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FEATURED Q&A

Will Foreign Firms Cash in on Brazil's New Incentives?

Brazilian Minister of Economy Paulo Guedes said Friday that the climate in Brazil's Congress is "extraordinarily favorable" to passing new reforms proposed by the government. // File Photo: Brazilian Government.

Q Brazil's government is modifying rules to give foreign firms an even playing field for winning government contracts, Economy Minister Paulo Guedes said Jan. 27. As of May, international companies will no longer need a Brazilian representative in order to participate in public tenders, nor will they be required to have a Brazilian tax identification. What do the new rules mean in practice, and will they successfully expand foreign companies' participation in Brazil's public auctions? Will national companies be at a disadvantage as a result of the changes? What other hurdles remain for firms looking to expand their business in Latin America's largest economy?

A Gabrielle Trebat, managing director for Brazil and the Southern Cone at McLarty Associates: "The Brazilian Economy Ministry's announcement of its intention to join the WTO's Government Procurement Agreement (GPA) is another positive step in the effort to reduce red tape, promote transparency in government contracting, increase competition and adopt best practices in public bidding processes. GPA will afford foreign firms better access to a $11.8 billion public procurement market in Brazil and Brazilian firms to a global market worth $ 1.7 trillion per year. This follows last October's decree dropping the requirement that foreign firms provide certified translations of bidding documents and that public procurement websites Comprasnet and Sicaf offer English versions. With Brazil's adhesion to GPA, foreign firms will have access to the same procedures that Brazil-

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TODAY'S NEWS

POLITICAL

Brazilian Police Kill Prime Suspect in Franco Murder

Notorious hitman Adriano da Nóbrega, who police say fired upon them as they approached, is said to have led a right-wing paramilitary group suspected of ordering the murders of Rio de Janeiro Councilwoman Marielle Franco and her driver in 2018.

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ECONOMIC

Fitch Cuts Outlook on Panama Debt

The moved follows what Fitch called a marked deterioration in Panama's fiscal deficits and a significant increase in the government's debt burden. Panama grew by about 6 percent last year.

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POLITICAL

El Salvador's President, Troops Occupy Congress

The President of El Salvador, Nayib Bukele, and a group of heavily armed soldiers briefly occupied the country's Congress on Sunday in a bid to pressure lawmakers to back his crime-fighting proposals.

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Bukele // File Photo: Salvadoran Government.

POLITICAL NEWS

President, Troops Occupy El Salvador's Congress Building

The President of El Salvador, Nayib Bukele, and a group of heavily armed soldiers briefly occupied the country's Congress on Sunday in a bid to pressure lawmakers to back his crime-fighting proposals, Reuters reported. About 50,000 pro-government demonstrators descended on the parliament building in response to Bukele's call for public support, BBC News reported. The move, which opposition leaders said was intended to intimidate them, drew international condemnation. Human Rights Watch issued a statement calling Bukele's actions an "exhibition of brute force," and the United Nations called on Bukele to respect the country's institutions. Guarded by soldiers in full battle uniform, Bukele, 38, sat in the seat reserved for the president of Congress and cupped his hands together to pray, he said, for patience with lawmakers. But few of them turned up at the special session, according to the report. The president of Congress, Mario Ponce, told reporters that lawmakers would meet today to discuss Bukele's proposals, which involve a $100 million multilateral loan to crack down on crime. The funds would be used to buy police vehicles, uniforms, surveillance equipment and a helicopter, with an emphasis on the military's involvement in fighting crime.

Ecuador's President to Meet With Trump

Ecuadorean Foreign Minister José Valencia on Saturday confirmed that President Lenín Moreno's visit to Washington this week will include a meeting on Wednesday with U.S. President Donald Trump, the first time in nearly two decades that a sitting president from Ecuador will visit the White House, El Comercio reported. Moreno is scheduled to arrive in Washington on Tuesday and leave Friday. His schedule includes a visit to the U.S. Senate, as well as meetings with Luis Almagro, the secretary general of the Organization of American States, and David Malpass, president of the World Bank. Ecuador is hoping to improve trade relations with the United States, according to the report. Last month, the U.S. Trade Representative held two days of hearings under the Generalized System of Preferences program that could lead to a suspension or reduction of trade benefits for the Andean nation, Politico reported. The hearings stem from an ongoing legal dispute between Ecuador and U.S. oil company Chevron. Ecuador's non-oil exports to the United States reached $2.8 billion in 2019, El Comercio reported.


Moreno // File Photo: Ecuadorean Government.

Brazilian Police Kill Prime Suspect in Franco Murder

Police in Brazil's northern state of Bahia on Sunday said they killed a former policeman suspected of murdering a prominent leftist politician and activist in 2018, Folha de S.Paulo reported. Adriano da Nóbrega, who police say fired upon them as they approached, is said to have led a right-wing paramilitary group suspected of ordering the murders of Rio de Janeiro Councilwoman Marielle Franco and her driver. Franco had been critical of police tactics used in deadly raids in poor areas of the city. Last year, two former police officers were arrested in connection with the murders. Nóbrega was expelled from Rio's military police unit in 2014 and had been arrested at least twice before the Franco incident on charges of murder and attempted murder. Local media reports have been documenting Nóbrega's ties to the

NEWS BRIEFS

Fitch Lowers Outlook on Panama Debt Ratings

New York-based Fitch Ratings on Friday lowered Panama's rating outlook from stable to negative, La Estrella de Panamá reported. The moved follows what Fitch called a marked deterioration in Panama's fiscal deficits and a significant increase in the government's debt burden, according to the report. Although the country maintains the 'BBB' rating (investment grade), the rating agency projects that the debt burden will continue to increase this year. Panama's economy grew by about 6 percent last year, making it one of the fastest-expanding economies in Latin America and the Caribbean, according to the World Bank.

United Nations Grants $4.1 Million to Costa Rica for Migrant Assistance

The United Nations High Commissioner for Refugees said Friday the agency will grant $4.1 million to Costa Rica to assist asylum seekers in the country who are living in poverty, Agence France-Presse reported. The agency's deputy director, Kelly Clements, was in Costa Rica last week meeting with President Carlos Alvarado. There are currently 87,190 asylum seekers in Costa Rica, of which 80 percent are Nicaraguans and 7 percent Venezuelans.

CA International Invests $325 Million in Mexico

Chicago-based real estate investment firm CA International said Friday it will invest $325 million to expand its business in Latin America. Initial investments will target multifamily and student housing in Mexico, specifically the cities of Monterrey, Mexico City and Mérida. The company, which has projects already underway in Chile and Colombia, is a unit of CA Ventures, a real estate firm with more than $13 billion in assets across North America, South America and Europe.

family of President Jair Bolsonaro, in particular his son Flávio. Prosecutors in December said they had concluded that bank accounts controlled by Nóbrega were used to launder money taken from the salaries of officials employed in Flávio Bolsonaro's office in the state assembly. Nóbrega's lawyer said he feared his client, who has been on the run for more than a year, would be killed by police because he knew too much, BBC News reported.

BUSINESS NEWS

United States Levies New Sanctions on Venezuelan Airline

The U.S. government on Friday slapped new sanctions on Venezuela in an effort to increase pressure on President Nicolás Maduro, targeting its state-run airline carrier CONVIASA. "The illegitimate Maduro regime relies on the Venezuelan state-owned airline CONVIASA to shuttle corrupt regime officials around the world to fuel support for its anti-democratic efforts," said Treasury Secretary Steven T. Mnuchin in a statement. "The Trump Administration will not allow Maduro and his proxies to continue stealing from the Venezuelan people and abusing state-owned assets to advance their own corrupt and destabilizing activities." Treasury's Office of Foreign Assets Control added CONVIASA to the Specially Designated Nationals and Blocked Persons (SDN) List, which generally prohibits U.S. persons or companies from conducting business with entities on the list. OFAC also added to the SDN list CONVIASA's 40 aircraft. The United States contends that the Maduro regime has used CONVIASA's planes to "promote its own political agenda, including shuttling regime officials to countries such as North Korea, Cuba, and Iran." Russian Foreign Minister Sergei Lavrov on Friday slammed U.S. sanctions against Venezuela during a visit to Caracas. The U.S. State Department last week suggested its Venezuela sanctions program could begin targeting Russian oil companies, Reuters reported.

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ian firms have long enjoyed: a 100 percent digital environment and streamlining of document submissions. Brazil will also no longer be able to tie local content or local production requirements to public bids. Ironically, this is occurring while the United States is mulling a withdrawal from GPA; it remains an open question how this move will affect Brazil's accession process. The government can also expect resistance from domestic industry in Brazil, particularly small- and medium-sized firms, which argue they don't have the scale or resources to compete with established foreign players unencumbered by the infamous 'Brazil Cost.' This said, the accession process should provide internal impetus for accelerating the pace of tax reform and improving Brazil's overall investment climate."

A **Sérgio Giovanetti Lazzarini, professor of organization and strategy at Insper Institute of Education and Research in Brazil:** "For a long time, public concessions and contracts in Brazil were concentrated on a few local players such as big construction companies and investment funds with public connections. These domestic players often received vast sums of subsidized credit (chiefly, via BNDES), equity coming from public or quasi-public sources (such as BNDES, pension funds and other public funds irrigated by earmarked transfers) and preferential procurement schemes. This practice created at least three sorts of problems. First, public contracts and concessions were virtual domestic oligopolies, with scant competition in the tender process and dysfunctional selection mechanisms (for example, there is evidence that companies donating to winning politicians received more public credit and were more likely to win those public contracts). Second, as these anti-competitive, politically driven schemes were investigated and punished (such as with the 'Lava Jato' operation), several big domestic firms went bankrupt and/or ended up with limited investment resources. Third, the Brazilian economy did not reap the productivity-enhancing benefits of more globally integrated supply chains, with new technologies and capital brought by external players. For this reason, the proposal to create a more open process inviting foreign companies and creating a level playing field is more than welcome. In the long run, it will tend to increase foreign domestic investment, increase competition (with positive effects in terms of lower prices and/or higher government revenues in public auctions) and generate positive spillovers to domestic firms, with the presence of diverse players with new technologies and practices."

A **Husani Durans de Jesus, senior consultant for public affairs in Latin America at FTI Consulting:** "Although the Bolsonaro administration is attempting to facilitate the participation of foreign companies in public auctions and has recently announced the intention of joining the Government Procurement Agreement (GPA) of the WTO, these changes require congressional approval to come into force. Recent congressional activity indicates little interest in changing Law 8.666/93 (the public procurement law), but if modifications are implemented, and foreign companies are given national treatment, this could increase competition for government contracts. The bidding process for public tender is online and straightforward; the government only needs to provide an English version of the platform. However, a prohibi-

> **"Unfortunately, the current administration does not recognize government procurement as an economic development tool."**
> — Husani Durans de Jesus

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tive tax system, outdated IP framework and political and economic instability continue to deter foreign companies from expanding their business operations in Brazil. Additionally, it is worth noting that many international companies already participate in public tenders, but it is hard to quantify due to companies' use of Brazilian representatives. Unfortunately, the current administration does not recognize government procurement as an economic development tool. Government procurement could be used as a countercyclical tool with a positive spillover effect in the Brazilian economy, precisely at a moment where Brazil is trying to revamp economic activity."

A **Fabiano Deffenti, partner at DEQ - Deffenti & Queiroz Advogados:** "The Bolsonaro government's emphasis on economic liberalization is a welcome change from the Workers' Party era. In practice, the reduction in bureaucracy is likely to attract more bidders to public auctions—and this is likely to increase when Brazil accedes to the WTO's Government Procurement Agreement. For corporate governance purposes, appointing a Brazilian resident as a representative usually caused concerns and took time to be approved by foreign decision-makers. The cost of obtaining certified translations (now only required if the foreign bidder wins, which will ultimately still add to the transaction costs) often made smaller procurement processes not viable for foreign SMEs. However, that is only part of the problems that foreign entities faced when participating in procurement processes. Other problems include: 1.) government officers' poor command of English and the procurement documentation only being available in Portuguese (and often being poorly drafted); 2.) the unpredictability and litigiousness of Brazil's legal system; 3.) the complexity of the Brazilian tax system; 4.) bureaucracy in obtaining bank guarantees issued by Brazilian banks; 5.) exposure to foreign exchange fluctuations; 6.) when the bidder is a joint venture (consortium), the requirement that the leader be a company registered in Brazil; and 7.) corruption during the procurement process and performance of the contract stages. Many foreign companies have chosen to stay away from Brazil to avoid being caught up in involvement with corruption allegations (and the risk of having class actions and SEC investigations that might ensue). Ironically, corruption has become much less of a problem in recent years (especially after Operation Car Wash). Brazilian companies will not be at a disadvantage vis-à-vis their foreign competitors. Brazil's Procurement Law provides that local and foreign bidders will have taxes that apply only to Brazilian bidders added to their tendered prices. This is itself a problem that may lead to litigation due to the complexity of Brazil's tax system (which is also likely to be reformed soon under Bolsonaro)."

> **"Brazilian companies will not be at a disadvantage vis-à-vis their foreign competitors."**
> **— Fabiano Deffenti**

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at **gkuleta@thedialogue.org**.

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