

Statement on Behalf of

BSA | The Software Alliance

Before the

HOUSE COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON TRADE

On

“US – Brazil Trade and Investment Relationship: Opportunities and Challenges”

BSA | The Software Alliance  
June 26, 2013

## INTRODUCTION

BSA | The Software Alliance (BSA)<sup>1</sup> appreciates this opportunity to provide the House Ways and Means Subcommittee on Trade the following statement for inclusion in the record of the hearing on US – Brazil Trade and Investment Relationship: Opportunities and Challenges held on June 12, 2013.

BSA is the leading global advocate for the software industry. It is an association of world-class companies that invest billions of dollars annually to create software solutions that spark the economy and improve modern life. BSA member companies make products that enable and provide solutions for all sectors of the economy.

Access to global markets and strong protection and enforcement of intellectual property (IP) rights are key priorities for BSA members. Overseas markets now represent more than half our members' overall business. Yet many obstacles challenge our members' ability to sell their products and services in foreign markets, hampering their ability to contribute to economic and job growth in the United States. They also undercut the ability of businesses and consumers in other countries to access the best and most cost effective products and services.

BSA has been active in Brazil since 1998. It's a critical market for our members, because they see clearly Brazil's potential including highly trained and inventive professionals, sophisticated industry, and a passion for innovation and technology. This statement highlights the important challenges BSA member companies face in this important emerging market.

### **SOFTWARE PIRACY:**

BSA recognizes Brazil's progress in combating software piracy. The rate of PC software piracy has dropped from 59 percent in 2007 to 53 percent in 2011. However, this still represents a significant level of unlicensed software use – including by businesses and other enterprises – which has an estimated commercial value of more than \$2.8 billion.<sup>2</sup>

Strong IP protection is a necessary condition to support the development of innovative products by our member companies and to stimulate economic growth and prosperity. BSA recently released in conjunction with INSEAD a study entitled *Competitive Advantage: The Impact of Properly Licensed Software*. This analysis draws on data from 95 countries and calculates the benefits to national economies of using fully licensed software. The study confirms that increasing use of licensed software corresponds to substantial positive gains in GDP, and that the economic stimulus effect of properly licensed software is significantly greater than that of pirated software.

In Brazil, increasing legal software use by 1 percent would add \$743 million to Brazil's economy. Every single dollar worth of properly licensed software delivers a staggering \$33 return on investment in Brazil.

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<sup>1</sup>BSA's members include: Adobe, Apple, Autodesk, Bentley Systems, CA Technologies, CNC/Mastercam, Dell, IBM, Intel, Intuit, McAfee, Microsoft, Minitab, Oracle, PTC, Rosetta Stone, Siemens PLM, Symantec, and The MathWorks.

<sup>2</sup>BSA | The Software Alliance's 2012 Global Software Piracy Study, Ninth Annual BSA and IDC Global Software Piracy Study (May 2012).

BSA also recognizes the important role that the CNCP<sup>3</sup> (the main government entity responsible for the central coordination and implementation of Brazil's national anti-piracy campaign) plays in improving the enforcement of intellectual property rights in Brazil. However, Brazil's enforcement systems (both criminal and civil) suffer from critical bottlenecks, huge case backlogs and other deficiencies. BSA would like to highlight three among the many that are mentioned in the submission of the International Intellectual Property Alliance (IIPA) to USTR for the 2013 Special 301 Report:

- Prosecutors and judges lack specialized training in IPR cases, and there is no effective national program to train them. Last year, BSA sponsored four training sessions for eighty court experts on how to examine and identify unlicensed software. The CNCP has been active in promoting these events but efforts and resources need to be expanded considerably.
- Court backlogs and delays often undermine BSA enforcement campaigns to encourage business to legalize their software. Criminal cases can take up to four years to reach a verdict and civil cases can run up to 15 years to reach a final decision.
- BSA and its member companies face high expenses for forensic experts who conduct searches and seizures in civil cases, as sampling and private sector assistance in forensic work is not allowed under Brazilian law, and for bonds imposed on US and other foreign right holders in court proceedings.

## **GOVERNMENT PROCUREMENT OF SOFTWARE**

In August 2012, Brazil's Ministry of Science, Technology & Innovation (MCTI) released its "Bigger IT Plan" to bolster the growth of the domestic IT industry. The plan focuses heavily on software and related services including a new process to evaluate and certify software products that are locally developed in order to qualify for government procurement price preferences that could be as high as 25 percent.

BSA submitted comments to the Brazilian government raising serious concerns about the proposed software certification program for government procurement preferences – the Certification of National Technology Software and Related Services (CERTICS) program -- in December 2012. BSA has also raised this issue with the US government.

On June 18, Brazil's Secretary of IT Policies formally launched the CERTICS program. CERTICS aims to promote and identify domestically developed software and related services through a "voluntary" evaluation and certification process that allows the software to qualify for significant government price procurement preferences.

The implementation of the final CERTICS methodology remains unclear. However, we understand that preference for local software in federal government procurement will remain with a ceiling of 25 percent. The certification process should enter into force 60 days after its publication in the Brazilian official gazette June 19.

According to the ABES, the local software association, Brazil's software market is valued at \$9 billion in licenses. Of those, 8.7 percent were government procurement purchases. Seventy percent of software sold in Brazil is made by American companies.

BSA appreciates the goal of the Brazilian government to bolster local software development, but this should not be done in a way that discriminates against foreign providers of software. This will close down a significant part of the software market to US and other foreign companies and deny Brazilian government agencies the ability to choose the best products to meet their needs.

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<sup>3</sup> The National Council to Combat Piracy and Crimes Against Intellectual Property

We urge that this program be delayed and consultations with industry continue on alternative means to bolster local software and IT development.

#### **PATENT PENDENCY:**

As reported in the IIPA Special 301 submission, Brazil's backlog of pending patent applications undermines IP protection and market access for both foreign and Brazilian software companies in the Brazilian market. There is a 10-year backlog in computer implemented patent applications in part because the Brazilian patent office is understaffed, with only 12 examiners in the ICT division.

BSA urges the Brazilian government to move forward with the March 14, 2012, proposed Patent Examination Guidelines for computer-implemented inventions and to build on the efforts to support significant increases in the number of patent examiners.

#### **PERSISTENT TARIFFS ON IT PRODUCTS**

Software and other IT products continue to face tariff barriers. The multilateral Information Technology Agreement (ITA) removed tariffs on a substantial number of IT products when it was concluded more than 15 years ago. Negotiations are currently underway between the United States and several other ITA members to update the agreement and expand the number of products covered. Brazil is not a member of the ITA and is not participating in the current negotiations. This means that US software and other IT products may face continued and significant tariffs in Brazil. The United States should urge Brazil to join the ITA and the current efforts to expand the agreement.

BSA appreciates the opportunity to raise the important issues our members face in Brazil as this Subcommittee seeks to address the challenges and opportunities in this bilateral trade relationship.