

Brazil

1. Industrial Strategy (Including Objectives/Goals)

In 2024, Brazil designed and started implementing a coherent industrial strategy.¹ This moment also represented a turning point for the country. Until not too long ago, the country had been officially positioning itself against a political economy characterised by the development of industrial policies.² The overarching theme of Brazil's new industrial strategy is its focus on innovation and sustainability, singling out strategic areas for investment. Environmental concerns underlie the country's strategic direction. A particularity of this industrial strategy, which can be seen with the industrial strategies of other countries that have also been adopted more recently (such as the South African one) is its focus on international presence. Brazil's industrial strategy is also a response to what many policymakers see as the country's "premature industrialization".³ This can explain why a feature of the new industrialisation process is heavily focused on local content requirements and envisions a mixture of subsidising and other policies, such as the design of a public project and procurement policy.

Brazil's industrial strategy is built on six pillars, which seek to:

- **ensure food security** for Brazilian citizens (especially by strengthening agro-industrial chains);
- **build resilience in the health sector** by increasing the share of production of medical equipment and devices, vaccines, and medicines from 42% to 70%;
- increase the **well-being of people living in urban areas** (through sustainable infrastructure, adequate sanitation, housing and ensuring mobility);
- ensure **digital transformation** (for instance, by tripling the share of national production in new tech areas);
- focus on **bioeconomy, decarbonisation, energy transition, and energy security** (for instance, ensure that the transport sector uses at least 50% of biofuels);
- **address defence concerns** (for instance, autonomy in the production of 50% of critical technologies). Nuclear energy becomes a priority focus, especially for defence purposes.

¹ gov.br, "Brazil Launches New Industrial Policy with Development Goals and Measures up to 2033" (26 January 2024) <<https://www.gov.br/planalto/en/latest-news/2024/01/brazil-launches-new-industrial-policy-with-development-goals-and-measures-up-to-2033>> accessed 23 February 2025. This was approved in March 2024 by the National Council for Industrial Development in March 2024 (see Ministero degli Affari Esteri e della Cooperazione Internazionale, "Brazil – New industrial policy for the country's development adopted by the Brazilian Government" (4 March 2024) <https://www.esteri.it/en/sala_stampa/archivionotizie/approfondimenti/2024/03/brasile-adottata-dal-governo-brasiliano-la-nuova-politica-industriale-per-lo-sviluppo-del-paese/>>).

² Mateus Labrunie, "Brazil's new industrial policy plan: three sources of optimism and three words of caution" (Cambridge Industrial Innovation Policy) <<https://www.ciip.group.cam.ac.uk/reports-and-articles/brazil-new-industrial-policy-plan/>> accessed 23 February 2025.

³ gov.br (n 1).

In addition, Brazil has benefitted from developing-country status at the WTO, although this has raised questions in the context of its role as a major agricultural exporter.⁴

2. Digital (Development) Strategy

In 2018, Brazil adopted its digital transformation strategy.⁵ The strategy is built around five broad thematic axes:

- infrastructure and access to ICT technologies;
- research, development, and innovation;
- building trust and confidence in the digital environment (this includes the protection of rights and privacy, but also addresses defence and security aspects);
- education and professional qualification;
- international dimension. This dimension establishes an outward-oriented digital development strategy. In fact, the strategy singles out how negotiations at the WTO on e-commerce are essential for enabling new digital business models.⁶

3. Main Constitutional Provisions

Various constitutional provisions have an impact on Brazil's power to adopt industrial policies.⁷ For instance:

- Article 21(XXIII) establishes among the competences of the federal government its role in nuclear industrialisation;
- Article 153 safeguards the power to tax industrialized products, which could also be seen as a reinforcement of the government's powers to impose trade remedies. Nonetheless, the same article also exempts products destined for export from this power, which could raise questions under the WTO's Subsidies and Countervailing Measures Agreement.⁸
- Article 70 of the Brazilian Constitution establishes that the National Council should exercise control over the application of subsidies.⁹

⁴ Till Schöfer, Clara Weinhardt, "Developing-country status at the WTO: the divergent strategies of Brazil, India and China" (2022) 98(6) International Affairs 1937, 1944-8.

⁵ gov.br, "Brazilian Digital Transformation Strategy" <<https://www.gov.br/mcti/pt-br/centrais-de-conteudo/comunicados-mcti/estrategia-digital-brasileira/digitalstrategy.pdf>> accessed 23 February 2025.

⁶ Idem, 56.

⁷ Idem.

⁸ Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14.

⁹ Constitution of the Federative Republic of Brazil (3rd edition) (2010) <https://www.stf.jus.br/arquivo/cms/legislacaoConstituicao/anexo/brazil_federal_constitution.pdf> accessed 23 February 2025.

- According to Article 150(6) of the Constitution, any form of subsidy (at least as it is related to tax matters) can only be granted *via* law, according to Article 150(6) of the Constitution.
- Article 199(2) establishes a prohibition for the disbursement of subsidies in the health sector if their goal is to aid profit-oriented institutions.

4. Main Regulatory Provisions and Policy Developments

Relevant **regulatory frameworks** include:

- the Internet Act;¹⁰
- the Consumer Protection Code;¹¹
- or the General Data Privacy Law.¹²

As mentioned in the beginning, Brazil has only very recently adopted its industrial strategy and, until recently, it had opposed industrial policies – or at least the development of a coherent industrial strategy. Nonetheless, a few major **policy initiatives** had been adopted in the past, and it is worth mentioning some of them. This includes the Industrial, Technological and Foreign Trade Policy, adopted at the end of 2003. In fact, this was the equivalent of an industrial strategy, as its scope was broad and cross-cutting across industries.¹³ Among others, there was a new institutional organization that facilitated the implementation of the new industrial policy, which included the Brazilian Industrial Development Agency and the National Industrial Development Council.¹⁴

5. (Regional) Economic Treaties to Which the State is a Signatory

Perhaps the most relevant regional trade agreements that Brazil has signed, and which are in force are the Southern Common Market Agreement¹⁵ and the Global System of Trade Preferences among Developing Countries.¹⁶ The former, besides liberalising trade between its members, also contains several protocols that address, among others, trade in services, or aspects concerning rules of origin of MERCOSUR.

¹⁰ Law no. 12,965 (Macro Civil Law of the Internet in Brazil) of 23 April 2014.

¹¹ Law no. 8,078/1990 (Consumer Protection Code) of 11 September 1990.

¹² Law no. 13,709 (General Law on Personal Data Protection) of 14 August 2018.

¹³ Wilson Suzigan and João Furtado, “Industrial Policy and Development” (2006) 89 CEPAL Review 69, 77-81.

¹⁴ *Idem*, 80-1.

¹⁵ Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (signed 26 March 1991, entered into force 29 November 1991).

¹⁶ Agreement on the Global System of Trade Preferences among Developing Countries (signed 13 April 1988, entered into force 19 April 1989).

6. *Plurilaterals*

Brazil has been involved in various plurilateral initiatives, particularly at the WTO. This includes the Agreement on Government Procurement, or the Investment Facilitation for Development.

7. *Proceedings initiated against the state, or by it, before international fora for the adoption/implementation of industrial policy measures (e.g., before WTO panels, the WTO's AB)*

Brazil has been involved in multiple proceedings at the WTO, either as a complaining party or as a respondent. For instance, in 2016 it initiated a request for consultations with the USA because of the latter's imposition of countervailing measures on cold- and hot-rolled steel products from Brazil.¹⁷ Perhaps the most relevant dispute for present purposes is the *Brazil-Taxation* dispute, whereby proceedings were initiated by the European Union and Japan for the implementation of industrial programmes that involved the subsidisation of various firms and products.¹⁸ The Appellate Body confirmed the Panel's previous report finding Brazil in breach of several provisions of the GATT, SCM Agreement, and TRIMs Agreement.¹⁹

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¹⁷ United States - Countervailing measures on cold- and hot-rolled steel products from Brazil. Request for Consultations from Brazil (WT/DS514/1; G/L/1166; G/SCM/D112/1. The consultations are still ongoing.

¹⁸ Brazil – Certain Measures concerning Taxation and Charges (WT/DS472/AB/R; WT/DS497/DS/R (13 December 2018).

¹⁹ For an extensive analysis (including how the AB's reasoning regarding prohibited local content requirements under the SCM Agreement, distinguishing them from legitimate eligibility criteria, might facilitate the circumvention of the SCM's prohibition of local content requirements), see Emanuel Ornelas and Laura Puccio, "Reopening Pandora's Box in Search of a WTO-Compatible Industrial Policy? The *Brazil-Taxation* Dispute" (2020) 19(2) World Trade Review 249.