



**Comments to the U.S. Trade Representative on USTR-2025-0043,
Section 301 Investigation of Acts, Policies, and Practices of Brazil**

August 18, 2025

This is a joint comment submitted by Public Citizen (PC)¹ and Data Privacy Brasil Research (DPBR),² in response to the United States Trade Representative's (USTR) request for comments on its Section 301 investigation of Acts, Policies and Practices of Brazil related to Digital Trade and Electronic Payments Services; Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access' and Illegal Deforestation.³

We appreciate the opportunity to comment on the USTR's investigation into Brazil's supposedly illegal and unfair trade practices. We would also welcome the opportunity to make our case to the USTR, in person, at the hearing scheduled to be held in September 2025.

Our comments focus on the following issues:

- (1) The absence of any legal basis for adopting trade sanctions against Brazil by the current U.S. administration and the (mis)use of Section 301 of the Trade Act, 1974 (Trade Act), to attempt to create a legal case for implementing trade sanctions against Brazil.
- (2) Brazil's digital laws, regulations, and policies, notably the General Data Protection Law, 2018 (LGPD), social media regulations, and digital payments regulations, do not undermine the competitiveness of U.S. companies. These laws and regulations are not unjustified, unfair, unreasonable, or arbitrary, and they do not discriminate against U.S. companies.
- (3) Brazil's intellectual property laws, specifically those pertaining to pharmaceuticals, provide adequate and effective protection under international obligations and should be respected in line with U.S. commitments to respect trading partners' rights to adopt measures that further the public interest and protect public health.

¹ Public Citizen, established in 1971, is a Washington, D.C., based non-profit consumer advocacy organization with more than 500,000 members across the U.S. For more information please refer to www.citizen.org.

² Data Privacy Brasil Research is a São Paulo based non-profit organization established in 2020, that carries out research and advocacy related to data protection and digital rights. For more information, please refer to [www.https://www.dataprivacybr.org/en/](https://www.dataprivacybr.org/en/).

³ U.S. Trade Representative, "USTR Announces Initiation of Section 301 Investigation of Brazil's Unfair Trading Practices," July 15, 2025, <https://tinyurl.com/ymu38u9c>, last visited on August 5, 2025.

Based on the arguments presented, we urge the USTR to close its current investigation into Brazil's supposed illegal and unfair trade practices in the context of digital trade and digital payment services and intellectual property protection, without returning any findings suggesting a breach of S 301, Trade Act, by Brazil.⁴

1. No Legal Basis for Trade Sanctions Against Brazil

On July 9, 2025, President Trump announced via social media that he sent an official letter to Brazil threatening tariffs of 50% to begin August 1, 2025. President Trump's announcement outlined three ostensible reasons for imposition of the tariffs against Brazil:

- (a) A supposed trade deficit with Brazil, caused by “many years of Brazil’s tariff and non-tariff policies and trade barriers.”
- (b) The supposed “witch hunt” against his long-time friend Jair Bolsonaro, ex-president of Brazil, who is currently on trial before the Supreme Court of Brazil for allegedly instigating a coup following his electoral loss in 2022.
- (c) Recent rulings by the Brazilian Supreme Court on the liability of digital platforms for hosting illegal content.

A cursory examination of the underlying rationale for the decision to impose trade sanctions on Brazil makes it clear that President Trump's actions are not motivated by any real economic or legal factors, but are instead attempts to push the deregulatory agenda of Big Tech companies, while protecting his long-time friend and ally, Jair Bolsonaro, from prosecution in Brazil.

The absence of bona fides behind the announcement of trade sanctions against Brazil is made clear by the fact that *the U.S. does not have a trade deficit with Brazil*. The USTR has in fact noted that, “*The U.S. goods trade surplus with Brazil was \$6.8 billion in 2024, a 23.9% increase (\$1.3 billion) over 2023.*”⁵ President Trump's rationale in his letter to Brazil clearly contradicts the facts on record, with the U.S. actually running an increasing trade surplus over time.

The current administration has imposed tariffs on dozens of countries under the International Emergency Economic Powers Act (IEEPA) starting from April 2025. The invocation of an emergency under the IEEPA is primarily based on supposed trade imbalances between the U.S. and these countries. In May 2025, the U.S. Court of International Trade (USCIT) ruled that the tariffs imposed by the President under the IEEPA exceeded the scope of presidential authority. The decision of the USCIT is currently under appeal before the U.S. Court of Appeals for the Federal Circuit (though the tariffs imposed by the President continue to be in place).

⁴ Our comments focus on the digital and intellectual property related issues raised in the USTR's notice. We do not comment on the other Brazilian policies and laws that are the subject of this investigation.

⁵ U.S. Trade Representative, “Brazil Trade Summary,” <https://ustr.gov/countries-regions/americas/brazil>, last visited on August 5, 2025.

President Trump's proximity to and friendship with Jair Bolsonaro is a matter of public record. Notably, President Trump hosted Bolsonaro in the White House in 2019, while also endorsing his run for reelection in 2021 and 2022, describing him as "one of the great presidents of any country in the world."⁶ as well as the fact that Jair Bolsonaro's son, Eduardo Bolsonaro, who resides in the U.S., has been engaged in lobbying the U.S. administration to step up its attacks on Brazil, including by increasing the tariffs against his home country.⁷ The elder Bolsonaro reportedly put R\$2 million, or around USD\$350,000, in his son Eduardo's hands for the purpose of lobbying President Trump to interfere in the Brazilian Judiciary.⁸ The extent of his lobbying could be much higher, since as of mid-August 2025, Eduardo Bolsonaro has not registered as a foreign agent under the Foreign Agents Registration Act (FARA), nor has the State Department received notification from Eduardo Bolsonaro or the Brazilian government that this lobbying falls under official government activity.⁹

President Trump has explicitly stated that his tariffs were in response to the current trial Mr. Bolsonaro is facing before the Supreme Court of Brazil, an independent constitutional institution of the State of Brazil. Brazil is a sovereign, democratic country with a strong tradition of the rule of law since the end of the military dictatorship in 1985. Notably, Brazil's position in the global Rule of Law index has improved over the last few years, with Brazil now ranked amongst the top half of the 143 countries assessed by the World Justice Project.¹⁰ Insofar as protection of civil and political rights is concerned, the Freedom in the World Project ranks Brazil as "free."¹¹ Article 5, Section LIV of the Brazilian Constitution guarantees due process of law. There appears to be no legitimate claim that Mr. Bolsonaro will be denied constitutional rights during his trial by the Brazilian Supreme Court. Further, there is no credible argument that Brazil's domestic judicial process (directed against its own citizens, in accordance with its own democratic laws) should constitute any sort of national emergency or national security threat for

⁶ Xander Landen, "Bolsonaro Posts Shirtless Dance Video as Trump Urges Brazil to Reelect Him," *Newsweek*, October 2, 2022, <https://tinyurl.com/ha5c6zzz>, last visited on August 5, 2025.

⁷ Arthur Stabile, "For the Supreme Federal Court, R\$2 million sent by Bolsonaro is aligned with Eduardo's actions in the US," *Globo*, July 19, 2025, <https://tinyurl.com/4cvhx7ue>, last visited on August 15, 2025; Nick Cleveland-Stout, "Bolsonaro's Son: I convinced Trump to slap tariffs on Brazil," *Responsible Statecraft*, August 8, 2025, <https://responsiblestatecraft.org/bolsonaro-trump-tariffs/>, last visited on August 12, 2025; Kevin Liptak, "'Trump of the Tropics' fawns over US president, decries 'fake news,'" *CNN*, March 19, 2019, www.cnn.com/2019/03/19/politics/donald-trump-jair-bolsonaro-brazil-white-house, last visited on August 12, 2025; Daniel Carvalho, "Bolsonaro Sees 'Big Trump' as His Ticket out of Brazilian Limbo," *Bloomberg*, January 29, 2025, <https://tinyurl.com/38brf3v9>; Alice Maciel et al., "Inside Bolsonaro's campaign to impose US sanctions on Brazilian judges," *OpenDemocracy*, June 12, 2025, <https://tinyurl.com/ynte728z>, last visited on August 12, 2025.

⁸ Arthur Stabile, "For the Supreme Federal Court, R\$2 million sent by Bolsonaro is aligned with Eduardo's actions in the US," *Globo*, July 19, 2025, <https://tinyurl.com/4cvhx7ue>, last visited on August 15, 2025.

⁹ Nick Cleveland-Stout, "Bolsonaro's Son: I convinced Trump to slap tariffs on Brazil," *Responsible Statecraft*, August 8, 2025, <https://responsiblestatecraft.org/bolsonaro-trump-tariffs/>, last visited on August 12, 2025.

¹⁰ World Justice Project, "Rule of Law Improves in Brazil for the First Time in 8 years," October 23, 2024, https://worldjusticeproject.org/sites/default/files/documents/Brazil_2.pdf, last visited on August 12, 2025.

¹¹ Freedom House, "Freedom in the World 2025: Brazil," 2025, <https://freedomhouse.org/country/brazil/freedom-world/2025>, last visited on August 12, 2025.

the United States. This further indicates the dubious nature of the Executive Order of July 30, 2025, imposing tariffs on Brazil.

The administration is aware that it is on shaky legal ground insofar as the application of tariffs under the IEEPA is concerned. The fact that the U.S. has a trade surplus with Brazil makes it legally dubious for the president to use the emergency powers conferred by the IEEPA to impose trade sanctions on Brazil. The current proceedings under S 301, Trade Act, seem to be an attempt to provide the threatened illegal and arbitrary sanctions against Brazil some measure of *post hoc* legality. In essence, the current investigation is unsound and could be interpreted as a fig leaf to cover the arbitrary and illegal imposition of tariffs on Brazil, for matters that are political in nature.

As noted by a group of U.S. senators in a recent letter to President Trump:

...the threat to impose 50 percent tariffs on all imports from Brazil and ordering the U.S. Trade Representative to launch an investigation under Section 301 of the Trade Act of 1974 are primarily intended to force Brazil's independent judicial system to stop the prosecution of Brazilian former President Jair Bolsonaro. Interfering in another sovereign nation's legal system sets a dangerous precedent, provokes an unnecessary trade war and puts American nationals and companies at risk of retribution.¹²

We caution the USTR against being used as a political tool. The Trade Act confers significant power to the executive to ensure that American trade and commercial interests can be protected when faced with genuine threats. The misuse of this power, for political ends, is a significant problem and reduces faith in the rule of law. This also threatens the legitimacy of genuine investigations carried out by the USTR under this statute. The current administration's chaotic use of tariffs against the rest of the world have led to significant global and domestic economic instability, and have hurt American consumers, producers, and workers.¹³ The USTR

¹² Tim Kaine, Jeanne Shaheen, Adam Schiff, Richard Durbin, "Letter to President Donald J. Trump," United States Senate, July 24, 2025, https://www.kaine.senate.gov/imo/media/doc/brazil_trade_war_letter.pdf, last visited on August 15, 2025.

¹³ See for example, The Budget Lab, "State of U.S. Tariffs: July 30, 2025," July 30, 2025, <https://budgetlab.yale.edu/research/state-us-tariffs-july-30-2025>, last visited on August 5, 2025; Jared Bernstein, "Trump's trade war has only just begun to hit American's wallet," MSNBC, August 1, 2025, <https://www.msnbc.com/opinion/msnbc-opinion/trump-tariff-deadline-trade-war-inflation-prices-rcna222221>, last visited on August 5, 2025; Jack Ewing, "Ford is latest carmaker to blame tariffs for profit slump," New York Times, July 30, 2025, <https://www.nytimes.com/2025/07/30/business/ford-profit-tariffs.html>, last visited on August 5, 2025; Jaclyn Peiser, "Shoppers are stressed, but some brands are raising prices anyway," The Washington Post, July 30, 2025, <https://www.washingtonpost.com/business/2025/07/30/retailers-price-hike-tariffs/>, last visited on August 5, 2025; Ryan Mulholland, "What will Trump's tariffs do for U.S. consumers, workers, and businesses," Centre for American Progress, April 1, 2025, <https://www.americanprogress.org/article/what-will-trumps-tariffs-do-for-u-s-consumers-workers-and-businesses/>, last visited on August 5, 2025; Niven Winchester, "New Trump Tariffs: early modelling shows most economies lose - the US more than many," The Conversation, August 3, 2025, <https://theconversation.com/new-trump-tariffs-early-modelling-shows-most-economies-lose-the-us-more-t>

would only aid in this destabilization of the domestic and international economy by continuing with this charade of an investigation into Brazilian domestic policies, that have nothing whatsoever to do with trade.

2. Brazil's Digital Regulations Do Not Discriminate Against or Otherwise Unfairly Target U.S. Companies

2.1. Brazil Has the Competence and Authority to Implement Public Interest Regulation of the Digital Ecosystem

Brazil, as a sovereign democratic nation, is well within its rights in implementing public interest regulation over technology companies providing services within the territory of Brazil, whether pertaining to privacy, misinformation, hate speech, or the use of digital payment solutions. In this respect, it is relevant to point to the National Trade Estimate Report, 2024, (NTE Report), which explicitly recognizes that *"Each trading partner has a sovereign right to adopt measures in furtherance of legitimate public purposes."*¹⁴

In the context of internet regulation, the World Summit on Information Society's Tunis Agenda, 2005, reaffirms that *"policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues."*¹⁵ The U.S and Brazil are both signatories to the Tunis Agenda, thereby recognizing that the governments of both countries have the sovereign right to regulate the Internet in the public interest.

2.2. A Clear and Justified Public Interest Motivation for Regulation of Digital Technologies

Each of the regulatory measures highlighted in the USTR's notice, that is, cross-border data transfer provisions in Brazil's General Data Protection Law (LGPD), reasonable restrictions on speech rights of technology corporations, and measures to regulate the use of digital payment services, all serve a legitimate public interest purpose.

The LGPD is motivated by the constitutional mandate to protect the privacy rights of Brazilians, social media regulation is motivated by the need to limit online offences and ensure public order (including by limiting the spread of misinformation and hate speech), and digital payments regulation is motivated by the need to ensure competition in and the orderly development of the digital payments sector and to aid financial inclusion.

[han-many-262491](#), last visited on August 5, 2025; Amna Nawaz, "Economist analyzes Trump's trade deals as tariff deadline approaches," PBS News, July 31, 2025, <https://www.pbs.org/newshour/show/economist-analyzes-trumps-trade-deals-as-tariff-deadline-approache>s, last visited August 5, 2025.

¹⁴ U.S. Trade Representative, "National Trade Estimate Report on Foreign Trade Barriers," 2024, <https://ustr.gov/sites/default/files/2024%20NTE%20Report.pdf>, last visited on August 5, 2025.

¹⁵ World Summit on the Information Society, "Tunis Agenda for the Information Society," United Nations and International Telecommunications Union, November 18, 2005, <https://www.itu.int/net/wsinfo/docs2/tunis/off/6rev1.html>, last visited on August 5, 2025.

Thus, it cannot be said that the policies/laws under question are “unjustifiable”, so as to violate S 301, Trade Act. There is a clear public policy rationale, recognized in numerous international instruments including those to which the U.S. is a party, that recognize the sovereign rights of states to regulate relevant aspects of the digital ecosystem in the public interest.

Merely imposing compliance norms on U.S. companies, even if they are burdensome, cannot constitute a violation of Section 301, Trade Act, as long as they are not arbitrary, unreasonable, or discriminatory. Needless to mention, all multinational corporations are required to follow the domestic laws of the country they are operating within (unless such compliance violates international law). The United States would and does expect the same of all foreign companies operating within its territory.

A finding of discrimination against U.S. companies cannot be based solely on the fact that some or even all companies affected by a policy are U.S.-based.¹⁶ Any examination of alleged discrimination must examine the facts and context of each specific law or policy that is alleged to be discriminatory, as well as the relevant market conditions. A law cannot be said to be discriminatory if it is equally applicable to all entities within a market. Even laws or policies having the effect of imposing measures on single entities or entities from a particular country cannot *ipso facto* be considered to constitute discrimination, so as to attract sanction via S 301.

2.3. *Brazil Implements a Multistakeholder Technology Governance Regime*

Brazil has a long-standing tradition of proactive and forward-looking Internet governance and digital technology regulation, consistently maintaining good relations with the U.S. and other countries. In 2009, the Brazilian Internet Steering Committee (CGI.br) published the “Internet Decalogue,” a set of ten principles meant to guide the use of the Internet, in the spirit of “Internet Freedom.”¹⁷ The first principle recognizes that the internet must be “driven by” the principles of freedom, privacy, and human rights, which are considered essential to the preservation of a fair and democratic society. These principles have guided the development of Brazil’s regulatory framework around the internet and digital technologies ever since.

In 2014, Brazil passed the pioneering Internet Bill of Rights, Marco Civil da Internet¹⁸ (Marco Civil), which was developed through a years-long multistakeholder process including

¹⁶ See for example, comments of previous US Trade Representative, Amb. Katherine Tai, to the Capital Forum podcast on December 19, 2024 and at the Center for American Progress on October 10, 2023. Teddy Downey, “Transcript of Exclusive Interview with Ambassador Katherine Tai,” The Capital Forum January 6, 2025, available at <https://thecapitolforum.com/resources/transcript-of-exclusive-interview-with-ambassador-katherine-tai/>, last visited on August 5, 2025; Center for American Progress, “President Biden’s Worker-Centered Trade Policy: A Conversation With Ambassador Katherine Tai,” October 10, 2023, available at <https://www.youtube.com/watch?v=RB6KrjZvmGI>, last visited on August 5, 2025.

¹⁷ CGI.br, “Principles for the Governance and Use of the Internet,” <https://cgi.br/principles/>, last visited on August 12, 2025.

¹⁸ Marco Civil da Internet Law, 2014: <https://www.cgi.br/pagina/marco-civil-law-of-the-internet-in-brazil/180>

participation from the private sector. Per the Marco Civil, it is the government's duty to establish multistakeholder, transparent, collaborative, and democratic governance mechanisms for the Internet, with the participation of the government, the business sector, civil society, and the academic community. The development of Internet related legislation was strongly supported by regional companies, such as Mercado Libre, but also by US companies, such as IBM, Facebook, Google, Amazon, and others.¹⁹ The legislative process in Brazil is characterized by democratic dialogue and stakeholder engagement, especially with multinational companies.

Maintaining the same multistakeholder spirit, Brazil conducted public consultations to develop the LGPD under the aegis of the Ministry of Justice. It is therefore clear that the private sector, including American technology corporations, have played a critical role in the development of Brazil's internet governance and data protection regimes.²⁰

With this background in mind, we next provide a detailed analysis of the rationale and context for the relevant digital regulations implemented by Brazil.

2.4. General Data Protection Law (LGPD)

It is universally accepted, including in the recently signed Global Digital Compact, 2024 (GDC), that all human rights — including the right to privacy — must be respected, promoted and protected, both online and offline.²¹ Articles 5. X and 5.XII of Brazil's Constitution enshrines the right to privacy,²² with Constitutional Amendment 115 of 2022 elevating personal data protection to a fundamental right.

In accordance with this constitutional mandate, the Brazilian parliament enacted a comprehensive data protection law — the General Data Protection Law (LGPD) — which came into effect in 2020 (under then-President Jair Bolsonaro). The legislative process took a number of years, with a preliminary draft law being published for public consultation in 2015.

As with many modern data processing laws, the LGPD provides for a number of user rights with respect to personal data, regulates the grounds of processing personal data, and establishes

¹⁹ TechTudo, "Google, Facebook and Mercado Livre support the Internet Civil Rights Framework," *Correio Do Estado*, September 19, 2012, <https://tinyurl.com/hbsunu3x>, last visited on August 14, 2025, and Mgalhas, "Google, Facebook and Mercado Livre support the Internet Civil Rights Framework," September 19, 2012, <https://tinyurl.com/yckd6pyb>, last visited on August 14, 2025.

²⁰ For example, in the context of enacting the LGPD, it has been observed that "Both civil society and the private sector start working to make the subject of personal data protection better known and more palatable for the general audience", emphasizing the fundamental role and participation of the private sector in this work. Refer LGPD Memory, "2016 – 2017: The Draft arrives at the House," *Observatorio por Data Privacy BR*, Episode 2/5, <https://observatorioprivacidade.com.br/en/memoria/2016-2017-the-draft-arrives-at-the-house/>, last visited on August 12, 2025.

²¹ See for example, Article 8(c), 22, 23, 30, 37, 39, and 46 of the Global Digital Compact, United Nations General Assembly, 2024, <https://tinyurl.com/5x26ms3v>, last visited on August 7, 2025.

²² Article 5.X protects the right to privacy, Article 5.XII safeguards the secrecy of correspondence, telegraphic and telephonic communications.

various offences pertaining to the illegal processing of personal data. The law covers data processing by both private and public sector entities.

The LGPD is notable not only for its focus on protecting fundamental rights, but the open and consultative mechanisms it envisages for regulation making processes. For example:

- (a) Article 55J requires the National Data Protection Authority (ANPD) to carry out public consultations and hearings, as well as regulatory impact assessments prior to implementing any regulations under the law.
- (b) Article 53 requires the ANPD to define appropriate methodologies for calculating fines for violation of the law, subsequent to public consultation.
- (c) The ANPD is assisted in its duties by a National Council for Protection of Personal Data and Privacy, which comprises 28 representatives, including 2 individuals representing business interests.

Thus, Brazil's privacy and data protection regime has been and continues to be developed in an open and inclusive manner, with the full participation of the private sector, including American technology companies.

Articles 33-36 of the LGPD pertain to cross-border data transfers of personal data. Article 33 provides that international transfers of personal data are permitted in the following cases:

- (a) When the foreign jurisdiction provides an adequate or similar degree of protection to personal data;
- (b) When the data controller takes appropriate measures to protect privacy rights when conducting a cross-border data transfer, in the form of adopting appropriate contractual clauses for international transfers, follows global corporate standards, or appropriate certification mechanisms and codes of conduct;
- (c) When the transfer is necessary for international legal cooperation;
- (d) When the transfer is necessary to protect the life or safety of the data subject or a third party;
- (e) When authorized by the ANPD;
- (f) When made under the terms of an international cooperation agreement;
- (g) When the transfer is necessary to give effect to public policy;
- (h) When explicit consent is given by the data subject.

Article 34 lists the various conditions required to be fulfilled in order for a finding of "adequacy" to be made by the ANPD. Article 35 provides the ANPD with the authority to scrutinize and

make recommendations pertaining to the nature of contractual clauses that can be used to enable cross-border data transfers.

In accordance with the statutory mandate, the ANPD has engaged in public consultations pertaining to several regulations and standards issued under the law, including in the context of cross-border data transfers.

In May 2022, the ANPD initiated consultative processes on the regulation of cross-border data transfers,²³ starting with a call for contributions, followed by a public consultation and hearing.²⁴ The final regulation issued in August 2024 established procedures and rules applicable to international data transfers.²⁵ The regulation clarifies the nature of standard contractual clauses to be adopted for international data transfers, while allowing data controllers time until August 2025 to implement appropriate measures.

It is therefore evident that:

- (a) Brazil's data protection law broadly accords with international standards in attempting to protect domestic personal data.²⁶
- (b) The LGPD imposes restrictions on cross border data transfers where this would lead to a situation where privacy rights of Brazilians will not be respected or protected. This implies that companies cannot export personal data purely to evade or avoid Brazilian privacy and data protection law. Permitting data to be transferred out of the country, without application of relevant legal protections would, in effect, render the LGPD nugatory.

²³ Fernando Bousso and Matheus Botman Kasputis, "Brazil's new regulation on international data transfers," IAPP, September 4, 2024, <https://iapp.org/news/a/brazil-s-new-regulation-on-international-data-transfers>, last visited on August 7, 2025.

²⁴ Fernando Bousso and Matheus Botman Kasputis, "Brazil's new regulation on international data transfers," IAPP, September 4, 2024, <https://iapp.org/news/a/brazil-s-new-regulation-on-international-data-transfers>, last visited on August 7, 2025.

²⁵ ANPD, "International Data Transfer Regulations," August 23, 2024, <https://www.in.gov.br/en/web/dou/-/resolucao-cd/anpd-n-19-de-23-de-agosto-de-2024-580095396>, last visited on August 7, 2025.

²⁶ See generally, Paul Bischoff, "Data privacy laws & government surveillance by country: Which countries best protect their citizens?" CompariTech, March 25, 2022, <https://www.comparitech.com/blog/vpn-privacy/surveillance-states/>, last visited on August 12, 2025; CNIL, "Data protection around the world," July 18, 2024, <https://www.cnil.fr/en/data-protection-around-the-world>, last visited on August 12, 2025; World Population Review, "Data privacy laws by country 2025," <https://worldpopulationreview.com/country-rankings/data-privacy-laws-by-country>, last visited on August 15, 2025.

- (c) The conditions for cross-border data transfer are very similar to those found in other international data protection regulations,²⁷ in that they permit transfers to jurisdictions that provide an equivalent level of data protection and require appropriate steps to be taken to ensure Brazilians may enforce their data protection rights over data that has been exported from Brazil. The conditions for data transfers are not excessively onerous and accord with global best practice.
- (d) The Brazilian data protection authority, ANPD, has clarified processes and legal instruments to be used to enable data transfers, including in the form of standard contractual clauses. It is unreasonable to expect the ANPD to implement fully fleshed out rules and regulations or “adequacy decisions” right from the outset. To be kept in mind that an “adequacy decision” is a discretionary power, that is based on the quality of data protection offered by a foreign jurisdiction. U.S. tech companies cannot claim arbitrariness or discrimination merely because no such finding has been made in respect of the U.S., particularly given that the ANPD is yet to make any adequacy finding with respect to any other country.
- (e) The aforesaid clauses do not discriminate against U.S. technology companies or otherwise unreasonably or disproportionately restrict the export of personal data from Brazil. The measures are equally applicable to all data controllers who seek to export personal data from Brazil.
- (f) Businesses have been given a period of one year to align their data export practices with regulatory requirements.

It is important to remember that several countries implement some form of restrictions on cross-border data transfers. Some estimates suggest that over 60 countries and jurisdictions implement such measures.²⁸ Crucially, the U.S. also implements a number of such measures (which are often stricter than that seen in the LGPD). At the federal level, the U.S. restricts foreign data transfers under the Protecting Americans’ Data from Foreign Adversaries Act of 2024, Cybersecurity requirements for U.S Cloud Computing Contractors, and Executive Order 14117 – Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government Related Data by Countries of Concern. At the state level, cross-border data transfers are restricted by laws such as Montana’s Genetic Information Privacy Act, and the 2023 Amendment to California’s Confidentiality of Medical Information Act.²⁹

²⁷ See for example, Data Guidance, “Comparing Privacy laws: GDPR v LGPD,” available at <https://ec.europa.eu/futurium/en/system/files/ged/dataguidance-gpdr-lgpd-for-print.pdf>, last visited on August 7, 2025.

²⁸ Deloitte, “Regulations on Promoting and Regulating the Cross-border Data Flow,” March 25, 2024, <https://tinyurl.com/3nvvk6a7>, last visited on August 7, 2025.

²⁹ Daniel Rangel, Jai Vipra and Lori Wallach, “The Digital Trade Data Heist: Trade Agreement Limits on Data Transfer and Storage Regulation Could Undercut Data Governance,” Rethink Trade, February 2025, <https://tinyurl.com/vhwneynb>, last visited on August 7, 2025.

It is therefore clear that Brazil's regulations on cross-border data transfers are reasonable and accord with global norms. Any finding that such regulations violate Section 301 of the Trade Act open up U.S. laws that also restrict cross-border data transfers to similar trade challenges, thereby putting American privacy rights and security interests at risk.

Finally, it is also relevant to note that as part of its broader efforts to strengthen a culture of personal data protection and enhance international cooperation, the ANPD became a member of the Global Privacy Assembly (GPA) in October 2023,³⁰ joining global authorities such as the United States Federal Trade Commission (FTC). This reinforces Brazil's commitment to international cooperation on data governance and privacy, even outside the scope of formal international treaties. Through the GPA, the ANPD engages in technical exchanges, sharing best practices, and aligning regulatory trends with authorities in the global North and South. This collaboration highlights that effective cross-border data governance can be built through dialogue, multistakeholder engagement, and shared regulatory objectives, which the ANPD has consistently embraced.

Thus, Brazil's restrictions on cross-border data transfers are not unreasonable, unjustified, disproportionate, or discriminatory.

2.5. Social Media Regulation

Article 19 of the Marco Civil codifies the concept of 'safe harbor' for intermediaries into Brazilian law.³¹ The provision states that the provider of "internet applications"³² can only be subject to civil liability for damages resulting from user-posted content if it fails to take appropriate steps to take down content upon being directed to by a specific court order.

The growth of the Internet ecosystem in Brazil over the last decade has seen an explosion in online content and interaction. However, this has also been paralleled by a rise in online criminal activity, including in the form of hate speech and the spread of disinformation. A number of studies point to how election-related disinformation is a particularly pernicious problem in the Brazilian context. For example, research indicates that more than 86% of voters encountered electoral misinformation during the 2018 Brazilian presidential election.³³ The increased reliance on social media as a tool for sourcing news, combined with high levels of trust in online content, poses an increasingly dangerous problem for democracies the world over, and Brazil is no different.

³⁰ Ministry of Justice and Public Security, "ANPD is accepted as a full member of the Global Privacy Assembly," October 20, 2023, <https://tinyurl.com/y32xd8rm>, last visited on August 12, 2025.

³¹ Refer Law No. 12.965, Marco Civil Law of the Internet in Brazil, <https://www.cgi.br/pagina/marco-civil-law-of-the-internet-in-brazil/180>, last visited on August 6, 2025.

³² The term covers email service providers and OTT communication services (video, voice and text). Separate consumer protection laws establish the civil liability of online marketplaces.

³³ Christopher Harden, "Brazil fell for fake news: What to do about it now?" February 21, 2019, Wilson Center, <https://www.wilsoncenter.org/blog-post/brazil-fell-for-fake-news-what-to-do-about-it-now>, last visited on August 6, 2025.

A number of international attempts are being made to develop appropriate legal and technical frameworks to deal with the problem of 'information integrity'. For example, the Group of 20 (G20) declaration in 2024, recognizes that "digital platforms have reshaped the digital ecosystem and online interactions by amplifying information dissemination and facilitating communication within and across geographical boundaries. *However, the digitization of the information realm and the accelerated evolution of new technologies, such as artificial intelligence, has dramatically impacted the speed, scale, and reach of misinformation and disinformation, hate speech, and other forms of online harms, a phenomenon exacerbated by a variety of economic incentives in the digital domain.*" The statement accordingly recognizes the importance of adopting measures to promote and protect information integrity.³⁴

Similar global norms around the issue of information integrity, that recognize the need for effective state and private sector action can be found at the United Nations, OECD, and a number of other international bodies.³⁵ For example, the UN's Principles for Information Integrity, recognize the key role played by technology corporations and the need for accountability mechanisms to "*address the responsibility of technology companies for the consequences of the design and use of their products and services on human rights and social cohesion.*"³⁶ Similarly, the recently signed GDC, recognizes the need to address online misinformation and hate speech while recognizing the need for international cooperation to promote information integrity and the integrity of democratic processes.³⁷

In this context, it is only reasonable for Brazil to analyze the role played by intermediaries in ensuring a safe and trustworthy online ecosystem that cannot be used to promote or propagate harm – either against individuals or democratic norms and processes.

The first Brazilian legislative initiative to reexamine the role of online platforms in content moderation took place in 2020, with the formulation of Bill 2630. This bill sought to balance multiple constitutionally protected rights, harmonize content take-down processes, and establish a transparency regime for certain intermediaries. In 2023, following attacks on the Supreme Court, the legislation was revised to include chapters on "systemic risks" caused by propagating content depicting anti-democratic acts. The bill was supported by the federal government and various sectors of civil society.³⁸

³⁴ G20, "Ministerial Declaration," September 13, 2024, <https://tinyurl.com/4523e6tv>, last visited on August 12, 2025.

³⁵ M20, "Information Integrity is a vital public good - and its at risk," Policy Brief 1, May 16, 2025, <https://tinyurl.com/txm7r2wf>, last visited on August 12, 2025.

³⁶ United Nations, "Global principles for information integrity: Recommendations for multistakeholder action," <https://www.un.org/en/information-integrity/global-principles>, last visited on August 12, 2025

³⁷ Refer Paragraphs 30, 33 and 34 of the United Nations, "Global Digital Compact," 2024, <https://tinyurl.com/5x26ms3v>, last visited on August 12, 2025.

³⁸ Coalizao Direitos Na Rede (Rights in the Network Coalition), "Approval of Bill 2630 is essential to regulate platforms and defend Brazilian democracy," April 9, 2024, <https://tinyurl.com/fxj76sud>, last visited on August 12, 2025.

Despite broad support for the new bill, it was attacked by technology companies, largely in view of the various controversies surrounding legislating on controversial issues such as "information integrity" and "systemic risks."³⁹ The bill was therefore abandoned.

This is where the dramatic conflict with Elon Musk's X begins. Under Brazilian law, foreign companies operating in the country are mandated to designate a legal representative within Brazil. This requirement ensures that companies can be held accountable for their operations and comply with local regulations. In August 2024, Brazil's Supreme Court ordered the suspension of X after the platform failed to appoint a legal representative, a decision that was upheld by the Supreme Court's First Chamber.⁴⁰ The suspension was also linked to X's non-compliance with court orders to remove accounts spreading misinformation and intimidating public officials. The Court had previously ordered the removal of several accounts used to intimidate a federal officer, which escalated to offline threats. X's refusal to comply with these orders led to escalating fines and legal actions, including the freezing of assets associated with X and its affiliated company, Starlink.⁴¹ Musk complained that "This guy @Alexandre [the Supreme Court judge who issued the blocking order] is an outright criminal of the worst kind, masquerading as a judge."⁴² But X eventually complied with the same laws that all platforms operating in Brazil are required to follow, and the platform was reinstated in October 2024.⁴³

Given the failure of the legislature to adequately address the problem of online speech related offences, particularly those occasioned by the use of social media and online communication services, the Supreme Court of Brazil was forced to step into the regulatory vacuum to decide extraordinary appeals that required the interpretation of provisions of the Federal Constitution concerning the fundamental rights of social media users. It is relevant to note here that the Brazilian Constitution states that any violation or threat to rights can be brought before the judiciary, as a fundamental right of the citizen.

On June 24, 2025, Brazil's Supreme Court ruled that Article 19 of Marco Civil was partially unconstitutional, in that the provision failed to adequately protect certain fundamental rights and constitutional interests. The Supreme Court adopted a moderate position that represented a compromise between two extremes: automatic liability (proactive take-downs), which can lead to

³⁹ Laura Scofield, "Bolsonaro supporters planned a boycott of the Fake News Bill on social media," *Agencia Publica*, April 24, 2023, <https://tinyurl.com/46dr7fny>, last visited on August 13, 2025.

⁴⁰ Iná Jost & Francisco Brito Cruz, "X vs. Brazil: What Questions Remain After the Turmoil?" *Tech Policy Press*, 2024, <https://www.techpolicy.press/x-vs-brazil-what-questions-remain-after-the-turmoil/>, last visited on August 14, 2025.

⁴¹ Iná Jost & Francisco Brito Cruz, "X vs. Brazil: What Questions Remain After the Turmoil?" *Tech Policy Press*, 2024, <https://www.techpolicy.press/x-vs-brazil-what-questions-remain-after-the-turmoil/>, last visited on August 14, 2025.

⁴² Associated Press, "Brazil starts blocking social media platform X amid dispute with Elon Musk," *NPR*, August 30, 2024, <https://www.npr.org/2024/08/30/nx-s1-5096220/brazil-suspends-x-elon-musk>, last visited on August 14, 2025.

⁴³ Gabriela Sá Pessoa, "Musk's X to be reinstated in Brazil after complying with Supreme Court demands," *Associated Press*, 2024, <https://tinyurl.com/3hsmypx>, last visited on August 14, 2025.

private censorship and excessive content removal, and judicial liability (take-down on court notification), which is often slow and ineffective in containing harm in real time.⁴⁴

The court, while directing the legislature to replace Article 19 Marco Civil with a new law, ordered that in the interim, the provision was to be interpreted so as to hold internet application providers civilly liable for damages resulting from user posted content in cases of crime or unlawful acts, without prejudice to the obligation to remove the offending content.⁴⁵ Providers would, however, be able to avoid liability if they can show they acted diligently and within a reasonable time to make the offending content unavailable.

Further, internet application providers are to make content related to certain serious criminal offences — such as terrorism, anti-democratic conduct as defined in relevant laws, hate speech, child sexual abuse material (CSAM), inducement to suicide, etc. — immediately unavailable. They must also implement measures to (a) establish a notification, due process, and reporting system (so as to ensure transparency pertaining to content take-down), and (b) establish systems to enable customer service (to enable complaints). Internet application providers operating within Brazil are also required to establish and maintain headquarters and a representative within the territory of Brazil.

In essence, the Supreme Court found that the broad “safe harbor” provided to certain classes of intermediaries under A. 19, Marco Civil, was excessively broad. The Court accordingly imposed certain measures to ensure that digital platforms acted to take down serious criminal content as soon as possible.

Importantly, and with a view to balance rights of speech as well as protect business interests of digital platforms, the Supreme Court’s decision recognizes that:

- (a) isolated or fragmented content cannot be used to attach liability to platforms;
- (b) users have a right to request reinstatement of their content, through a judicial route;
- (c) platforms must take “reasonable measures” to avoid the distribution of content related to serious offences;
- (d) platforms have transparency obligations, requiring them to report on take-down practices, including take-downs without judicial approval.

Brazil’s Supreme Court has therefore sought to move away from a system where digital platforms were required to remove content only subsequent to a notification by court order. This

⁴⁴ See Supreme Court of Brazil, “Recognition of the partial and progressive unconstitutionality of art. 19 of the MCI,” June 24, 2025, <https://tinyurl.com/24wyr3xz>, last visited on August 6, 2025.

⁴⁵ In the context of certain criminal offences such as “crimes against honor,” the court recognizes the possibility of the need for removal of content through “extra judicial notification.” Internet application providers are to be held responsible for illegal content where such content includes paid advertisements and algorithmic boosts, or is distributed through artificial means (chatbots or robots). In such cases, liability could arise irrespective of notification.

has been occasioned by the increased use of digital platforms to spread hate speech, misinformation, CSAM, etc., all of which are considered serious criminal offences. Accordingly, digital platforms are now being asked to play a more proactive role in monitoring and taking down user generated content, where this could prove harmful to broader social and constitutionally protected interests.

2.5.1. Legitimacy of Brazil's Social Media Regulations

While the new Brazilian law clearly imposes more compliance burdens on digital platforms, this in itself does not imply that Brazil's regulation of digital platforms is unfair, unjustified or discriminatory.

First, it is important to note that the new regulatory framework applies equally to *all* digital platforms that fall within the appropriate regulatory ambit (that is, to all email providers, social media platforms and digital communication providers). U.S. technology companies are not singled out, with the law equally applicable to service providers from other countries. The fact that the majority of social media and digital communications services are U.S. based companies is irrelevant to this analysis.

Second, as the use of social media and digital communication services has grown, the problems occasioned by the spread of illegal content online have also grown. This has also been exacerbated by the practices of digital platforms that often boost harmful content so as to ensure greater user engagement. Thus, countries are increasingly moving away from legal frameworks that confer complete "safe harbor" to intermediaries, to frameworks where platforms are required to adopt appropriate content moderation and take-down processes.

There is a bipartisan, vigorous, and ongoing debate in the U.S. on the need to tackle the harms arising from social media, including through potential revision of Section 230 of the Communications Decency Act.⁴⁶ U.S. law also imposes additional content moderation and related obligations on intermediaries in certain contexts, for instance, concerning intellectual property violations (under the Digital Millennium Copyright Act, 1998) and in the context of child rights (Children's Online Privacy Protection Act, as well as statutes preventing the distribution of CSAM, etc.). Recent legislative attempts, such as the Kids Online Safety Act (KOSA), also impose 'duties of care' on covered platforms.⁴⁷ A number of states have adopted laws regulating

⁴⁶ See for example, Clare Cho and Ling Zhu, "Social media: Content dissemination and moderation practices," Congressional Research Services, March 20, 2025, <https://www.congress.gov/crs-product/R46662>, last visited on August 6, 2025; John McKinnon and Brody Mullins, "Nancy Pelosi Pushes to Remove Legal Protections for Online Content in Trade Pact," Wall Street Journal, December 4, 2019, <https://www.wsj.com/articles/nancy-pelosi-pushes-to-remove-legal-protections-for-online-content-in-trade-pact-11575503157>, last visited on August 6, 2025, and Taylor Hatmaker, "Nancy Pelosi warns tech companies that Section 230 'is in jeopardy'," Tech Crunch, April 13, 2019, <https://tinyurl.com/23p7pt67>, last visited on August 6, 2025.

⁴⁷ Richard Blumenthal, "Kids Online Safety Act," <https://www.blumenthal.senate.gov/about/issues/kids-online-safety-act>, last visited on August 6, 2025.

social media platforms and online content. For example, the California Age Appropriate Design Code Act (CAADCA) requires relevant platforms to assess and mitigate risks posed by their products to children. Several other states have implemented regulations casting additional obligations on intermediaries who direct content at children, including through age-verification and other requirements.⁴⁸

Third, the June 2025 ruling by the Supreme Court of Brazil (as with previous orders pertaining to social media companies) was passed by a constitutional court following its routine procedures. The court is an independent institution of the State of Brazil and in accordance with the doctrine of separation of powers, is not subservient to or directed by the executive. The Brazilian executive does not have the power or authority to direct the Supreme Court to reverse or modify its decision, irrespective of trade sanctions applied by the U.S.

Fourth, the Supreme Court recognizes the need for the legislature to amend the appropriate provisions of Marco Civil. The present arrangement is by way of an interim measure, till such time as the law is amended. Sanctioning a country for interim measures laid down by a constitutional court is ill-considered and sets a worrying precedent.

Fifth, the suggestion in Executive Order 14323 of July 30, 2025, as well as comments by administration officials and industry lobbyists that Brazilian regulations and policies violate the First Amendment rights of U.S. technology companies or American users is without merit. The First Amendment protects speech from infringement *by the U.S. government*; Brazil is under no obligation to provide a platform for any type of speech emanating from U.S. soil. Were this to be the case, every multinational company could avoid compliance with local laws merely by referring to the legal framework in its home jurisdiction. By providing services in the territory of Brazil, digital platforms agree to abide by domestic constitutional, criminal, and civil laws as may be applicable.

Sixth, all countries have the sovereign right to require foreign companies to establish a local presence. While establishing a local presence may cast compliance obligations on U.S. companies, this in itself cannot be a reason to impose trade sanctions, given that the law applies equally to all relevant digital platforms and is aimed at securing compliance with domestic law by foreign multinationals (thus serving a justified public policy aim). A number of countries require multinationals to establish a domestic presence in various contexts.

Finally, there is a global consensus that there is an urgent need to tackle issues such as online hate speech, misinformation, violence against women and children, etc., and further that intermediaries and digital platforms have a role in pushing back against the growth of such illegal content. The Brazilian Supreme Court's decision, therefore, finds backing in a number of international legal texts and frameworks, including those mentioned previously.

⁴⁸ Peter J Benson, Valerie C Brannon et al., "Social Media: Regulatory, legal and policy considerations for the 119th Congress," Congressional Research Services, <https://www.congress.gov/crs-product/IF12904>, last visited on August 6, 2025.

In the circumstances as described above, it is clear that attempts at regulating online platforms by the Brazilian legislature and courts are not unjustified, unreasonable, arbitrary or discriminatory.

2.6. *Digital Payments Regulation*

Ensuring access to the formal financial sector is a key public policy objective of countries across the world, with financial inclusion seen as a key enabler to reduce poverty and boost social development.⁴⁹ Ensuring easy access to formal finances is also seen as a key enabler of a number of Sustainable Development Goals, including those related to poverty reduction, hunger, health, gender equality, and infrastructure development.⁵⁰ One of the methods by which Brazil is seeking to achieve this aim is through the development and deployment of an easily accessible, secure payment system. To this end, the Brazilian Central Bank launched “Pix,” an instant payments platform in 2020.

Pix is the result of a collaboration between the Central Bank, which regulates and operates it, and other private sector stakeholders, which began in 2018 with the establishment of a working group on instant payments. The private sector has been particularly involved since the design phase of Pix, and currently, there are over 900 payment and financial institutions participating in the system.⁵¹ The creation and continuous development of Pix is supported by the Pix Forum, created in 2019, which is composed of various market players with the goal of dialoguing with and supporting the Central Bank in defining the operating rules for instant payment ecosystems. Thus, key regulations around Pix have been developed through open and consultative mechanisms involving private banks, payment system operators, fintech companies, etc.⁵² There are therefore numerous mechanisms for private sector operators to liaise with and suggest improvements to the regulatory ecosystem around Pix.

As with other Digital Public Infrastructure (DPI) systems, Pix attempts to “open up” the payments ecosystem, thereby enabling greater competition and innovation in the fintech sector. A number of smaller companies and startups are said to be developing new services and applications around the Pix ecosystem, creating an ecosystem of diversified product offerings. As noted by an International Monetary Fund (IMF) study, the use of Pix has enabled greater competition in

⁴⁹ See for example, World Bank Group, “Financial inclusion,” January 27, 2025, <https://www.worldbank.org/en/topic/financialinclusion/overview>, last visited on August 12, 2025.

⁵⁰ Leora Klapper, “Financial inclusion has a big role to play in reaching the SDGs,” CGAP, August 11, 2016, <https://tinyurl.com/45ycfs3d>, last visited on August 13, 2025.

⁵¹ Banco Central Do Brasil, “Pix - Participants”, August 14, 2025, <https://www.bcb.gov.br/en/financialstability/pixparticipants>, last visited on August 14, 2025.

⁵² International Monetary Fund, Western Hemisphere Department, “Pix: Brazil’s Successful Instant Payments System,” Vol. 2023: Issue 289, July 31, 2023, <https://www.elibrary.imf.org/view/journals/002/2023/289/article-A004-en.xml>, last visited on August 6, 2025; Christian Perrone, “Brazil’s Bridges to the Future: how the country is building digital infrastructure,” Carnegie Endowment for International Peace, November 15, 2023, <https://tinyurl.com/yc7j8xz8>, last visited on August 7, 2025; Banco Central do Brasil, “Forum Pix,” <https://www.bcb.gov.br/estabilidadefinanceira/forumpagamentোসinstantaneos>, last visited August 7, 2025.

the financial sector as it has “led to the growth of several payment services institutions, which have established banking subsidiaries, increasing competition for deposits with big banks. The open sharing of transaction information on Pix users has helped to strengthen competition in the sales of banking products and services, including for better and cheaper payment services, among various institutions.”⁵³

Pix has also enabled greater financial inclusion, with reports indicating that the system is used by more than 93% of the adult population of Brazil.⁵⁴ This implies that a large proportion of people who had no previous links with the formal financial system are now opening bank accounts and increasingly taking part in the formal economy. Some estimates suggest that the implementation of Pix has increased access to banking services from around 70% of the population in 2017 to more than 84% in 2022.⁵⁵ This has led to a number of broader social benefits, including the ability of the previously unbanked and underbanked to access formal banking and financial services, a greater ability to scrutinize and prevent illegal activities such as money laundering (which are aided by a large informal or grey economy), reducing the urban-rural and gender divide in access to formal financial service, etc.⁵⁶ Pix is therefore generally perceived as a successful example of Brazil's investments in digital public infrastructure, deriving from liberal values, such as innovation and competition.

Pix's significant impact, which stems from its opening of the financial system, collaborative governance, reduced costs of transactions, and inclusion measures, have made it an international example⁵⁷ for other countries to emulate. These results are aligned with international frameworks such as the WSIS Tunis Agenda (23.i) and Plan of Action (C7, 16, 17) which recognize the importance of fostering local development and manufacturing of ICT applications and technologies by developing countries, and the GDC, which highlights the need to expand inclusion and ensure that all can benefit from the digital economy, including through the recognition of the role of DPs.

⁵³ International Monetary Fund, Western Hemisphere Department, “Pix: Brazil's Successful Instant Payments System,” Vol. 2023: Issue 289, July 31, 2023, www.elibrary.imf.org/view/journals/002/2023/289/article-A004-en.xml, last visited on August 6, 2025.

⁵⁴ Lais Godinho, “Pix drives sharp decline in cash use in Brazil,” Valor, July 16, 2025, <https://tinyurl.com/jydum2mt>, last visited on August 7, 2025.

⁵⁵ United Nations Secretary General's Special Advocate for Financial Health, “Building Resilience and Financial Health Through Inclusive Finance in Brazil,” June 19, 2023, <https://tinyurl.com/4cbu92m7>, last visited on August 7, 2025; Christian Perrone, “Brazil's Bridges to the Future: how the country is building digital infrastructure,” Carnegie Endowment for International Peace, November 15, 2023, <https://tinyurl.com/yc7j8xz8>, last visited on August 7, 2025.

⁵⁶ Christian Perrone, “Brazil's Bridges to the Future: how the country is building digital infrastructure,” Carnegie Endowment for International Peace, November 15, 2023, <https://tinyurl.com/yc7j8xz8>, last visited on August 7, 2025.

⁵⁷ G20 Brasil, “‘Faz um Pix’ is an example of good practice for G20 countries. The system included millions of Brazilians in the financial system,” June 9, 2024, <https://tinyurl.com/ytk7dbu6>, last visited on August 14, 2025.

Big Tech companies, on the other hand, have vigorously opposed the ‘public utility’ model adopted by Pix, claiming it is a threat to private payment systems. Their arguments do not stand up to scrutiny. Pix has enabled significant financial inclusion and, consequently, an increase in banking activity. Since Pix requires people to open bank accounts, there is a boost in competition among services, including fintechs, also encouraging private institutions to innovate, improve service quality, and offer more attractive products. In 2024, 72 million people began making bank transfers.⁵⁸ Given that Pix is run by the Central Bank, intermediation and other fees are reduced as the Central Bank does not operate to maximize profit. Accordingly, Pix may be viewed more as a public utility rather than a commercial competitor to other payment systems and products.

It is important to note that Pix is not a substitute for traditional digital payment mechanisms such as credit cards. Pix has not replaced credit services; instead, it has been widely used as a real-time payment tool. If anything, Pix has driven a move away from the use of cash, rather than traditional digital payment methods. Notably, despite the huge uptake in use of Pix, studies indicate that the use of credit card systems has also increased over the past 5 years.⁵⁹ Data show that the credit card market expanded in Brazil (with an 11.6% increase in the number of transactions in credit in the first half of 2024 compared to 2023), reaching R\$4.1 trillion in total transaction volume.⁶⁰

2.6.1. Legitimacy of Brazil’s Regulation of Big Tech’s Payment Systems

Claims by Big Tech companies that the Brazilian Central Bank discriminated against Meta and WhatsApp Payments, including allegations that it delayed approval for private sector licenses till the launch of Pix, are unfounded.

In 2021, the Central Bank of Brazil (BC) authorized Facebook Pagamentos do Brasil Ltda to operate a payment institution under the Payment Transaction Initiator model.⁶¹ The authorizations allow it to be used to transfer funds between its users. In 2023, the Central Bank fully authorized WhatsApp Payment, a fact celebrated by companies like Meta.⁶² Back in 2020, one spokesperson of Meta stated that *“our goal is to provide digital payments to all WhatsApp users in Brazil using an open model, and we will continue to work with local partners and the*

⁵⁸ “Pix e fintechs incluíram 60 milhões em serviços bancários em uma década,” O Globo, January 20, 2025, <https://tinyurl.com/4bjvwec6>, last visited on August 14, 2025.

⁵⁹ Lais Godinho, “Pix drives sharp decline in cash use in Brazil,” Valor, July 16, 2025, <https://valorinternational.globo.com/markets/news/2025/07/16/pix-drives-sharp-decline-in-cash-use-in-brazil.ghtml>, last visited on August 7, 2025.

⁶⁰ Banco Central do Brasil, “BCB publishes statistics on retail payments and cards in Brazil,” January 30, 2025, <https://www.bcb.gov.br/en/pressdetail/2587/nota>

⁶¹ Banco Central do Brasil, “BC authorizes two arrangements and one payment institution related to WhatsApp,” March 30, 2021, <https://www.bcb.gov.br/detalhenoticia/17359/nota>, last visited on August 14, 2025.

⁶² Electronic Payments International, “WhatsApp receives approval to launch payment feature in Brazil,” March 3, 2023, www.electronicpaymentsinternational.com/news/whatsapp-payment-feature-in-brazil/, last visited on August 14, 2025.

*Central Bank to make this possible.” He also mentioned: “In addition, we support the Central Bank’s PIX project on digital payments and together with our partners are committed to work with the Central Bank to integrate our systems when PIX becomes available.”*⁶³

Importantly, the actions of Brazilian regulators have focused on preventing digital wallet solutions developed by private sector multinational companies from allowing transactions outside the Brazilian legal financial system and BC regulation, thereby violating Brazilian rules on monitoring monetary transactions. In 2020, five months after the launch of Pix, Meta announced that it would unveil a new feature on WhatsApp, which would allow users to send and receive money using registered cards. As these kinds of transactions fell outside the legal framework of the Brazilian financial system, the Central Bank and the Administrative Council for Economic Defense (CADE) suspended the functionality as a means to ensure the proper functioning of the Brazilian Payment System (SPB), prevent potential risks to competition and ensure data of users was adequately protected.⁶⁴

The Brazilian authorities, therefore, undertook appropriate regulatory measures to address the potential risks related to both market concentration and data governance related risks. Private payment systems were required to ensure regulatory alignment before making offerings to the public. As emphasized by the Head of WhatsApp for Brazil, this has not harmed innovation by US companies: WhatsApp Pay has been widely adopted in Brazil and successfully integrated Pix into its functionalities.⁶⁵

The BC’s decision to assess the data privacy impacts of the WhatsApp payment systems is consistent with financial system regulations and the LGPD, as is the decision to request an assessment by CADE, the Brazilian competition regulator, regarding competition aspects. Acting in accordance with legal parameters and specific rules on competition and personal data protection cannot be considered political interference by the executive branch, particularly given that the relevant regulators are independent regulatory authorities that operate under strict legal frameworks and authorities.

Similarly, claims of discrimination by Apple are not supported by the facts. Wholly separate from the development of Pix, beginning in 2022, various private sector entities (such as the e-commerce company MercadoLibre) raised concerns about the anti-competitive acts of Apple’s iOS based payment systems. It was alleged that Apple created entry barriers for developers and adopted mechanisms aimed at preventing or hindering the development of competitors in the relevant markets, including by bundling digital goods distribution services with its in-app purchase payment processing service. The issue was taken up by CADE, with Apple fully

⁶³ Mario Sergio Lima and Kurt Wagner, “Brazilian Authorities Suspend WhatsApp Payments,” Bloomberg, June 24, 2020, <https://finance.yahoo.com/news/brazil-central-bank-suspends-whatsapp-235003197.html>, last visited on August 14, 2025.

⁶⁴ Alex Rodriquz, “The United States Has Been Monitoring Pix Since 2022,” Agencia Brasil, July 19, 2025, <https://tinyurl.com/y7u48jvm>, last visited on August 14, 2025.

⁶⁵ Danylo Martings, “‘We never wanted to compete with Pix’ says WhatsApp’s head in Brazil,” Finsider Brasil, March 17, 2025, <https://tinyurl.com/yys5hubb>, last visited on August 14, 2025.

participating in proceedings, including through submission of written statements in its defense.⁶⁶ In November 2024, CADE ruled as an interim measure that Apple must allow app developers to add tools so customers can buy their services or products outside the app, such as through the use of hyperlinks to external websites. Apple was also directed to allow app developers to offer alternate in-app payment processing options. In June 2025, CADE's technical body found that Apple imposed various restrictive practices related to the sale of digital content inside its iOS ecosystem, including requiring in-app purchases be made using Apple's payment system.⁶⁷ Accordingly, CADE's technical body recommended a fine be levied against Apple, though the amount of the fine is yet to be determined.⁶⁸ Apple has indicated that it will continue to dialogue with the regulator with respect to the matter.⁶⁹

The antitrust proceeding against Apple is a completely separate matter to the development of Pix. The Brazilian competition authority, an independent regulator, has opened appropriate legal proceedings in view of complaints received from private sector market participants, in which Apple has fully participated. Apple is also free to challenge the decision taken by CADE in accordance with Brazilian law, if it so desires.

A finding of abuse of dominance (on merits) against a U.S. company by a foreign competition authority should not in itself be grounds for initiating proceedings against S 301, Trade Act. Any allegations of discriminatory or arbitrary treatment against Apple must be supported by facts, which in this case are absent.

Importantly, the absence of discriminatory intent is supported by the fact that Apple's closed payment systems have been the subject of anti-trust investigations in numerous other jurisdictions. For example, competition authorities in the European Union, the Netherlands, South Korea, United Kingdom, Germany, France, Turkey, and India have all raised concerns or initiated action against Apple's abuse of dominance, including in payments.⁷⁰ Apple was also the

⁶⁶ Thassius Veloso, "Apple responds to Cade and requests an end to the investigation into payments with iPhone", TecnoBlog, April 30, 2025, <https://tecnoblog.net/noticias/os-argumentos-da-apple-para-encerrar-inquerito-no-cade/>, last visited on August 13, 2025.

⁶⁷ Reuters, "Technical body of Brazil antitrust regulator recommends ruling against Apple in iOS case," June 30, 2025, <https://tinyurl.com/fza8uahr>, last visited on August 13, 2025.

⁶⁸ Competition Policy International, "Brazil's Antitrust Authority Issues Recommendation to Sanction Apple," July 1, 2025, <https://www.pymnts.com/cpi-posts/brazils-antitrust-authority-issues-recommendation-to-sanction-apple/>, last visited on August 13, 2025.

⁶⁹ Competition Policy International, "Brazil's Antitrust Authority Issues Recommendation to Sanction Apple," July 1, 2025, <https://www.pymnts.com/cpi-posts/brazils-antitrust-authority-issues-recommendation-to-sanction-apple/>, last visited on August 13, 2025; Reuters, "Technical body of Brazil antitrust regulator recommends ruling against Apple in iOS case," June 30, 2025, <https://tinyurl.com/fza8uahr>, last visited on August 13, 2025.

⁷⁰ See for example, Metin Pektas and Dervis Beysulen, "A Comparative Analysis of Apple's Legal Challenges Across Jurisdictions," Mondaq, September 6, 2024, <https://tinyurl.com/448ww8bz>, last visited on August 14, 2025.

subject of private litigation in the United States (brought by American technology companies) alleging exactly the same practices as currently under investigation in Brazil.⁷¹ In one of these cases, the Supreme Court declined to hear appeals filed by Apple in a case brought by Epic Games, leading to Apple having to open up its payments ecosystem in the U.S.⁷² Similar cases have also been brought in Australia.⁷³ This clearly indicates that it is highly unlikely that Brazil initiated its anti-trust investigation into Apple merely to disadvantage a U.S. company and push people towards the use of Pix.⁷⁴ Forcing Brazil to discontinue a legitimate investigation into Apple's practices that have been found illegal even in the U.S. appears disingenuous at best.

In the circumstances, it is clear that Brazilian regulation of the digital payments sector in terms of the aforementioned regulations and policies are justified public policy interventions that are neither arbitrary, unfair nor discriminatory against U.S. technology companies. The BC has not discriminated against U.S. tech/payments companies in licensing processes, and has in fact, ensured open participation of the private sector in rule-making around Pix. Private sector digital payments systems from the U.S. were indeed allowed to operate in Brazil pursuant to compliance with local norms and legal frameworks. Separately, Brazilian anti-trust authorities have opened a legitimate investigation into Apple's allegedly illegal payments related practices, which echo similar investigations in a number of other jurisdictions, and in fact, appear to match the current U.S. legal position.

3. Intellectual Property and Access to Medicines

Trade rules recognize the need for balance in intellectual property regimes such that intellectual property does not preclude efforts to ensure affordable access to medicines or otherwise support the public interest. Following the adoption of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), this commitment is enshrined in the 2001 Declaration on the TRIPS Agreement and Public Health (Doha Declaration), which reaffirmed that the TRIPS Agreement "*can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all,*" and that WTO members have the right to use, "to the full," the provisions of the TRIPS Agreement, which provide flexibility to promote access to medicines.⁷⁵

⁷¹ CohenMilstein, "Apple Inc. iOS App Antitrust litigation," www.cohenmilstein.com/case-study/apple-inc-ios-app-antitrust-litigation/, last visited on August 12, 2025.

⁷² Leah Nyen, Greg Stohr, and Mark Gurman, "Apple to Allow Outside Payments for Apps After US Decision," Bloomberg, January 16, 2024, <https://tinyurl.com/5xhxb73h>, last visited on August 13, 2025.

⁷³ Gilbert and Tobin, "Epic wins cases against Apple and Google in Australia," August 13, 2025, Lexology, <https://tinyurl.com/ep8jky7d>, last visited on August 14, 2025.

⁷⁴ CohenMilstein, "Apple Inc. iOS App Antitrust litigation," <https://www.cohenmilstein.com/case-study/apple-inc-ios-app-antitrust-litigation/>, last visited on August 12, 2025.

⁷⁵ World Trade Organization, "Declaration on the TRIPS Agreement and Public Health (Doha Declaration)," Doha WTO Ministerial 2001, November 14, 2001, http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm, last visited on August 14, 2025.

This Federal Register notice alleges that “Brazil engages in a variety of acts, policies, and practices that apparently deny adequate and effective protection and enforcement of intellectual property rights.”⁷⁶ Regarding pharmaceutical-related intellectual property protections, the notice explicitly mentions that average patent pendency is 9.5 years which it states “cut[s] into the patent term.” These allegations are incorrect for a number of reasons.

U.S. commitments under the TRIPS Agreement and the Doha Declaration, as well as recognition of these commitments by Congress and across presidential administrations,⁷⁷ underscore that unilateral pressures or sanctions against other countries’ TRIPS-compliant policies—which are fair, adequate, and effective by internationally-agreed standards—are inappropriate and impinge on policy space needed to protect the public interest and access to medicines. For the same reasons, such policies should not be considered “unreasonable” under Section 301. Additionally, Brazil has no bilateral agreement with the U.S. providing for additional intellectual property protections (this is thus not a valid reason to pursue action under Section 301) and Brazilian policies in compliance with TRIPS and other international agreements are not “unjustifiable” according to Section 301.

Further, the specific complaints raised in this Section 301 investigation are unfounded. Variance in patent review periods is a normal part of patent examination. Consistent with its international obligations under TRIPS, Brazilian law provides a 20-year term of protection for invention patents.⁷⁸ Importantly, under TRIPS, countries are not obliged to adopt standards that are more extensive than those articulated in the TRIPS Agreement. The Agreement leaves countries room to adopt national policies that favor the public interest, including those that promote access to medicines. As such, Brazil is not obligated to extend patent terms beyond a 20-year period. Extending patent terms beyond that 20-year period due to perceived delays in examination represents a windfall for drugmakers, legislatively, financially, and against the public interest in timely access to affordable generics. Moreover, in 2021, the Brazilian Supreme Court ruled a provision of Brazil’s Industrial Property Law granting automatic patent term extensions unconstitutional, citing in its deliberations the right to health and access to medicine. Among several considerations, Justice Dias Toffoli highlighted that, because of this provision, Brazil’s average effective patent term was *longer* than other BRICS countries, other Latin

⁷⁶ 90 Fed. Reg. 34069 (July 18, 2025).

⁷⁷ See e.g., USTR, “2025 Special 301 Report,” at 36, [https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20(final).pdf), last visited on August 15, 2025 (“As affirmed in the Doha Declaration, the United States respects a trading partner’s right to protect public health and, in particular, to promote access to medicines for all.”); The Bipartisan Agreement on Trade Policy of May 10, 2007 (recognizing the need to ensure that “developing country free trade agreement partners are able to achieve an appropriate balance between fostering innovation in, and promoting access to, life-saving medicines...” and recognizing the “mutual commitment to the 2001 Doha Declaration on the TRIPS Agreement and Public Health”), USTR, “Bipartisan Trade Deal,” May 2007, www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf, last visited on August 15, 2025.

⁷⁸ Art. 40, Law No. 9.279/96.

American countries, and than the United States, noting a “disadvantage in the international scenario regarding access to medicines and the enforcement of health as a right.”⁷⁹

As recognized in recent Special 301 Reports, Brazil is already “taking concrete steps toward its goal of reducing the average patent pendency to two years by 2026.”⁸⁰ Further, the claim that the average patent pendency for biopharmaceutical patents is 9.5 years appears incorrect. The source for the claim is the Pharmaceutical Research and Manufacturers of America, which itself shows that the patent pendency timeline has improved since 2020.⁸¹ Other sources support the claim that Brazil has made considerable progress to improve patent backlogs in recent years.⁸²

While not mentioned in the Federal Register notice, recent USTR reports cite pharmaceutical stakeholders’ claim that Brazil does not “provide for protection against unfair commercial use of undisclosed test results and other data generated to obtain marketing approval for pharmaceutical products.”⁸³ Brazil is obligated only to protect undisclosed clinical trial data against unfair commercial use and disclosure under Article 39.3 of the TRIPS Agreement. Such protection of clinical test data is available under Brazilian law. The protection of undisclosed pharmaceutical test data in Brazil prevents unfair commercial use and unauthorized disclosure, but permits “disclosure by a government body competent to authorize the marketing of products, when necessary to protect the public,” as allowed by Article 39.3 of the TRIPS Agreement.⁸⁴

The U.S. should not pursue Section 301 actions against Brazil regarding its patent pendency timelines, test data protection, or other provision of TRIPS-compliant intellectual property protection. It would be inappropriate to pressure Brazil to adopt patent term extensions or any other measures that would undermine Brazil’s established right to adopt policies in the public interest and to support access to medicines, as mutually reaffirmed in the Doha Declaration.

⁷⁹ See, Cabral, “Automatic Patent Term Extensions Ruled Unconstitutional in Brazil: Better Late Than Never?” International Review of Industrial Property and Copyright Law, January 13, 2022, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8755977/>, last visited on August 14, 2025.

⁸⁰ USTR, “2025 Special 301 Report,” at 69, [https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20(final).pdf), last visited on August 15, 2025.

⁸¹ For instance, a recent Phrma blog post shows an average patent examination timeline of 7.52 years in 2024. Anjam Aziz, “Updated Analysis Underscores the Need for Brazil to Address Patent Backlogs,” Phrma, January 25, 2025, <https://phrma.org/blog/the-time-is-now-to-address-brazils-notorious-patent-backlog>, last visited on August 14, 2025.

⁸² European Innovation Council and SMEs Executive Agency, “INPI Brazil huge effort in reducing the patent and trade mark backlog,” European Commission, July 28, 2025, <https://tinyurl.com/32whf5nx>, last visited on August 14, 2025.

⁸³ USTR, “2025 National Trade Estimate Report on Foreign Trade Barriers,” at 32, <https://ustr.gov/sites/default/files/files/Press/Reports/2025NTE.pdf>, last visited on August 15, 2025. See also, USTR, “2025 Special 301 Report,” at 69–70, [https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20(final).pdf), last visited on August 15, 2025.

⁸⁴ Art. 195, Law No. 9.279/96.

4. **Concluding Comments**

By carrying out an arbitrary investigation against Brazil, the USTR shakes global faith in the U.S. as a country governed by the rule of law, while weakening the case against adversary nations that take similarly illegal actions.

Imposition of illegal trade sanctions against Brazil and the unjustified Section 301 investigation related to digital trade and digital payments services and intellectual property protection suggest that the current administration is attempting to interfere with the domestic judicial and legislative practices of a sovereign foreign nation. This not only goes against U.S. consumer and national interests, but also against President Trump's own stated goal during his campaign to reduce U.S. interference in domestic matters of sovereign nations.

Actions such as the current S 301 investigation will lead to the U.S. being viewed by foreign countries as an unreliable trading partner. This will inevitably lead to countries seeking to reduce their exposure to the U.S. economy, thereby hurting consumers and producers in the U.S. Chaotic tariffs to push a political agenda are only likely to force countries to either band together and/or turn towards adversaries such as China/Russia for greater economic cooperation. A strategy of bullying other countries, particularly for naked political ends, will only hasten a global movement away from the U.S., giving an added impetus towards new economic alliances such as BRICS (Brazil-Russia-India-China) group of nations.⁸⁵ In the medium to long term, this would be a disastrous development for the U.S. from a geopolitical and economic perspective.

In arriving at its decision on whether or not to impose sanctions against Brazil under the current investigation, the USTR must consider both the direct effects of any sanctions on U.S. consumers, workers, and small businesses, as well as the effects of possible retaliatory measures implemented by Brazil.⁸⁶ Earlier this year, Brazil enacted a new economic reciprocity law (Law No. 15.122/2025). This allows the Brazilian government to impose countermeasures against countries that adopt measures negatively impacting Brazil's international competitiveness. These countermeasures can include restrictions on trade, investment, and intellectual property rights.⁸⁷ The effect of countermeasures, if adopted by the Brazilian

⁸⁵ Note for instance, President Lula de Silva's recent comments regarding the possibility of a coordinated BRICS response to the imposition of tariffs by the U.S. Brad Haynes and Lisandra Paraguassu, "Exclusive: 'I won't humiliate myself': Brazil's president sees no point in tariff talks with Trump," Reuters, August 6, 2025, <https://www.reuters.com/world/americas/i-wont-humiliate-myself-brazils-president-sees-no-point-tariff-talks-with-trump-2025-08-06/>, last visited on August 7, 2025.

⁸⁶ The report accompanying the Departments of Commerce and Justice, Science and Related Agencies Appropriations Bill, 2026, directs the USTR to take into account the effect of retaliatory action on Americans, while enforcing trade agreements. U.S. Senate, "Departments of Commerce and Justice, Science and Related Agencies Appropriations Bill, 2026, Report (to Accompany S 2345)," July 17, 2025, https://www.appropriations.senate.gov/imo/media/doc/fy26_cjs_senate_report.pdf, last visited on August 5, 2025.

⁸⁷ Brazil has previously considered countermeasures against the U.S. in 2010, during a U.S.-Brazil WTO dispute on cotton subsidies, indicating that such measures may also be adopted if the U.S. were to go ahead with its threatened tariffs. "Having prevailed in the dispute, Brazil considered responses that

government, could significantly add to the burden on American consumers and businesses. Big Tech companies – the very businesses that the current administration is attempting to protect – might themselves be impacted if, for instance, Brazil decided to implement measures opening up the intellectual property of American technology companies. To be also noted that Brazil has already initiated a dispute at the World Trade Organization against the tariffs applied by the U.S. in early August.⁸⁸

In the circumstances, we believe that the current investigation does not hold up to legal scrutiny and is based on an ill-considered political strategy. We therefore recommend that the USTR close its current investigation into Brazil's supposed illegal and unfair trade practices in the context of digital trade and digital payment services and intellectual property protection, without returning any findings suggesting a breach of S 301, Trade Act, by Brazil.

combined traditional tariffs of 100% for 102 U.S. export goods, while also targeting U.S. intellectual property, such as U.S. patents and copyrights relating to biotechnology, chemicals, films, music, pharmaceuticals, and software. Some of these measures included new special taxes." Covington, "U.S. Tariffs and Brazil's Potential Response: A Guide for Businesses," July 17, 2025, <https://tinyurl.com/35m6h74h>, last visited on August 5, 2025.

⁸⁸ World Trade Organization, "Brazil Initiates WTO Dispute regarding US tariff measures," August 11, 2025, www.wto.org/english/news_e/news25_e/ds640rfc_11aug25_e.htm, last visited on August 13, 2025.