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

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Brazilian FDI regime

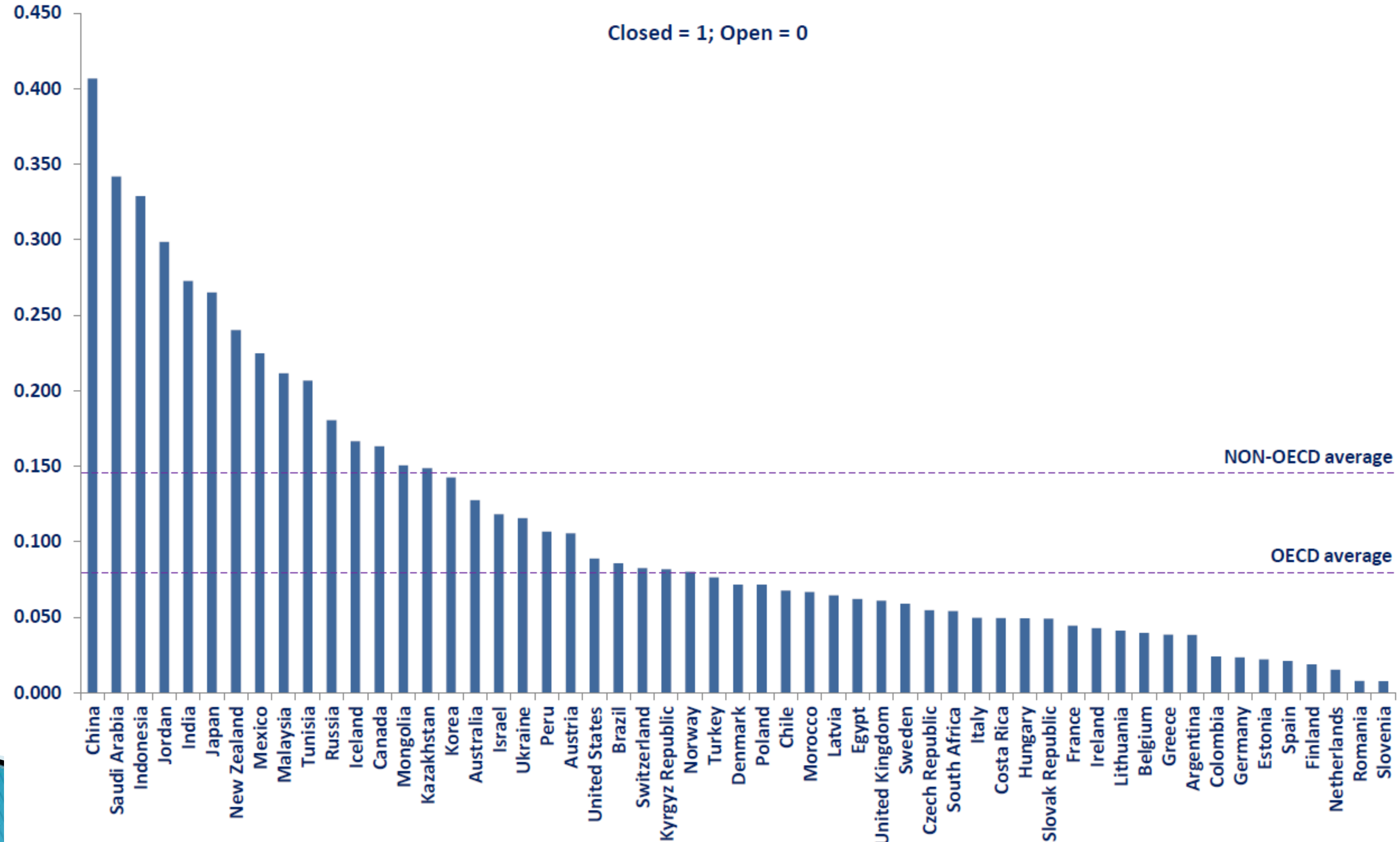
- The **FDI regime in Brazil** has been fairly **open** during the last decades.
- Except in specific situations in the legislation or as a manner to circumvent FDI limitations, there is **no distinction between established companies in Brazil by capital origin**.
- **Agriculture and Manufacturing activities** 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; www.bcb.gov.br; www.cvm.gov.br; www.susep.gov.br

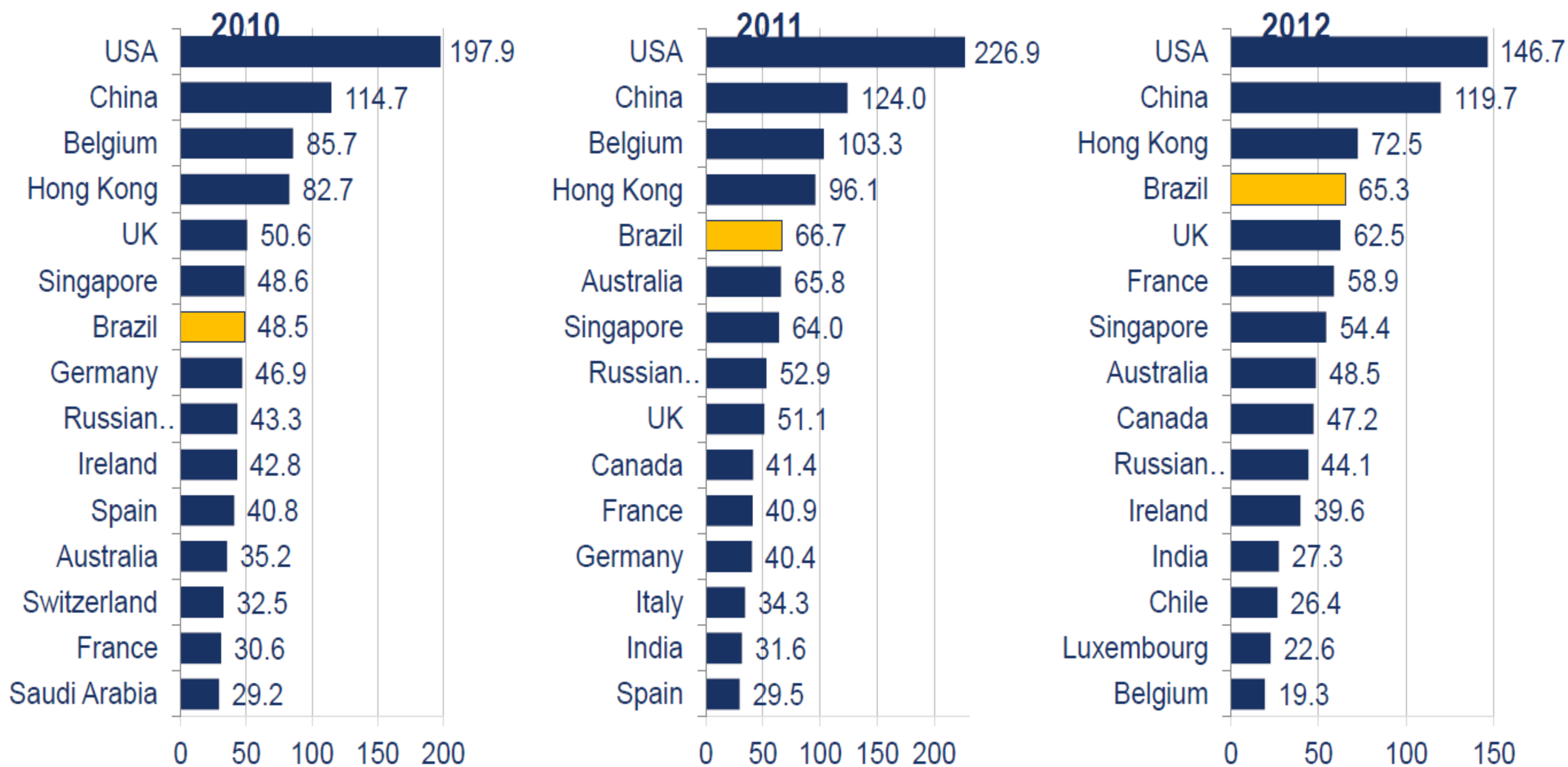
Brazil at OECD FDI regulatory restrictiveness index

- **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).

Prudential Measures in Brazil

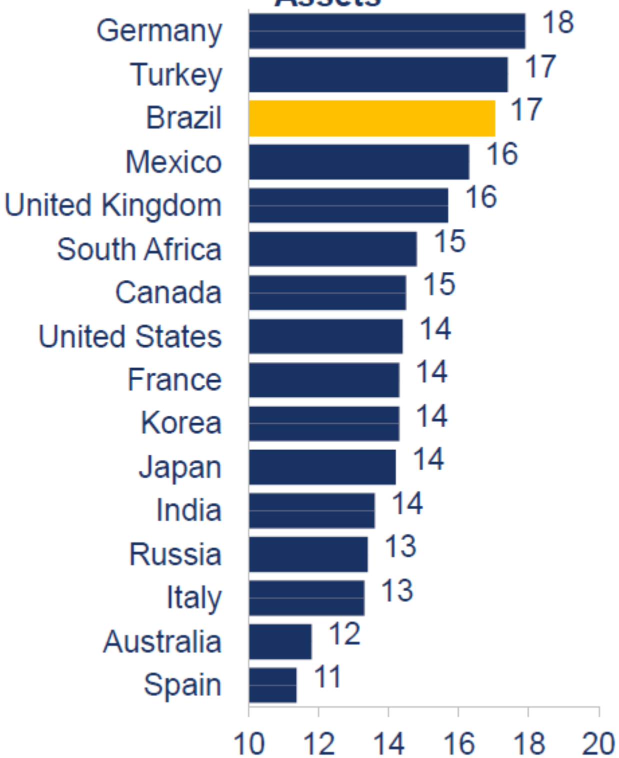
- Brazilian **macroeconomic framework** is based on **fiscal responsibility, floating exchange regime and inflation target regime**. Any variable that affects one of these three pillars is quite important to be assessed and monitored by Government.
- **To achieve macroeconomic stability**, under specified 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

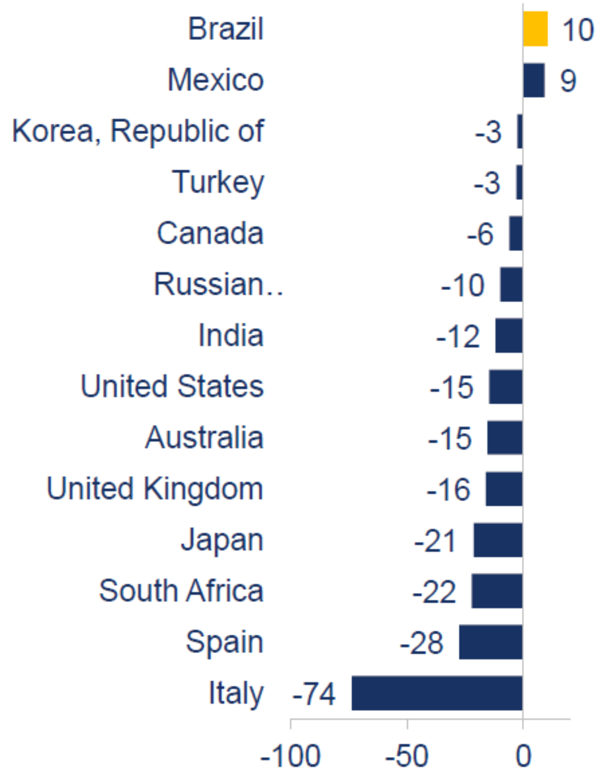
- **Capital flows management** (CFM) measures in Brazil involved:
  - Tax measures
  - Capital requirements on consumer loans with longer maturities and higher LTV ratios
  - FX intervention, including through FX swaps
- Also, banks face a **rigorous FX exposure regulation**:
  - more stringent FX capital 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

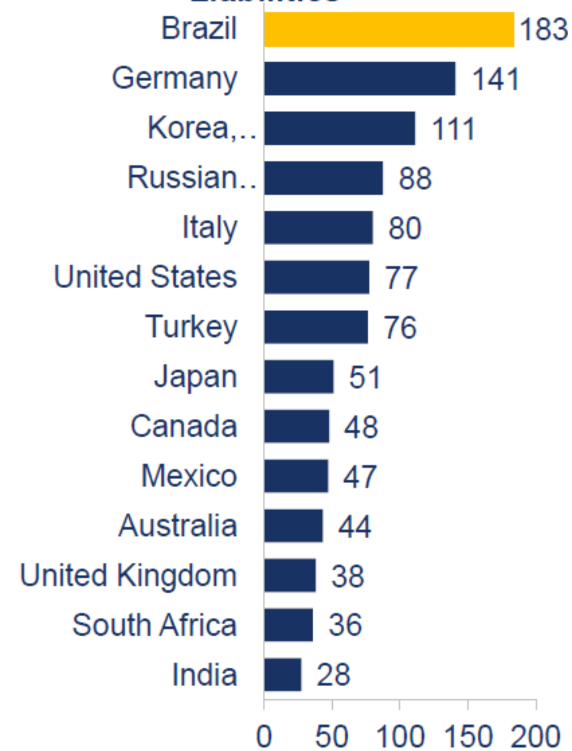
Regulatory Capital to Risk-Weighted Assets



(Provisions – NPL) / Capital



Liquid Assets to Short Term Liabilities



Source: IMF/FSI
(latest avaliable data)

Foreign Investment in Brazil

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

In US$ million

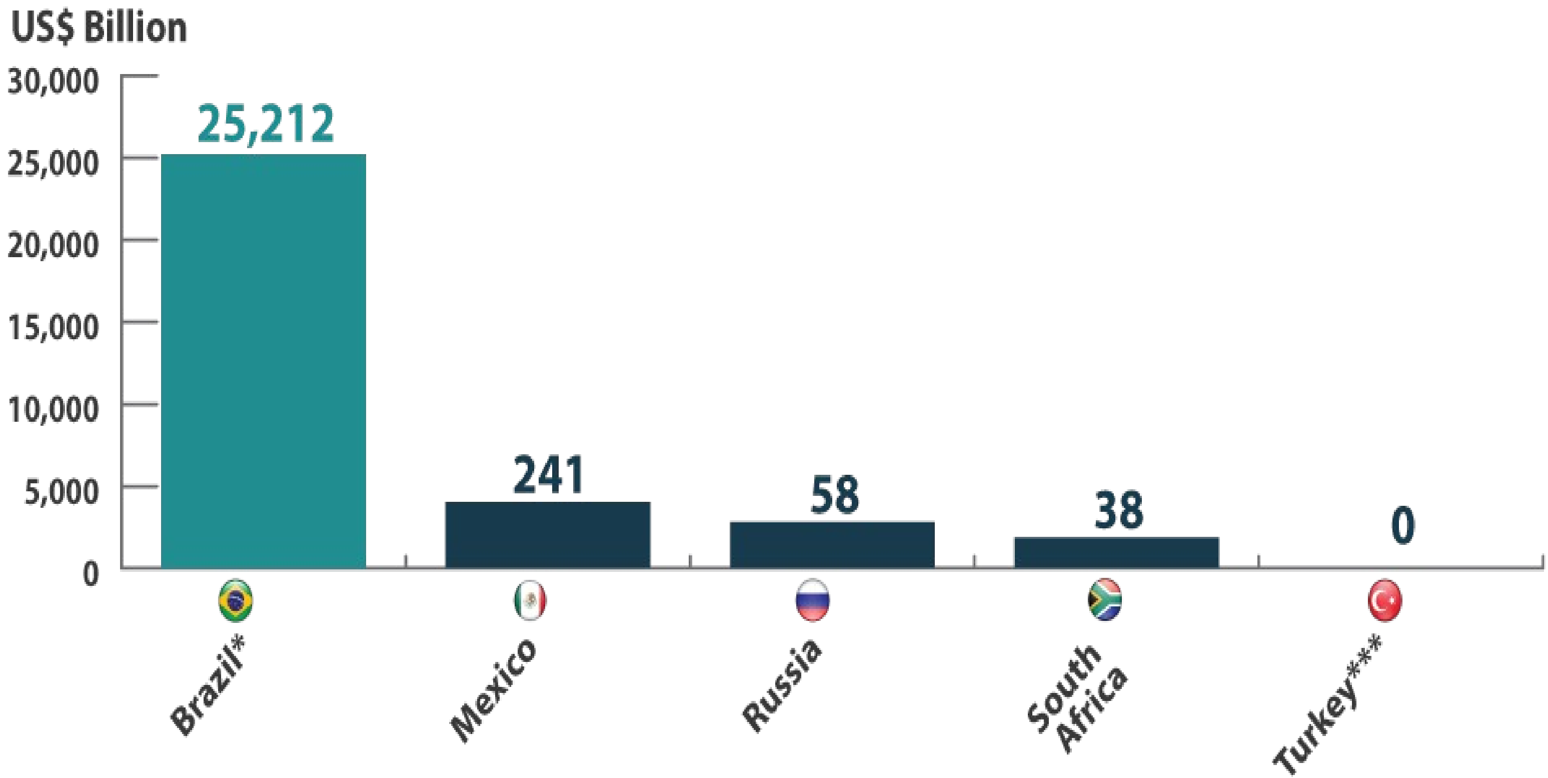
	2012		2013		2013
	Aug	Jan-Aug	Aug	Jan-Aug	Estimate*
Current Account	**-2,551**	**-31,541**	**-5,505**	**-57,952**	**-75,000**
Financial Account	**2,421**	**56,002**	**2,001**	**61,648**	**76,500**
Direct Investment (net)	3,665	45,905	2,540	43,800	
FDI	5,035	43,204	3,775	39,014	60,000
Portfolio Investment	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

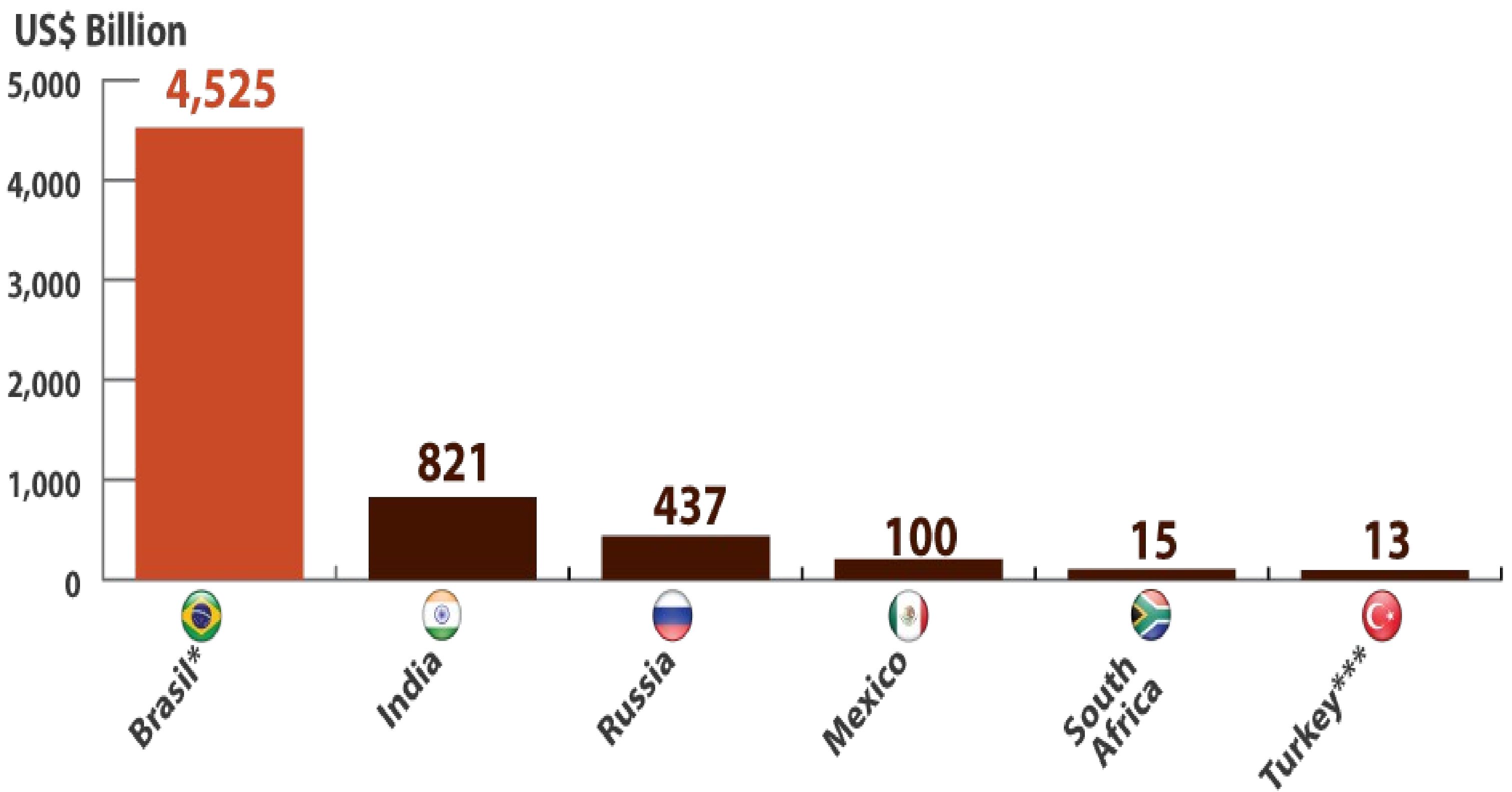


- * For Brazil, indicators only include futures and options operations.
- ** In China, currency derivatives are not traded (FX restriction).
- *** Turkdex Annual Market Statistics (Annual Fact Book 2012).

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



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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.
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