



## Compulsory licensing tensions loom in clash over US tariffs, Brazil IP retaliation

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US pharmaceutical companies are worried about the US-Brazil trade war, as President Donald Trump's tariffs and trade investigation prompted Brazil to pass a law enabling the suspension of intellectual property rights.

In response to US 50% tariffs, Brazil passed legislation authorising its government to suspend patents, trademarks and copyrights through the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS) suspension process. Some observers question whether compulsory licensing of pharmaceutical patents could be next.

"The situation is very volatile in Brazil right now. On the one hand, my tendency would be to say this idea of issuing compulsory licences in order to retaliate against the US seems to me very absurd, but the tensions are escalating as we speak," warns Gabriel Leonardos, president of the Brazilian Association of Intellectual Property (ABPI). "This

would give a horrible message to innovators worldwide that Brazil is not a trustworthy country to invest."

The Pharmaceutical Research and Manufacturers of America (PhRMA) urges the US government to pursue a binding agreement with Brazil to resolve these issues, says a public comment the association submitted in the US trade investigation. The group cautions against Brazil's use of retaliatory IP suspensions, calling for diplomatic engagement over trade escalation.

"These retaliatory measures would impair patient health outcomes by reducing access to innovative treatments, stifle both domestic and foreign investment and deepen trade tensions," says the PhRMA letter. No one from the group's press team responded to an email seeking comment.

## USA's actions

According to a White House **fact sheet** on 30 July, President Donald Trump signed an Executive Order imposing an additional 40% tariff on Brazil, bringing total tariffs to 50%, citing Brazilian government actions as a threat to US national security and economy. The order specifically targets what the administration characterises as the Brazilian government's coercion of US companies to censor content, deplatform users and modify their operations under threat of fines and prosecution. It calls out Brazilian Supreme Court Justice Alexandre de Moraes for allegedly issuing secret censorship orders and threatening US companies with financial penalties and asset freezes for refusing to comply.

Trump framed the tariffs as defending American companies from "extortion" and protecting free speech rights.

On 15 July, the Office of the United States Trade Representative **initiated** a Section 301 investigation – which could lead to retaliatory measures – into Brazil's trade practices across six areas, including intellectual property protection.

"Brazil apparently denies adequate and effective protection and enforcement of intellectual property rights, harming American workers whose livelihoods are tied to America's innovation- and creativity-driven sectors," the office stated in an **announcement**.

Regarding intellectual property specifically, the USTR alleges that Brazil fails to provide adequate protection and enforcement of IP rights, particularly citing widespread importation and distribution – without sufficient deterrent penalties – of counterfeit goods, modified gaming consoles and illicit streaming devices. The investigation notes that patent application processing takes an average of seven years (nine-and-a-half years for pharmaceuticals), effectively reducing patent terms. USTR argues these IP enforcement failures harm American workers in innovation and creativity-driven sectors.

On 18 August, the agency closed a public comment period on Brazil's IP practices and other topics (digital trade and electronic payment services; unfair, preferential tariffs; anti-corruption interference; ethanol market access; and illegal deforestation). The USTR will host a public hearing in the broad trade investigation on 3 and 4 September.

In public comments, ABPI defends Brazil's IP system, citing ongoing enforcement improvements and asserting that no measures are justified under Section 301(b).

In contrast, PhRMA urges USTR to address Brazil's IP shortcomings, including adopting regulatory data protection for pharmaceuticals, shortening patent examination pendency and introducing patent term adjustment to address the loss of minimum patent terms for pharmaceuticals.

## Brazil's response

Initially, Trump announced a 10% tariff on Brazilian imports in April. The Brazilian government responded by passing an Economic Reciprocity Law.

On 14 April, President Luiz Inácio Lula da Silva signed **Law No 15,122** establishing criteria for Brazil to suspend commercial concessions, investments and intellectual property obligations in response to unilateral measures by other countries or economic blocs that harm Brazil's competitiveness. The law specifically authorises the executive branch to suspend IP rights obligations under certain circumstances, particularly when other countries impose measures that interfere with Brazil's sovereign choices, violate trade agreements or establish environmental requirements more stringent than Brazil's own standards.

The law permits suspension of IP-related obligations as defined in Brazil's existing IP legislation, but stipulates this should be used exceptionally when other countermeasures are deemed inadequate. The legislation requires public consultations and diplomatic negotiations before implementation, with countermeasures designed to be proportional to the economic impact of the triggering foreign measures.

On 14 July, the Brazilian government convened a **committee** to oversee its response. The committee will consider potential countermeasures by creating work groups to analyse the actions and hosting public consultations to gather public opinions. The committee will also monitor diplomatic efforts between Brazil and the US.

Leonardos, the ABPI president, notes that the association intervened in the lawmaking process to convince the National Congress to add two amendments.

"Number one, it must obey the WTO rules. Brazil has to make a complaint to the WTO, and has to be authorised by the WTO to suspend IP rights. Number two, suspension of

IP rights can only be used as a last resort if other countermeasures are not effective," he states. "The final text of the act is not harmful at all to IP owners."

## Compulsory licensing discussions

But further change appears imminent.

Brazil's generic pharmaceutical industry includes a lot of corporations with significant political power, says Leonardos, partner in Kasznar Leonardos.

"They are more or less trying to use the momentum to convince the government to enact compulsory licenses so that they can introduce the generic versions sooner in the Brazilian market," he states.

Brazilian newspaper **O Globo reported** that Yi Shin Tang, a professor of commercial law and international relations at the University of São Paulo, suggests that patent changes allowing compulsory licensing could serve dual purposes: retaliating against the US and reducing domestic medicine costs by eliminating patent royalty payments to American companies. However, Tang warns that if Brazil explicitly links patent modifications to retaliation against Trump's tariffs the action could face legal challenges at the World Trade Organization.

Brazilian IP attorney Ana Carolina Cagnoni notes Brazil's Economic Reciprocity Law avoids directly referencing "patents" or compulsory licensing mechanisms, **O Globo reported**. Brazil's 1996 IP legislation typically reserves compulsory patent licensing for public health emergencies and requires compensation to patent holders. Cagnoni, who founded A2C Legal, warns that deploying such measures outside health crises could undermine Brazil's legal predictability.

For this reason, ABPI also strongly opposes compulsory licensing as a trade retaliation measure.

"Our view is very strong: to use IP rights in this dispute would be silly by the Brazilian government," Leonardos comments. "It would hurt us much more than it would hurt US interests. As we say in Portuguese: we would be shooting our own foot".



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