PRACTICES.

C.ACTIONS TAKEN OR TO BE TAKEN

BRAZILIAN LIMITATIONS ON TRANSBORDER DATA FLOWS HAVE BEEN RAISED DURING BILATERAL TALKS ON INFORMATICS AND WILL BE DISCUSSED IN THE URUGUAY ROUND NEGOTIATIONS.

MOTION PICTURES
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A. DESCRIPTION

THE MOST SIGNIFICANT TRADE BARRIER FOR U.S. MOTION PICTURES IS A CONCINE 98 REQUIREMENT FOR FOREIGN HOME VIDEO CASSETTE DISTRIBUTORS TO MAINTAIN AN INVENTORY INCLUDING AT LEAST 25 PERCENT BRAZILIAN TITLES AND 25 PERCENT COPIES EACH MONTH. BECAUSE THE SUPPLY OF BRAZILIAN HOME VIDEO CASSETTES IS LIMITED, THIS REQUIREMENT RESTRICTS THE NUMBER OF FOREIGN VIDEOS THAT MAY BE DISTRIBUTED AND THEREFORE IMPORTED.

IT ALSO SIGNIFICANTLY INCREASES DISTRIBUTORS' OPERATING EXPENSES SINCE THEY MUST: A) PURCHASE VIDEO RIGHTS FOR NATIONAL PRODUCERS; B) BUY BLANK CASSETTES FOR DUPLICATING NATIONAL FILMS; C) PAY FOR DUPLICATING NATIONAL FILMS (A HIGH COST SINCE THERE IS ONLY ONE BRAZILIAN PRINTING COMPANY); D) PAY FOR NATIONAL FILM PACKAGING AND PUBLICITY; AND E) PAY ALL RELEVANT TAXES ON NATIONAL FILMS (5 PERCENT SERVICE TAX, 5 PERCENT INDUSTRIAL TAX AND 12 PERCENT SALES TAX).

IT ALSO ARTIFICIALLY INCREASES DEMAND FOR THE LIMITED BRAZILIAN HOME VIDEO CASSETTES AVAILABLE, THUS DRIVING UP THEIR PRICES CONSIDERABLY. FINALLY, LIMITED AVAILABILITY OF LEGITIMATE IMPORTED CASSETTES CREATES AN ENVIRONMENT THAT PERPETUATES WIDESPREAD PIRACY OF U.S. HOME VIDEO PROGRAMMING.

OTHER BARRIERS INCLUDE:

OA DISCRIMINATORY REQUIREMENT TO EXHIBIT A BRAZILIAN SHORT SUBJECT FILM ALONG WITH ANY FOREIGN FEATURE FILM.

ODIVIDING 3.4 PERCENT OF THE GROSS BOX OFFICE
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RECEIPTS AMONG THE BRAZILIAN SHORT SUBJECT PRODUCERS AND THE NATIONAL DISTRIBUTOR OF BRAZILIAN FILMS, EMBRAFILME.

OSUBJECTING EACH FOREIGN FILM TITLE IMPORTED

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FOR THEATRICAL OR TELEVISION DISTRIBUTION TO A GOVERNMENT CENSORSHIP REVIEW BEFORE DISTRIBUTION. A FEE IS REQUIRED FOR EACH FOREIGN TITLE BUT NOT IMPOSED ON BRAZILIAN FILMS.

OA REQUIREMENT ON ALL BRAZILIAN MOVIE THEATERS TO EXHIBIT BRAZILIAN FEATURE FILMS AT LEAST 140 DAYS EVERY YEAR.

OA REQUIREMENT TO PRINT ALL COLOR FEATURE FILMS DISTRIBUTED FOR TELEVISION BROADCAST AND THEATRICAL EXHIBITION IN BRAZILIAN LABORATORIES. BRAZIL HAS ONLY ONE SUCH LABORATORY.

OA FIVE-YEAR WAITING PERIOD FOR THEATRICAL TELEVISION DISTRIBUTION.

B. ESTIMATED IMPACT

IN 1985 BRAZIL WAS THE 10TH LARGEST FOREIGN MARKET IN REVENUE FOR ALL MEDIA AND THE LARGEST LATIN AMERICAN MARKET FOR U.S. MOTION PICTURE DISTRIBUTORS. GIVEN THE BRAZILIAN POPULATION'S AGE AND INCOME DISTRIBUTION, THE U.S. MOTION PICTURE INDUSTRY BELIEVES BRAZIL IS AN ENORMOUS POTENTIAL MARKET.

U.S. INDUSTRY ESTIMATES ONE MILLION PIRATED CASSETTES UNCLASSIFIED

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WERE AVAILABLE AT THE END OF 1984. SOME 30 NEW U.S. TITLES WERE PIRATED EVERY MONTH. BRAZIL HAS THUS BECOME THE LARGEST SOURCE FOR GENERATING PIRATED U.S. HOME VIDEO CASSETTES IN LATIN AMERICA.

C. ACTIONS TAKEN OR TO BE TAKEN

THE UNITED STATES HAS UNSUCCESSFULLY RAISED ITS CONCERNS ABOUT THE CONCINE 98 RESOLUTION AND OTHER RELATED ISSUES DURING GENERAL BILATERAL CONSULTATIONS

AND WITH BRAZILIAN OFFICIALS FOR THE LAST SEVERAL YEARS. IN AUGUST 1986 THE UNITED STATES OFFICIALLY REQUESTED CONSULTATIONS BUT HAS NOT YET RECEIVED A

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JANUARY 1985 THE U.S.-BRAZIL INVESTMENT TASK FORCE MET TO DISCUSS BILATERAL INVESTMENT MATTERS IN GREATER DETAIL. IN MAY THE TASK FORCE PREPARED A PROGRESS REPORT FOR THE FULL SUBGROUP'S CONSIDERATION.

10. OTHER BARRIERS

INFORMATICS

A. DESCRIPTION

IN 1984 BRAZIL APPROVED A COMPLEX NEW LAW CODIFYING AND EXTENDING POLICIES FOLLOWED SINCE THE 1970S TO PROMOTE A NATIONAL INFORMATICS INDUSTRY. THE INFORMATICS SECTOR IS BROADLY DEFINED TO INCLUDE NOT ONLY COMPUTERS AND PARTS BUT ALL OTHER DEVICES INCORPORATING A DIGITAL INSTRUMENT. THUS COMMUNICATIONS SWITCHING EQUIPMENT, INSTRUMENTS, PROCESS CONTROLS, OPTICAL AND ELECTRONIC COMPONENTS ARE COVERED AS IS SOFTWARE.

THE NEW LAW GRANTS THE GOVERNMENT'S EXECUTIVE BRANCH BROAD AUTHORITY TO RESTRICT IMPORTS FOR AN ADDITIONAL EIGHT YEARS. IT RESERVES PRODUCTION AND SALES OF MANY PRODUCTS EXCLUSIVELY FOR BRAZILIAN-OWNED FIRMS.

IMPORTS OF DIGITAL PRODUCTS, PRODUCTS INCORPORATING DIGITAL TECHNOLOGY AND, REPORTEDLY, ALL INSTRUMENTATION WHETHER DIGITAL OR OTHERWISE ARE SUBJECT TO REVIEW AND APPROVAL BY THE SPECIAL SECRETARIAT FOR INFORMATICS (SEI) UNDER INFORMATICS LAW PROVISIONS. SINCE THE LAW IS VAGUE AND NONTRANSPARENT, SEI HAS WIDE DISCRETION IN ITS APPLICATION. MANY PRODUCTS ARE DENIED ENTRY.

NATIONAL FIRMS ARE GIVEN PREFERENCE IN GOVERNMENT PROCUREMENT AND ACCESS TO SPECIAL FISCAL AND FINANCIAL INCENTIVES. FOREIGN FIRMS OPERATING IN SPECIAL EXPORT UNCLASSIFIED

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ZONES ENJOY ALL EXPORT INCENTIVES BUT MAY NOT SELL IN THE DOMESTIC MARKET. LOCAL CONTENT REQUIREMENTS ARE

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CONDITIONS FOR VARIOUS INCENTIVES AND APPROVAL OF SOME INVESTMENTS. IN ADDITION, BRAZIL DOES NOT NOW GRANT FULL COPYRIGHT PROTECTION TO COMPUTER SOFTWARE.

B. ESTIMATED IMPACT

FROM 1980 TO 1984 THE U.S. MARKET SHARE IN BRAZIL'S COMPUTER SECTOR DROPPED 12 PERCENTAGE POINTS. IN THOSE COMPUTER PRODUCT CATEGORIES KNOWN TO BE COVERED BY THE MARKET RESERVE, THE SHARE HAS DROPPED 22 PERCENTAGE POINTS. BRAZILIAN FIRMS LARGELY ABSORBED THESE LOST SALES. U.S. COMPUTER PRODUCT EXPORTS TO BRAZIL ALSO EXPANDED ONLY 9 PERCENT WHILE U.S. WORLD EXPORTS GREW 16 PERCENT. USING BRAZILIAN DATA, A U.S. COMPARATIVE MARKET ANALYSIS CONSERVATIVELY ESTIMATES U.S. FIRMS LOSE BETWEEN \$340 MILLION AND \$450 MILLION IN HARDWARE AND SOFTWARE SALES EACH YEAR DUE TO THE BRAZILIAN RESTRICTIONS.

PROSPECTIVE U.S. LOSSES ARE EVEN MORE SIGNIFICANT. BRAZIL'S MARKET RESERVE POLICY WILL VIRTUALLY ELIMINATE U.S. ACCESS TO THE LOWEND OF THE COMPUTER MARKET WHERE MOST OF THE GROWTH IS EXPECTED BOTH IN BRAZIL AND IN THE WORLD. FUTURE LOSSES COULD REACH \$12 BILLION FROM 1985 TO 1992 WHEN THE INFORMATICS LAW IS SCHEDULED TO EXPIRE.

C. ACTIONS TAKEN OR TO BE TAKEN

FOR THREE YEARS THE UNITED STATES HAS CONSISTENTLY RAISED ITS CONCERNS ABOUT BRAZIL'S INFORMATICS POLICIES
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BOTH IN BILATERAL CONSULTATIONS AND UNDER GATT ARTICLE XXII. IN SEPTEMBER 1985 THE PRESIDENT ORDERED A SECTION 301 INVESTIGATION.

CONSULTATIONS WITH BRAZIL UNDER THAT INVESTIGATION HAVE FOCUSED ON THE WIDE AND UNDEFINED SCOPE OF SEI'S REVIEW, ITS VIRTUALLY UNLIMITED DISCRETION TO APPROVE OR DISAPPROVE APPLICATIONS, THE REGULATIONS' GENERAL NONTRANSPARENCY AND ARBITRARY NATURE, THE DENIAL OF NATIONAL TREATMENT TO FOREIGN FIRMS AND PRODUCTS AND

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LACK OF SOFTWARE COPYRIGHT PROTECTION.

TO DATE BRAZIL HAS MADE INADEQUATE CONCESSIONS TO RESOLVE THE CASE SATISFAC-TORILY. THEREFORE, ON OCTOBER 6, 1986 THE PRESIDENT DETERMINED THAT BRAZIL'S INFORMATICS POLICIES WERE AN "UNREASONABLE" TRADE ACTION UNDER SECTION 301 OF THE 1974 TRADE ACT.

HOWEVER, THE PRESIDENT INDICATED FURTHER CONSULTATIONS WITH BRAZIL SHOULD BE ATTEMPTED. HIS DECISION ON FINAL ACTIONS TO BE TAKEN WILL BE DEFERRED UNTIL THE END OF 1986 PENDING THE OUTCOME OF THESE DISCUSSIONS.

AS AN INTERIM MEASURE, THE UNITED STATES WILL NOTIFY GATT OF ITS INTENT TO SUSPEND TARIFF CONCESSIONS ON SELECTED BRAZILIAN PRODUCT IMPORTS TO COMPENSATE FOR U.S. SALES LOST DUE TO BRAZIL'S INFORMATICS POLICIES. ALTHOUGH THIS ACTION DOES NOT IMMEDIATELY INCREASE U.S. TARIFFS ON BRAZILIAN IMPORTS, IT ENABLES THE PRESIDENT TO DO SO EVENTUALLY SHOULD HE DETERMINE SUCH AN ACTION WOULD BE JUSTIFIED.

GENERAL AVIATION AIRCRAFT

A.DESCRPTION
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LICENSING IS THE MAJOR DETERRENT TO U.S. GENERAL AVIATION AIRCRAFT SALES IN BRAZIL. HOWEVER, BRAZIL FREELY EXPORTS ASSEMBLED AIRCRAFT TO THE UNITED STATES WHICH HAS NO TARIFF.

ALTHOUGH BRAZIL HAS TAKEN STEPS TO EXPEDITE THE LICENSING PROCEDURE FOR REGULAR SALES OF NEW AIRCRAFT, IT IS ACTIVELY CONSIDERING IMPOSING A "MARKET RESERVE" FOR HELICOPTERS. THIS WOULD RESERVE THE BRAZILIAN MARKET FOR ONLY THOSE HELICOPTERS MADE BY MAJORITYOWNED BRAZILIAN FIRMS.

THE U.S. INDUSTRY ALSO MAINTAINS BRAZIL'S TAXES AND

GENERAL AVIATION AIRCRAFT FEES INCREASE IMPORTED AIRCRAFT COSTS MORE THAN 90 PERCENT UNLESS A WAIVER IS

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GRANTED. THE LANDED PRICE OF U.S.-MANUFACTURED AIRCRAFT OFFERED FOR SALE IN BRAZIL IS VIRTUALLY DOUBLE THE C.I.F. PRICE.

BRAZIL IS NOW CONSIDERING ADDITIONAL FINANCING FOR NEW GENERAL AVIATION AIRCRAFT WHICH, IF NOT FULLY RECOVERED IN THE SALES PRICE, MAY ALSO CONSTITUTE UNFAIR COMPETITION FOR U.S. MANUFACTURERS. EMBRAER OF BRAZIL AND FIBRICA MILITAR DE AVIONES (FMA) OF ARGENTINA PLAN TO COPRODUCE A PRESSURIZED, 19-PASSENGER, TURBOPROP AIRCRAFT TO BE DESIGNATED THE EMB-123 IN BRAZIL AND IA70 IN ARGENTINA. EMBRAER WILL PROVIDE TWO-THIRDS AND FMA ONE-THIRD OF THE ESTIMATED \$300 MILLION DEVELOPMENT COSTS.

B. ESTIMATED IMPACT
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DURING THE EARLY 1970S BEFORE RESTRICTIONS WERE IMPOSED, THE UNITED STATES EXPORTED 200 TO 600 GENERAL AVIATION AIRCRAFT TO BRAZIL, ITS LARGEST FOREIGN MARKET, EACH YEAR. SINCE 1976 THE RESTRICTIONS HAVE ALL BUT ENDED ASSEMBLED AIRCRAFT EXPORTS.

IN 1985 10 FULLY ASSEMBLED U.S. GENERAL AVIATION AIRCRAFT WERE SOLD IN BRAZIL ALONG WITH 77 SHIPMENTS OF AIRCRAFT PARTS TO BE ASSEMBLED IN BRAZIL. THIS AGAIN MAKES BRAZIL THE TOP EXPORT MARKET BY VALUE FOR U.S. GENERAL AVIATION MANUFACTURERS.

THE U.S. GENERAL AVIATION INDUSTRY IS CONCERNED ARGENTINE AND BRAZILIAN SUBSIDIES FOR THE EMB-123/IA-70 MAY LOWER THE SELLING PRICE BELOW THE AIRCRAFT'S TRUE MARKET COST, THUS GIVING IT AN UNFAIR ADVANTAGE COMPARED TO SIMILAR U.S.-MANUFACTURED AIRCRAFT.

C. ACTIONS TAKEN OR TO BE TAKEN

AT A DECEMBER 1985 MEETING IN BRASILIA, BRAZIL ANNOUNCED IT WOULD UNILATERALLY REDUCE ITS TARIFF ON GENERAL AVIATION AIRCRAFT AND LIBERALIZE THE ISSUANCE OF AIRCRAFT IMPORT LICENSES. ON JANUARY 30, 1986 THE BRAZILIAN CUSTOMS POLICY COMMISSION PASSED RESOLUTION

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02-0897 WHICH LOWERED THE TARIFF ON AIRCRAFT UNDER 7,000 KILOGRAMS (15,400 POUNDS) FROM 50 TO 20 PERCENT. ON APRIL 23, 1986 THE CIVIL AIR TRANSPORTATION COORDINATION COMMISSION (COTAC) PASSED RESOLUTION 12/86, WHICH AUTHORIZED IMPORT LICENSES TO BE GRANTED WITHIN

30 DAYS FOR AIRCRAFT ON WHICH THE TARIFF AND ALL RELEVANT TAXES ARE PAID.

THE UNITED STATES RAISED THE MATTER OF NEW GOVERNMENT UNCLASSIFIED

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SUPPORT FOR GENERAL AVIATION AIRCRAFT IN OCTOBER 1986.

IN ADDITION TO REDUCING BRAZIL'S IMPORT BARRIERS, THE UNITED STATES SOUGHT BRAZILIAN ADHERENCE TO THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) STANDSTILL AGREEMENT ON AIRCRAFT FINANCING TO RESTRAIN THE SUBSIDY ELEMENT IN BRAZIL'S EXPORT FINANCE. THE UNITED STATES WOULD ALSO LIKE BRAZIL TO SIGN THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT. IT PLANS TO REOPEN NEGOTIATIONS IN THE NEAR FUTURE.

PHARMACEUTICALS

A. DESCRIPTION

IN OCTOBER 1984 BRAZIL'S OUTGOING ADMINISTRATION ISSUED A REGULATION (PORTARIA 4), REQUIRING ALL NEW SPECIALTY CHEMICAL PRODUCT PROJECTS TO OBTAIN PRIOR APPROVAL FROM THE INDUSTRIAL POLICY AUTHORITY, CDI. SPECIALTY CHEMICALS ARE DEFINED AS RAW MATERIALS, PHARMACEUTICALS AND ADDITIVES USED IN DRUGS AND A VARIETY OF CHEMICAL PRODUCTS.

CDI IS EMPOWERED TO BAN ANY FOREIGN INVESTMENT THAT WOULD COMPETE WITH A BRAZILIAN-CONTROLLED COMPANY IF INTERNAL DEMAND IS JUDGED INSUFFICIENT FOR MORE THAN ONE COMPANY. IN EFFECT, PORTARIA 4 APPLIES A MARKET RESERVE PRINCIPLE TO SPECIALTY CHEMICALS.

IN JULY 1986 A BRAZILIAN INTERAGENCY TASK FORCE GAVE THE PRESIDENT A NEW INDUSTRIAL DEVELOPMENT PLAN TO EXPAND PORTARIA 4 AND CODIFY A DE FACTO MARKET RESERVE

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POLICY FOR PHARMACEUTICALS AND FINE CHEMICALS. CDI
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WILL HAVE TO AUTHORIZE ALL NEW INVESTMENTS. APPROVAL
CRITERIA WOULD INCLUDE LOCAL OWNERSHIP, TECHNOLOGY
CONTROL AND HIGH LEVELS OF VALUE ADDED.

THE DRAFT DECREE WILL ALSO RAISE IMPORT TARIFFS FOR
CERTAIN CHEMICAL PRODUCTS, CHANNEL RESOURCES TO
GOVERNMENT-AFFILIATED RESEARCH AND DEVELOPMENT CENTERS
AND UNIVERSITIES AND PROVIDE RESEARCH SUBSIDIES TO
FIRMS.

IN ADDITION, THE GOVERNMENT WILL REQUIRE THE CENTRO DE
MEDICAMENTOS, WHICH IS RESPONSIBLE FOR BUYING AND

DEVELOPING MEDICINES USED IN THE PUBLIC HEALTH SYSTEM,
TO SET SPECIFIC "NATIONAL" INDICES FOR ALL DRUGS IT
BUYS. THIS WILL APPLY NOT ONLY TO LOCAL CONTENT BUT TO
BRAZILIAN OWNERSHIP AS WELL.

STRICT PRICE CONTROLS IN BRAZIL HAVE SEVERELY HAMPERED
U.S. COMPANIES' EFFORTS TO RECOVER THE COSTS OF
RESEARCH, DEVELOPMENT AND MARKETING OF PRESENT AND
FUTURE PRODUCTS.

SINCE 1969 THERE HAS BEEN NO PATENT PROTECTION FOR
PHARMACEUTICALS, ANIMAL HEALTH OR FOOD PRODUCTS IN
BRAZIL. THIS BAN EXTENDS TO FINE CHEMICALS AND
ADDITIVES USED TO PRODUCE COSMETICS AND HYGIENE
PRODUCTS. THE LACK OF PATENT PROTECTION ENABLES PIRATE
PRODUCERS TO IMPORT OR COPY RAW MATERIALS AS WELL AS
FINISHED PRODUCTS AT LESS THAN THE ORIGINATOR'S FULL
PRODUCTION COST. IN SOME INSTANCES FOREIGN COMPANIES
ARE NOT AUTHORIZED TO BRING IN IMPORTS WHEN A SIMILAR
PIRATED PRODUCT IS AVAILABLE LOCALLY.

B. ESTIMATED IMPACT

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IN 1985 THE UNITED STATES EXPORTED APPROXIMATELY \$70 MILLION IN PHARMACEUTICALS TO BRAZIL. TOTAL U.S. PHARMACEUTICAL COMPANY INVESTMENT IN BRAZIL IS ABOUT \$1.1 BILLION.

MOST U.S. FIRMS REPORT THEIR RETURN ON NET WORTH DECLINED FROM NEARLY 31 PERCENT IN 1983 TO 11 PERCENT IN 1985, PARTLY AS A RESULT OF GOVERNMENTAL PRICING POLICIES. ESTIMATES OF LOST SALES AND INVESTMENTS DUE TO BRAZIL'S DE FACTO MARKET RESERVE POLICIES AND INADEQUATE INTELLECTUAL PROPERTY PROTECTION ARE BEING DEVELOPED FOR LATE 1986 BILATERAL CONSULTATIONS.

C.ACTIONS TAKEN OR TO BE TAKEN

THE UNITED STATES HAS RAISED THESE ISSUES IN PREVIOUS U.S.-BRAZIL TRADE SUBGROUP TALKS, MOST RECENTLY IN DECEMBER 1985. IN EARLY APRIL 1986 THE UNITED STATES OFFICIALLY REQUESTED CONSULTATIONS WITH BRAZIL. BRAZIL FINALLY AGREED TO MEET WITH THE UNITED STATES IN NOVEMBER 1986. SHULTZ

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