

# The New Brazil-US Agenda: Trade, Negotiations and Mechanisms for the Industry's Defense

FIESP Seminar – Panel II – Application of Trade Remedy Instruments

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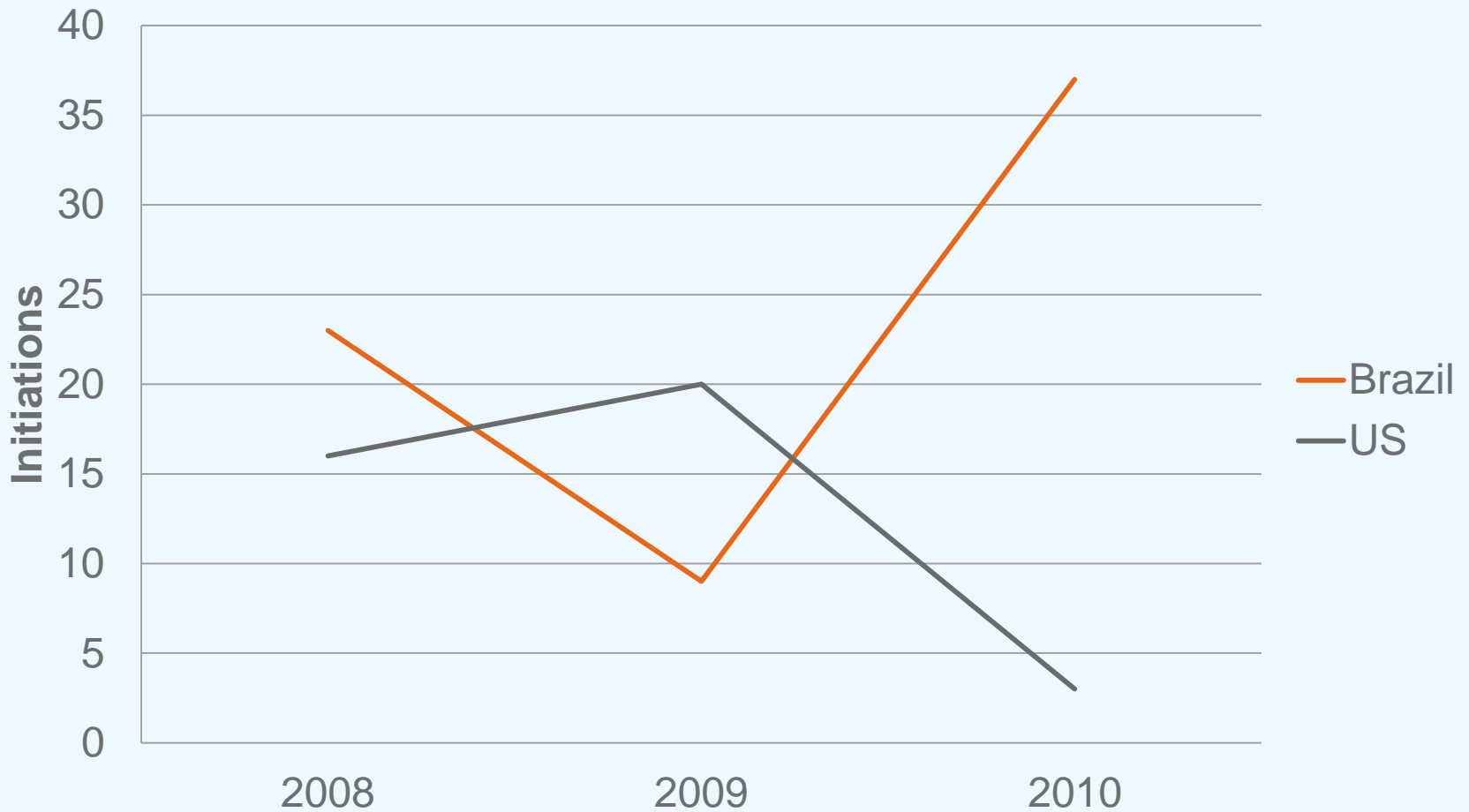
# US and Brazil among Top Users and Top Targets of Anti-Dumping Investigations

1995-2010 (Source: WTO)

- Brazil
  - initiated 216 AD investigations and applied 106 AD measures in the period; was target of 111 AD investigations in the period
- United States
  - initiated 443 AD investigations and applied 301 AD measures in the period; was target of 224 AD investigations in the period
- Things are changing, however... Brazil became in recent years a much more active user than the US

# Initiation of AD Investigations in 2008-2010

(Source: WTO)



# Recent Developments in the US

- Fewer new AD cases; though old cases continue to be fought hard and long at DOC, ITC and CIT
- China continues to be the inevitable target of virtually all new trade remedy actions
- Zeroing in administrative reviews poised to finally cease to exist
- August 2010 announcement of 14 proposed measures
- Recent WTO decision requires US to avoid double remedies in AD and CVD cases against China
- China Special Safeguard case: Obama revisited Bush's policy in tires dispute; WTO rejected China's challenge

# Recent Developments in Brazil

- Brazil facing rising imports due to steep appreciation of the Real in recent years
- MDIC/DECOM announced several new measures and policies to strengthen application of trade remedy instruments, including:
  - New anti-circumvention regulations
  - Semi-automatic import licensing to products subject to trade remedy investigations
  - Will cease to apply lesser duty rule
  - Tougher action against false declaration of origin
  - New regulations on retroactive application of AD duties

# Lessons Brazil May Learn from the US

- It is better to separate dumping from injury analysis in AD investigations
- Interim reviews should be more common
- DECOM is seriously understaffed (announced plans to fix it in “Brasil Maior”) compared to DOC/ITC
- More transparency in investigations
  - AD petitions are made available to public right away
  - Legal counsel have access to confidential records through APO
- Electronic filing (new DOC rules)

# Lessons US May Learn from Brazil

- No zeroing; lesser duty rule in all cases until recently
- 5-year sunset reviews have a reason to exist; AD and CVD orders are not supposed to remain in place for 20 years (as it occurs in the US)
- Investigators accessible at all times in the course of investigation
- DECOM investigators more wary of possible WTO-inconsistent behavior

# Section 337 Investigations

## A Powerful Trade Remedy Instrument

- Conducted by the US International Trade Commission in Washington, DC
- May be based on any unfair act in the importation of articles into the United States
- Are most frequently used in patent cases involving imports that are alleged to infringe a U.S. patent
- Have also been based on Trademarks, Copyrights, Trade Secrets, Gray Market Goods, Unfair Competition, and Anti-Trust Violations, among others

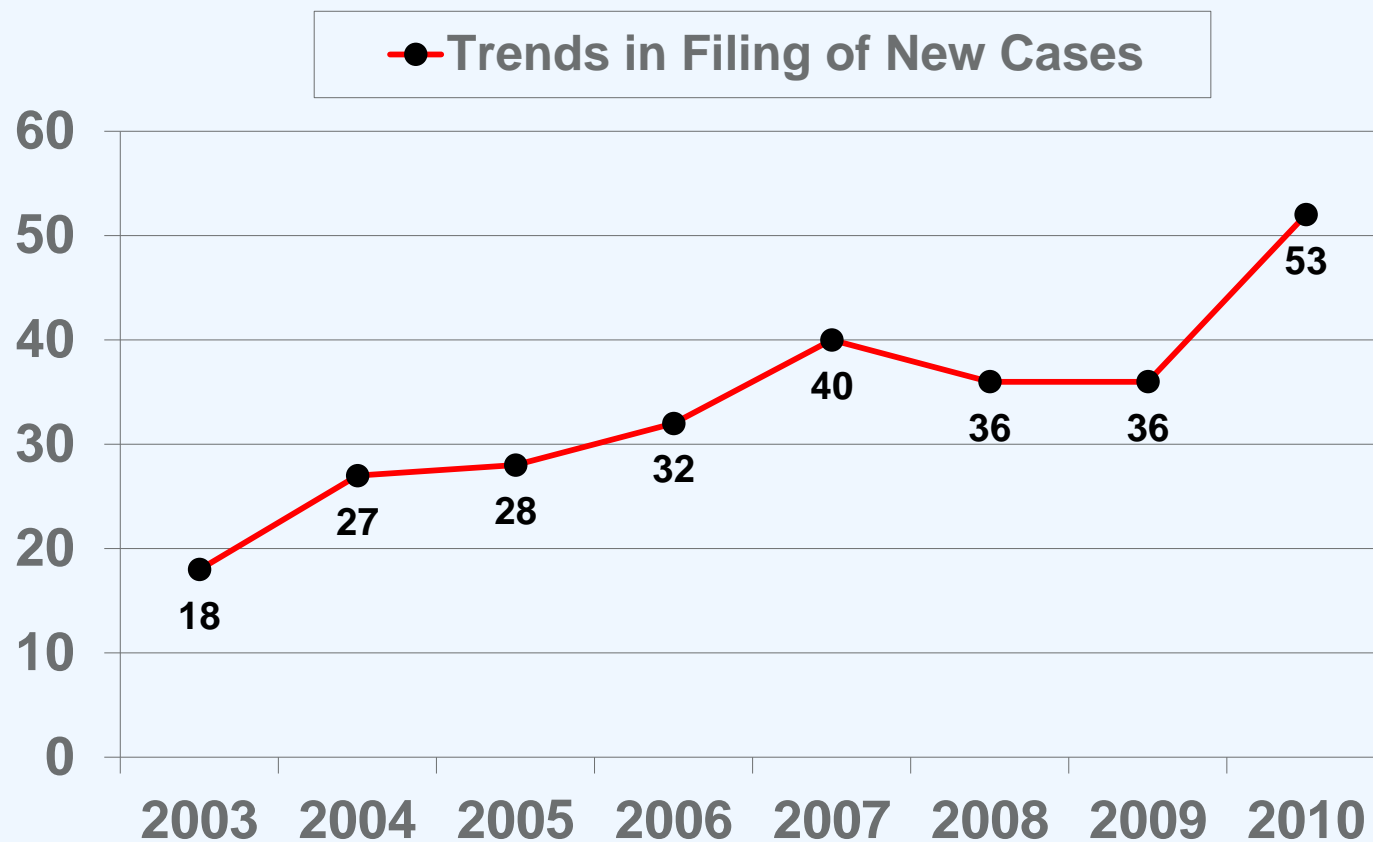
# Elements of a Section 337 Case

- To succeed, a complainant must establish:
  - existence of a domestic industry;
  - importation of products by a respondent; and
  - unfair act (such as infringement of a U.S. patent)

# Why Complainants Like Section 337

- Quick decision — target dates of 12-16 mos. typical
- Ability to name all known companies importing infringing products in one proceeding
- Availability of Customs-enforced exclusion orders
  - much better result than in anti-dumping case; product is simply denied entry by Customs and banned from the US market
- Possibility of general exclusion order
- Respondents must produce discovery or default
- Administrative law judges with experience in patent cases

# Section 337: A booming practice in the US



# Why Are Record Number of Section 337 Complaints Being Filed at the ITC?

- Foreign companies becoming more multinational and able to satisfy the “domestic industry” requirement
- U.S. manufacturing moving abroad means more goods are imported and subject to ITC's jurisdiction
- Supreme Court’s *eBay* decision raises uncertainty about the availability of permanent injunctions in district court cases
- Remedies not available in district court (including limited exclusion orders not limited to accused products and general exclusion orders)

# Foreign Companies Using Section 337

## EUROPE

*Siemens, Unilin, Philips*

*SGS-Thompson,*

*OSRAM GmbH*

## KOREA

*Samsung*

*LG Electronics*

## TAIWAN

*MediaTek*

*Mosel Vitelic*

*United Microelectronics Corp.*

*Taiwan Semiconductor Manufacturing*



## JAPAN

*Makita, Ricoh, Kubota,*

*Fujitsu, Fuji, Funai,*

*Sumitomo, Rohm*

## SINGAPORE

*Creative*

## HONG KONG

*Tal Apparel Limited*

# Brazilian Companies Should Do It Too!

- No Brazilian company has ever filed a Section 337 case
- WHY?
- Probably because they have no knowledge of this powerful tool
- Many Brazilian companies with US operations may qualify as Section 337 complainants and could fight competition in the US market, especially from Chinese imports!