

# Capital Account Regulations and the Trading System Brazilian experience at GATS and IIAs with capital flows regulation

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# Brazilian FDI regime

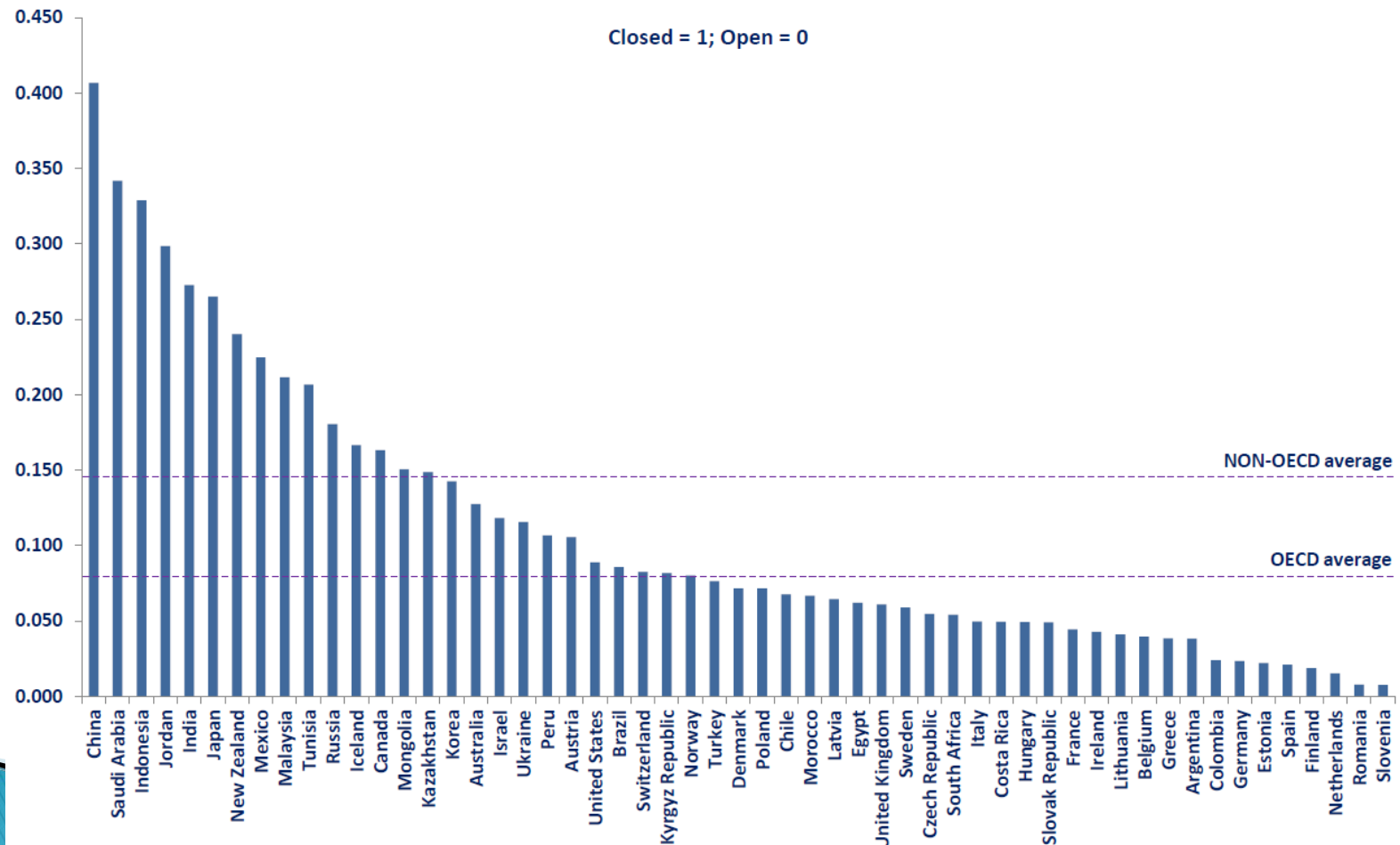
- ▶ The **FDI regime in Brazil** has been fairly **open** during the last decades.
- ▶ Except in specific situations in the legislation or as a manner to circumvent FDI limitations, there is **no distinction between established companies in Brazil by capital origin**.
- ▶ **Agriculture and Manufacturing activities** are almost entirely **open** to foreign investors.
- ▶ Limitations on Services Sectors does not impair **strong foreign presence** on **key economic sectors** like **Telecommunications, Maritime Transportation, Financial Services, Energy, IT and Distribution Services**.
- ▶ Apart from legal exceptions, Government Procurement, including **public service concessions**, will be contracted through process of **public bidding with no discrimination to foreign established bidder**.

# Limitations to foreign capital in Financial Services Sector

- ▶ **Banking:** Brazil's banking sector includes **significant foreign investment and representation**. Constitution of 1988 technically restricts new foreign investment in Banking, except for national interest – which means a **Presidential Decree** for each request. All requests for entry have been approved after the Central Bank verification that the foreign financial institution has fulfilled the same regulatory requirements applied to a national financial institution.
- ▶ **Insurance:** **Since 1996** almost all the insurance sector has been **open** to foreign investors participation. In **2007**, Complementary Law 126 eliminated the former state monopoly on **reinsurance** and set conditions for foreign participation in this market.
- ▶ For more information: [www.fazenda.gov.br](http://www.fazenda.gov.br); [www.bcb.gov.br](http://www.bcb.gov.br);  
[www.cvm.gov.br](http://www.cvm.gov.br); [www.susep.gov.br](http://www.susep.gov.br)

# Brazil at OECD FDI regulatory restrictiveness index

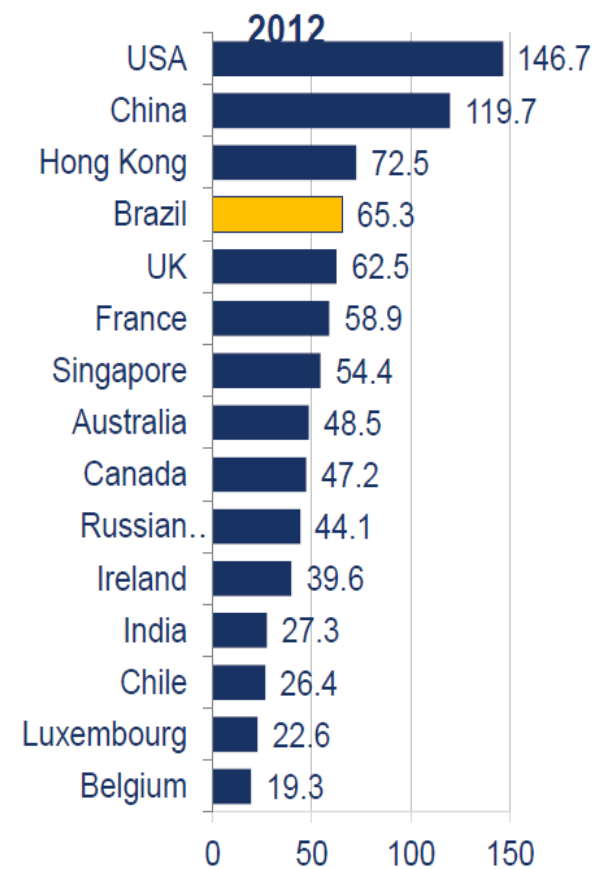
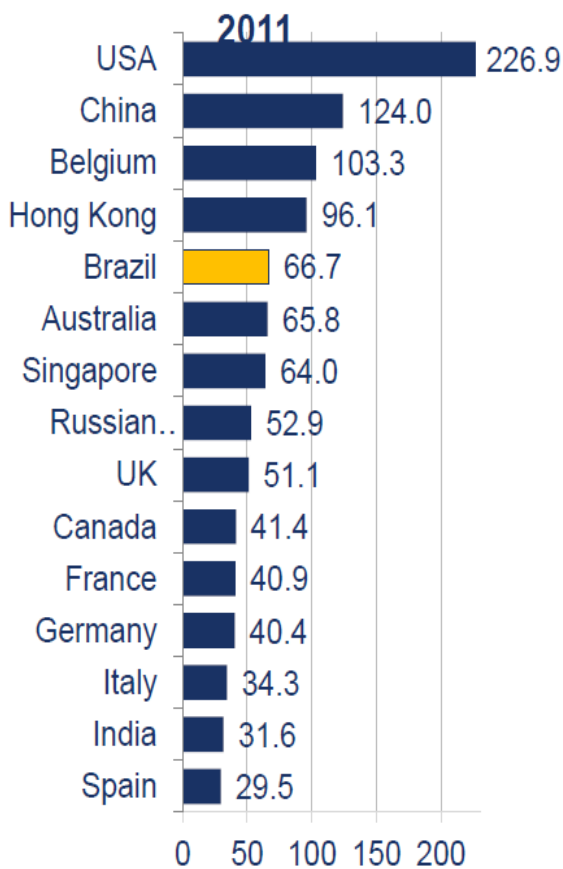
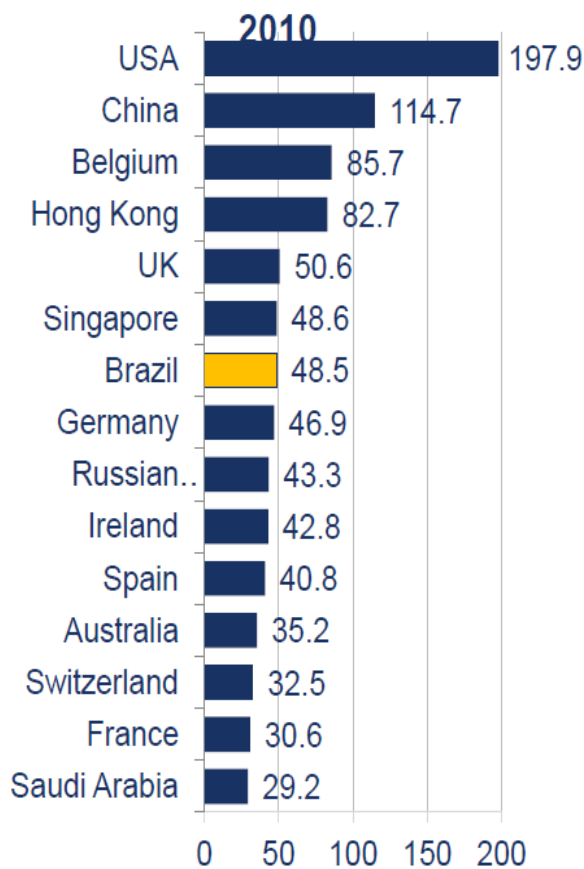
- **Brazilian FDI regime** is considered more **open** than many key OECD Countries



Source: OECD 2012



# Brazil is Leading Recipient of FDI



Source: UNCTAD

# Foreign Capital Treatment

- ▶ **No screening mechanism** for foreign investment as some countries.
- ▶ Brazil does not discriminate the type of capital that can enter the country, does not impose quotas or any type of quantitative restraints.
- ▶ In accordance with laws and regulations applying to foreign investments in Brazil, all foreign capital invested in Brazil must be **registered with the Central Bank of Brazil to be eligible for remittances**.
- ▶ At **any time** and **without prior authorization**, **capital repatriation, remittances, interest and loans payments may be made**, though registration may be required. Thus Brazil does not adopt capital restrictions as to the exit of the capital.
- ▶ Foreign Capital legislation:
  - Laws: 4.131, de 3.9.1962; 9.069, de 29.5.1995; 11.371, de 28.11.2006. Decree-Law: 1.060, de 21.10.1969; Provisional Measure: 2.224, de 4.9.2001.

Also National Monetary Council and Central Bank rules ([www.bcb.gov.br](http://www.bcb.gov.br)).

# Prudential Measures in Brazil

- ▶ Brazilian **macroeconomic framework** is based on **fiscal responsibility, floating exchange regime and inflation target regime**. Any variable that affects one of these three pillars is quite important to be assessed and monitored by Government.
- ▶ **To achieve macroeconomic stability**, under specified circumstances, Brazil may adopt **temporary prudential related measures** in order to stimulate or discourage certain types of capital inflows, including tax measures.
- ▶ After 2008, in the context of the **economic crisis on advanced economies**, there was a generalized reduction of tax rate over the world aimed to provide liquidity to markets and to try to speed recovery.
- ▶ Brazil adopted macro prudential measures in order to **reduce undesirable side effects**: the **excessive capital inflows in the short-term** which reflects on the exchange rate, leading to current account deficits, asset bubbles and finally crisis.

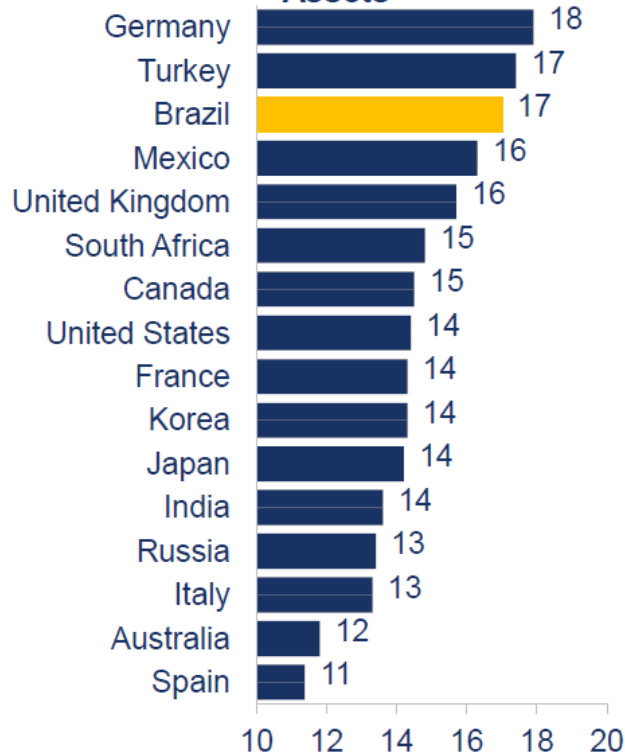
# Recent Prudential Measures

- ▶ **Capital flows management** (CFM) measures in Brazil involved:
  - Tax measures
  - Capital requirements on consumer loans with longer maturities and higher LTV ratios
  - FX intervention, including through FX swaps
- ▶ Also, banks face a **rigorous FX exposure regulation**:
  - more stringent FX capital adequacy ratio (CAR);
  - maximum leverage ratio on FX limited to 30% of regulatory capital (second line of defense);
  - reserve requirements applied to excessive short spot FX position (discouraging excessive risk taking).
- ▶ These measures were **quite successful** in moderating consumer credit expansion, inhibiting riskier types of inflows and reducing short term borrowing. It also resulted in reduced short-term capital flows (volatile).

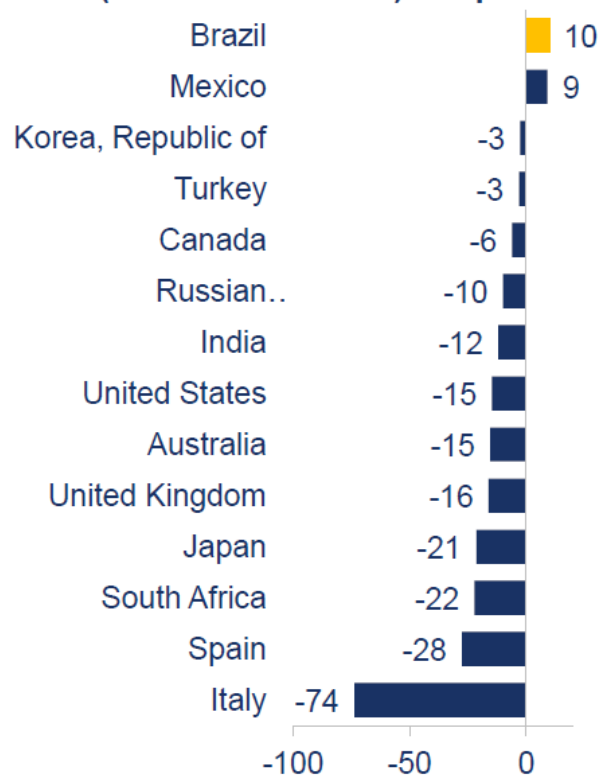


# Brazil: Sound Financial System

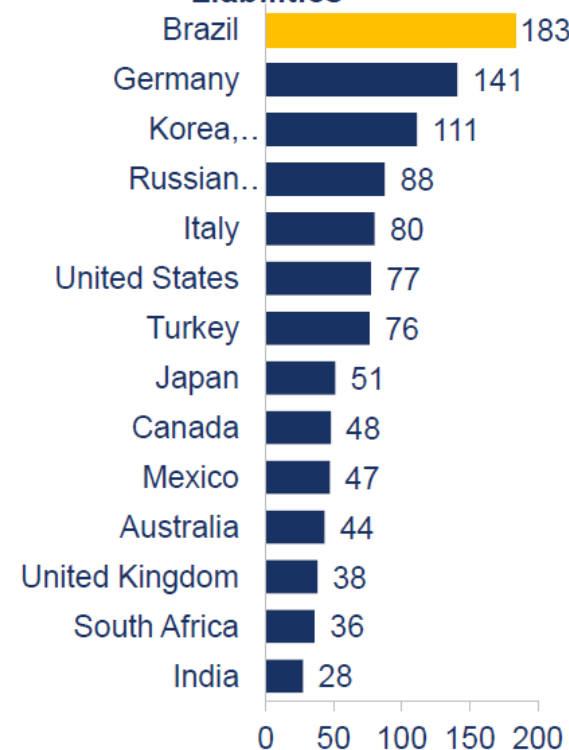
**Regulatory Capital to Risk-Weighted Assets**



**( Provisions – NPL) / Capital**



**Liquid Assets to Short Term Liabilities**



Source: IMF/FSI  
(latest available data)

# Foreign Investment in Brazil

Volatility did not affect the capital account of the balance of payments

In US\$ million

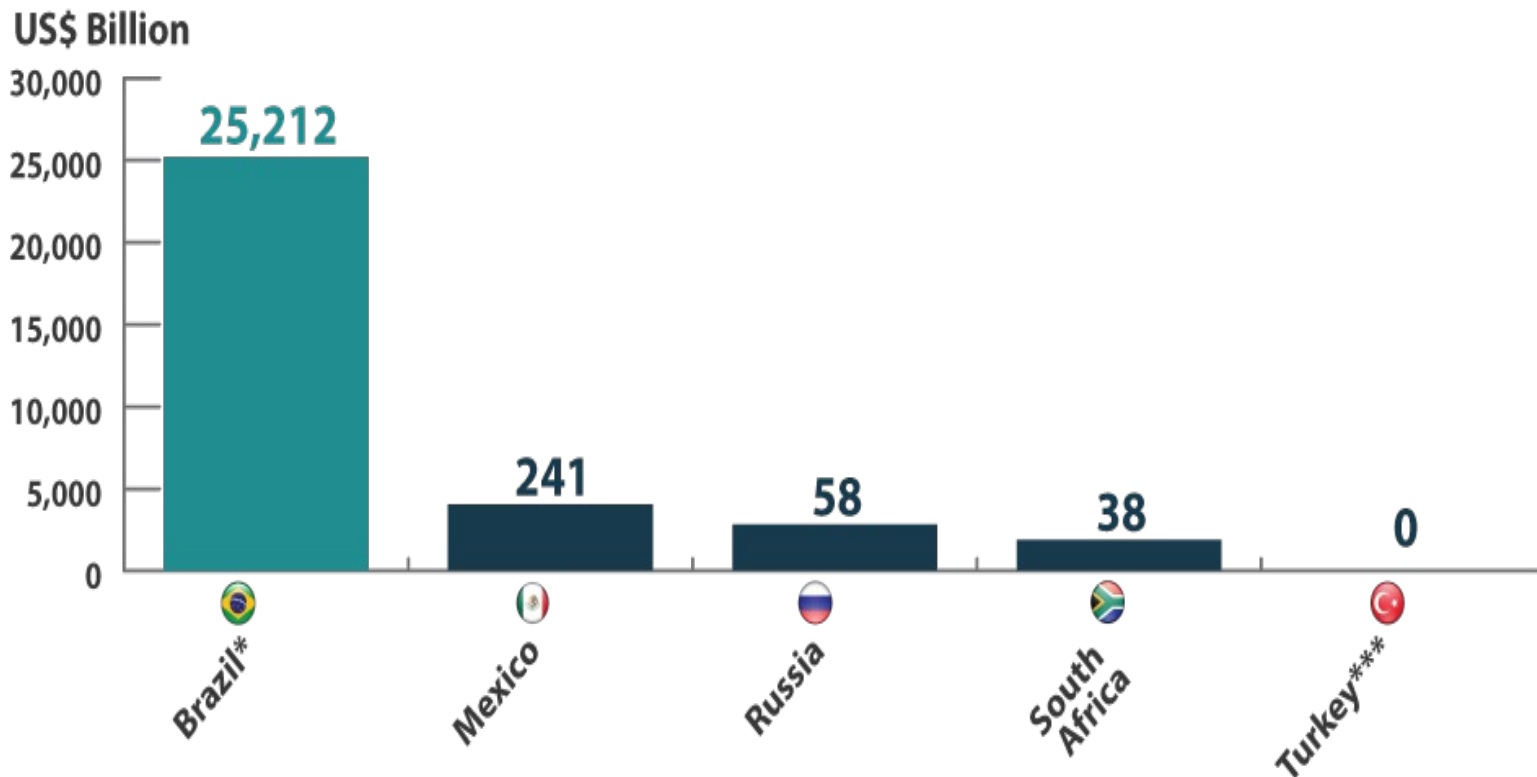
|                         | 2012   |         | 2013   |         | 2013      |
|-------------------------|--------|---------|--------|---------|-----------|
|                         | Aug    | Jan-Aug | Aug    | Jan-Aug | Estimate* |
| Current Account         | -2,551 | -31,541 | -5,505 | -57,952 | -75,000   |
| Financial Account       | 2,421  | 56,002  | 2,001  | 61,648  | 76,500    |
| Direct Investment (net) | 3,665  | 45,905  | 2,540  | 43,800  |           |
| FDI                     | 5,035  | 43,204  | 3,775  | 39,014  | 60,000    |
| Portfolio Investment    | 1,720  | 5,427   | 5,838  | 22,145  |           |
| Other Investments       | -2,980 | 4,558   | -6,415 | -4,432  |           |

\* Central Bank of Brazil estimate.

Source: Central Bank of Brazil  
Produced by: Ministry of Finance

# The role of derivatives in Brazil: second largest market for interest-rate options and futures

In billions of U.S. dollars and millions of contracts, traded in 2012

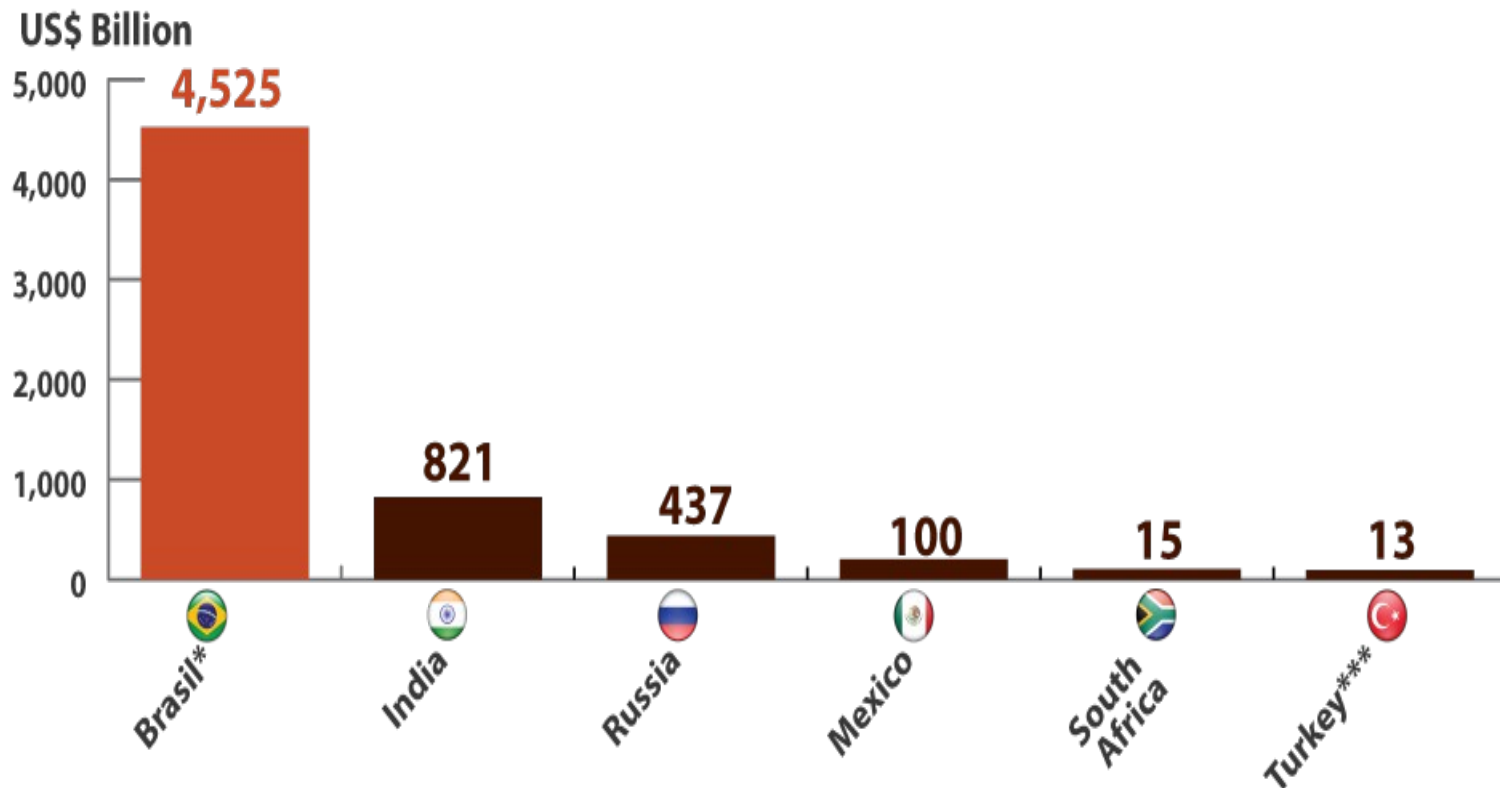


- ▶ \* For Brazil, indicators only include futures and options operations.
- ▶ \*\* In China, currency derivatives are not traded (FX restriction).
- ▶ \*\*\* Turkdex Annual Market Statistics (Annual Fact Book 2012).

Source: World Federation of Exchanges  
Produced by: Ministry of Finance

# Sixth largest market for currency options and futures

In billions of U.S. dollars and millions of contracts, traded in 2012



- ▶ \* For Brazil, indicators only include futures and options operations.
- ▶ \*\* In China, currency derivatives are not traded (FX restriction).
- ▶ \*\*\* Turkdex Annual Market Statistics (Annual Fact Book 2012).

Source: World Federation of Exchanges /  
Futures Industry Association Magazine  
March 2013

Produced by: Ministry of Finance

# Brazil's Financial Services Commitments and Negotiations

|                     | Schedule approach | Cross-border Commit. | Establishment (Mode 3) | BP Prov. | Financial Serv. Annex | Macro Prudential |
|---------------------|-------------------|----------------------|------------------------|----------|-----------------------|------------------|
| GATS                | Positive list     | No                   | Limited                | yes      | yes                   | Permitted        |
| Montevideo Protocol | Positive list     | Limited              | Status quo             | yes      | yes                   | Permitted        |
| Mercosur-Chile      | Positive list**   | **                   | **                     | yes      | **                    | **               |
| Doha Round*         | Positive list     | *                    | *                      | yes      | yes                   | Permitted        |
| Mercosur-Colômbia*  | Positive list     | *                    | *                      | yes      | yes                   | Permitted        |
| Mercosur-EU*        | Positive list     | *                    | *                      | yes      | yes                   | Permitted        |

\* Information based on current negotiations.

\*\* Current agreement envisages future negotiations on Financial Services.



# Brazil's Investment Commitments and Negotiations

- ▶ GATS (mode3)
- ▶ OECD Declaration on International Investment and Multinational Enterprises:
  - Guidelines for Multinational Enterprises
  - National Treatment
- ▶ Brazil-USA Investment Guaranty Agreement
- ▶ Brazil-USA Agreement on Trade and Economic Cooperation (ATEC)
- ▶ Mercosur-EU Services and Establishment Chapter  
*(current negotiations)*

# Brazil's Investment Commitments and Negotiations

- ▶ Brazil's New Approach on Investment Agreement:
  - Investment Cooperation and Facilitation Agreement:
    - ✓ Coverage: **only FDI**;
    - ✓ Cooperation through **Bilateral Joint Commission** meetings;
    - ✓ Facilitation through **National Contact Points** and development of **Thematic Agenda on investment daily basis issues**: transfers, visas, environmental and technical standards, logistics etc.
    - ✓ **Set of Principles**: right to establishment according national legislation, non discrimination (NT and NMF), transfers, direct expropriation and transparency;
    - ✓ Principles for **Responsible Business Conduct**;
    - ✓ **State-State Dispute Settlement**.

# Brazil stance on Financial Services Agreements

- ▶ FTA Services Chapter: place to consolidate reforms, transparency, set favorable conditions for trade and investment.
- ▶ **Capital Account and Financial Services provisions** should refer to **IFIs agreements**, such as IMF, BIS, IOSCO, FSB, IAIS.
- ▶ **Cross-Border Services Commitments** depends on:
  - Cooperation agreements between regulators (to ensure consumer protection, information disclosure, supervision and enforcement);
  - Tax Agreements.

# Global Challenge to Build a Promising Trade and Investment Regime

- ▶ Provide adequate conditions for:  
Trade and Direct Investment
  - Do not protect Capital Speculation or Gambling
- ▶ Under exceptional circumstances, **Capital inflows** may “require a **wide range of policy tools**”;
- ▶ Allow the necessary **Policy Space** for Regulators to achieve their main objectives:
  - to protect **consumers, investors and international trade operators**;
  - to ensure that **markets** are **fair, efficient and transparent**;
  - to **reduce systemic risk**.

- ▶ Thanks.
- ▶ **Erivaldo Alfredo Gomes**  
General Coordinator for Trade Policy  
Secretariat for International Affairs  
Ministry of Finance
- ▶ [www.fazenda.gov.br/sain/](http://www.fazenda.gov.br/sain/)

**Opinions expressed are exclusively those of the author and  
do not necessarily reflect the official position of the Brazilian Government**