

8-1-2016

Treaty of Amity, Commerce, and Navigation Between Brazil and the U.S.

Prof. Dr. Attila S.L. Andrade Jr.

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [International Law Commons](#), and the [International Trade Law Commons](#)

Recommended Citation

Prof. Dr. Attila S.L. Andrade Jr., *Treaty of Amity, Commerce, and Navigation Between Brazil and the U.S.*, 47 U. Miami Inter-Am. L. Rev. 200 ()

Available at: <http://repository.law.miami.edu/umialr/vol47/iss2/5>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

Treaty of Amity, Commerce, and Navigation Between Brazil and the U.S.

Prof. Dr. Attila S.L. Andrade Jr.*

This Article deals with the analytical history of the Treaty of Amity, Commerce and Navigation between the U.S. and Brazil. In the first part of the Article, the author analyzed all the provisions of the Treaty entered into between the two countries on December 12, 1828. The second part examined the historical causes for the early termination of the Treaty, 13 years after its execution. It suggests and evidences that the historical cause lies in a political factor, that is, the conflicts between a Republican form of government and the Brazilian Imperial political system. The third and final part of the Article deals with the economic history of investments and business between the two countries. It finalizes to suggest the economic losses to both countries in the absence of a new Treaty in force. It also makes an exhortation to both countries to enter into a new Treaty of Amity, Commerce and Navigation.

I. THE HISTORY	201
II. SPECULATIONS ON WHAT MAY HAVE HAPPENED TO THE TREATY	209
III. CONSEQUENCES OF THE ABSENCE OF A TREATY ON FRIENDSHIP, TRADE AND NAVIGATION BETWEEN BRAZIL AND THE U.S.	213
IV. CONCLUSION.....	217

* Dr. Andrade has a Master of Laws (LLM 1972) and a Juristic Science Doctor (JSD 1977) from the Yale Law School. He also has a LLB from the Federal University of Rio de Janeiro (1969) and is a Fulbright Scholar (1971). He has written twenty published books in Brazil and abroad. He is a former Visiting Professor at the University of Miami School of Law and the University of Florida Levin College of Law.

One of the most intriguing facts in the history of international law is the existence (or the non-existence) of the Treaty of Amity, Commerce and Navigation between Brazil and the United States.¹ It is hard to believe that the most powerful economies in the Americas (the first and the eighth largest economies on earth) do not seem to possess a treaty to govern their relationship on trade and navigation.² The main purpose of this article is to analyze the history of this treaty between the two countries. It will also speculate on what has happened to this treaty and the consequences of it going into oblivion.

I. THE HISTORY

The U.S. and Brazil entered into a treaty on Amity, Commerce, and Navigation on December 12, 1828.³ It was one of the very first treaties that the two young nations entered into. This treaty involved the Republic of the United States of America and the Empire of Brazil; it was actually signed by “His Majesty the Emperor of Brazil” Pedro (Peter) the Second.⁴

Article 1 declared the firm and stable bonds of friendship between the two countries and their respective citizens.⁵ It was more a declaration of intents and a philosophical brooding than an actual rule of law.

¹ For a list of treaties and other international agreements between the U.S. and Brazil, see U.S. DEP’T OF STATE, TREATIES IN FORCE, 29 (2010), available at https://books.google.com/books?id=KDOb9eh2ldUC&pg=PA29&lpg=PA29&dq=%228+Stat.+390%22&source=bl&ots=GNCdg_Ae7m&sig=Gpfebvper-jjE6o4DBD-mmKGHaCs&hl=en&sa=X&ved=0ahUKEwi31KDj_bvMAh-WCKx4KHRYQAsUQ6AEIJzAD#v=onepage&q=%228%20Stat.%20390%22&f=false.

² *Id.*; *World’s Largest Economies*, CNN MONEY, http://money.cnn.com/news/economy/world_economies_gdp/ (last visited May 1, 2016).

³ Treaty of Amity, Commerce, and Navigation, U.S.-Braz., Dec. 12, 1828, 8 Stat. 390, available at http://avalon.law.yale.edu/19th_century/brazil01.asp [hereinafter Treaty of Amity, Commerce, and Navigation].

⁴ *Id.*

⁵ *Id.* at art. I.

Article 2 established a principle of equality whereby neither country would grant concessions on trade and navigation to third parties without warranting the same privileges to each other.⁶ The Empire of Brazil at the time made exceptions to existing treaties and understandings with Portugal.⁷

Article 3 gave the citizens of both countries the freedom to undertake trade, business, and residence in either nation.⁸ Exception to this rule was made for coastal trading in either country subject to its domestic or local laws.⁹ It is interesting to note that had this Treaty remained in force, both Brazilians and Americans would have had preferential rights to permanent residence visa applications in their respective countries. In the U.S. for instance, this right would have been warranted within the category of the E-1 Trade Treaty Visas application requirements.¹⁰

Article 4 regulated freedom of navigation in the sense that the vessels of foreign countries, as well as U.S. and Brazilian vessels, were free to carry merchandise, produce and manufactured items of either country; they also were free to export into each other's territories irrespective of any special levies, duties, or tonnage of the cargo or its nature.¹¹ This rule would also be applied to exportation and re-exportation from one country to the other.¹² The end of the article explained what it meant for a vessel to be "Brazilian."¹³ Accordingly, for the vessel to be "Brazilian," it would have sufficed that the owner or the captain of the ship be Brazilian and the papers be legally in order.¹⁴ It was indeed the first attempt to regulate the

⁶ *Id.* at art. II.

⁷ *Id.*

⁸ *Id.* at art. III.

⁹ *Id.*

¹⁰ *Nonimmigrant Treaty Traders and Investors and Immigrant Employment-Based Alien Entrepreneurs, Overview*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Customer%20Service%20Reference%20Guide/TradersInvestors.pdf> (last visited May 1, 2016).

¹¹ Treaty of Amity, Commerce, and Navigation, *supra* note 3, at art. IV.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

freedom of the seas between the two countries and liberate them from the bonds of taxation.

Article 5 provided for a rule of tax equality and non-discrimination on taxation—it established that there should have been no higher taxation on the export of either Brazilian or U.S. products.¹⁵ Moreover, the taxes on the export of Brazilian and American goods could not have been more onerous than the taxes levied on the similar products to third party countries.¹⁶ Likewise there should have been no prohibition of exportation or importation of products into either country, a policy that did not exist for third party countries.¹⁷ In sum, no discrimination of any sort may have existed whether in taxation or in foreign trade.

Article 6 regulated the equality of citizen's rights concerning captains' and merchants' prerogatives in each country's ports concerning the loading and un-loading of cargo and the consignment and sale of their goods.¹⁸ Each country's captains and merchants were to be treated in the same way as the country's own citizens or its most favored nation's status.¹⁹ One may assume that in the case where the domestic law would have treated its own citizenry poorly concerning those activities, the treaty may have afforded a treatment according to the most favored nation.²⁰

Article 7 dealt with a no embargo rule in a case of military expedition or action.²¹ If the embargo was unavoidable, it required adequate indemnification be paid to the prejudiced party.²² This seems an old concept dear to both civil and common laws whereby there is "no expropriation without compensation."²³

Article 8 provided for the well being of the captain and the rest of the crew of the vessels, whether merchant or military, in case of

¹⁵ *Id.* at art. V.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at art. VI.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at art. VII.

²² *Id.*

²³ Javier Robalino-Orellana, *International Investment And Administrative Law In Latin America*, 101 AM. SOC'Y INT'L LAW PROCEEDINGS 465, 467 (2007).

wars or any extraordinary event.²⁴ Accordingly, it would have allowed them to seek refuge or asylum in the rivers, bays, and ports in either country and be treated with respect and humanity.²⁵

Article 9 reflected an interesting provision providing that after acts of piracy, the owners of the cargo be able to claim compensation for deprivation of its ownership before the proper tribunal.²⁶ Imagine the impact that this Article would have had if a similar treaty existed between the U.S. and Cuba in the famous case of *Banco Nacional de Cuba vs Sabbatino*.²⁷

Article 10 ruled on the captain's and crew's right to be assisted in cases where vessels are wrecked.²⁸ It also provided for the captain's right to jettison the cargo if the vessel was in peril of sinking.²⁹ It is an old principle in maritime law known as "general average."³⁰

Article 11 provided rules of civil rights concerning the captain and other members of the crew to dispose of its own assets by sale, donation, will, or testament.³¹

Article 12 contained a similar rule, extending to each country's citizenry the right to the full protection of the laws of each country.³² This article was amply interpreted to include all respective citizens, transients, or people permanently residing in each territory.

Article 13 assured freedom of conscience and of religion to the citizens of each country in its respective jurisdiction.³³ It also provided that in case of death, burial proceedings be observed in accordance with local usage and in appropriate places free from disturbance and molestation.³⁴

Article 14 sheltered an intriguing principle that would most likely be rejected during today's world affairs and developments of international law. It provided full liberty for the vessels of either

²⁴ Treaty of Amity, Commerce, and Navigation, *supra* note 3, at art. VIII.

²⁵ *Id.*

²⁶ *Id.* at art. XI,

²⁷ *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

²⁸ Treaty of Amity, Commerce, and Navigation, *supra* note 3, at art. X.

²⁹ *Id.*

³⁰ *General Average Definition*, DUHAIME.ORG, <http://www.duhaime.org/LegalDictionary/G/GeneralAverage.aspx> (last visited May 1, 2016).

³¹ Treaty of Amity, Commerce, and Navigation, *supra* note 3, at art. XI.

³² *Id.* at art. XII.

³³ *Id.* at art. XIII.

³⁴ *Id.*

contracting party to sail and engage in business with the vessels of the enemy of either country.³⁵ It seems that, at the time, freedom of the seas and trade prevailed over good common sense during wartime. Imagine a situation in which a Brazilian vessel was not a party to or ally of either the U.S. or Spain during the Spanish-American War. The Brazilian vessel could have engaged in business with a Spanish flag vessel in any nearby territory of the U.S. Or even worse, imagine a Brazilian vessel (before Brazil entered WWII on the side of the Allies) doing business in a Brazilian port for German U-boats to later torpedo American and British ships. It is a principle of law which would not be approved in modern days given the morality of “friendly nations” during times of war. The neutrality concept of a friendly nation would have been imposed and would have superseded any other economic consideration, which would otherwise support the very concept of free trade and freedom of the seas.

Article 15 embodied a consequential rule of the preceding article. It provided that if the properties of a neutral flagship (being one of the treaty parties thereof) were found in the enemy’s vessel, such properties would be deemed enemy properties and therefore be subject to confiscation.³⁶ This would be the case unless the properties had been placed aboard the enemy’s ship before the declaration of war between the enemy country and one of the contracting parties.³⁷

Article 16 reinforced the rule of Article 14 emphasizing the freedom of trade and the seas except in the following cases of transported goods:

1st. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuzees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds and grenades, bombs, powder, matches, balls and all other things belonging to the use of these arms.

2d. Bucklers, helmets, breast plates, coats of mail, infantry belts and clothes made up in the form and for a military use.

³⁵ *Id.* at art. XIV.

³⁶ *Id.* at art. XV.

³⁷ *Id.*

3d. Cavalry belts, and horses with their furniture.

4th. And generally all kinds of arms and instruments of iron, steel, brass and copper or of any other.

Of course the list of these items does not make much sense in today's warfare considering that this treaty is from the first quarter of the XIX century.³⁸

Article 17 restated the right to free trade and freedom of the seas except in cases of contraband and the items previously described.³⁹ It also denied freedom of navigation and trade in ports where an order of blockade existed.⁴⁰

Article 18 established that articles of contraband found on a vessel of either of the contracting parties bound for an enemy port would be subject to detention and confiscation.⁴¹

Article 19 provided that a vessel that was destined for an enemy port subject to besiege or a blockade may be entitled to turn around without having its cargo detained and confiscated (if its goods were not contraband).⁴² Imagine if this treaty were in force and a Brazilian ship carrying bags of coffee with all documents in order sailed to Cuba during the 1964 U.S. blockade to the island. Upon notice, the Brazilian vessel would have been entitled to turn away from its original destination. In this case, the U.S. authorities would not have been able to detain and confiscate the cargo as the vessel would not have defied or challenged the blockade. The same rule would apply to today's world.

Article 20 disposed of formalities in the examination of the neutral ship, and it provided that the naval authorities of one country would be entitled to examine documents and paperwork in an orderly fashion.⁴³ It was recommended that the examining authorities should not require the other vessel's personnel to leave its own ship to evidence its paperwork related to the cargo. The article recommended naval inspectors' courtesy and appropriateness.⁴⁴

³⁸ *Id.* at art. XVI.

³⁹ *Id.* at art. XVII.

⁴⁰ *Id.*

⁴¹ *Id.* at art. XVIII.

⁴² *Id.* at art. XIX.

⁴³ *Id.* at art. XX.

⁴⁴ *Id.*

Article 21 provided further details to avoid vexation and disorder during the examination process by indicating that crewmembers should carry sea letters and passports and any other documents to identify the personnel and the ship cargo.⁴⁵

Article 22 brought a rule of chivalry from almost two centuries ago that apparently laid dormant in the distant past. It said that if the vessels were in convoy, the word of honor of the convoy commander would suffice and supersede the need for the inspection.⁴⁶ What a world these people lived in!

Article 23 provided for procedural rules pursuant to which the competent tribunal would deliver its sentence concerning the vessel, the merchandise, and the crew.⁴⁷ Additionally, it bound the other contracting party concerning the same.⁴⁸ The tribunal would extract copies of its award.⁴⁹

Article 24 provided that as a contracting party at war, no citizen of the other party to the treaty would be required or obligated to accept a commission or a letter of marque in order to resist or cooperate with the enemy of that treaty party at war.⁵⁰ Conversely, such a person would be deemed a pirate.

Article 25 contained another rule of chivalry that no longer exists in today's world. It provided that if (and "God forbid," as the treaty phrased) the two contracting parties were at war with each other, citizens of either country would be afforded a free pass for themselves and their property for either six months for those dwelling along the coast or for one year for those residing in the interior of the territory of each country.⁵¹ Compared with today's world, one may conclude that the citizens of any country at war would be immediately taken to a concentration camp and their property confiscated as a war effort.

Article 26 said that in the event of war between the two contracting parties, no debt, credit, funds, moneys, commercial papers, or

⁴⁵ *Id.* at art. XXI.

⁴⁶ *Id.* at art. XXII.

⁴⁷ *Id.* at art. XXIII.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at art. XXIV.

⁵¹ *Id.* at art. XXV.

riches pertaining to the citizens of either country would be confiscated.⁵² What a fascinating world!

Article 27 gave, during times of eventual war, full protection and immunity to the contracting parties' diplomats, envoys, and ministers in order to warrant equality and fairness of public communications.⁵³

Article 28 provided that, in order to give more effectiveness and protection to the rights of the citizens of either country under this treaty, the contracting parties agreed to admit consuls and vice consuls to be appointed to the cities of respective ports open to foreign commerce.⁵⁴ Such diplomatic agents would enjoy the same rights, privileges, and prerogatives of consuls and vice consuls of the most favored nation.⁵⁵

Article 29 required these appointed consuls and vice consuls to present their patents and formal assignment letters to the authorities of the other country before they entered into their functions.⁵⁶

Article 30 provided for full diplomatic immunity and tax-free status to the parties' respective government agents and authorities.⁵⁷ It also guaranteed that their places of residence and belongings would be inviolable and exempted from court orders to the contrary.⁵⁸

Article 31 established that the consuls would have the power to request to the proper courts the detention and arrest of any deserter aboard the vessel of its own country.⁵⁹ The article did not specify the circumstances of the court request for arrest so one may surmise that it would have been during times of war and peace.⁶⁰

Article 32 declared that the two countries would endeavor to form consular convention in order to better define the rights and prerogatives of their respective consular and vice consular authorities to act within the framework of this treaty.⁶¹

⁵² *Id.* at art. XXVI.

⁵³ *Id.* at art. XXVII.

⁵⁴ *Id.* at art. XXVIII.

⁵⁵ *Id.*

⁵⁶ *Id.* at art. XXIX.

⁵⁷ *Id.* at art. XXX.

⁵⁸ *Id.*

⁵⁹ *Id.* at art. XXXI.

⁶⁰ *Id.*

⁶¹ *Id.* at art. XXXII.

Article 33 ended the treaty rules by establishing that the treaty was to be in force for twelve years.⁶² After one year, either party thereto would have had the right to terminate the treaty.⁶³ In case of termination, this article provided that the treaty would only have been terminated with reference to the provisions on trade and navigation.⁶⁴ Insofar as friendship, Article 33 provided that the treaty provisions would have remained.⁶⁵

On December 12, 1841, by a notice given from the Emperor of Brazil, this treaty was terminated “only for articles relating to commerce and navigation.”⁶⁶

II. SPECULATIONS ON WHAT MAY HAVE HAPPENED TO THE TREATY

Why did the Emperor of Brazil terminate the treaty
with the U.S. just 13 years after entering it into force?

The history of mankind is the history of the pursuit of riches and power—the “two Siamese brothers”—as one cannot live without the other. The history of the nations does not escape this assertion. The treaties themselves are a conciliation of these interests so that the nations could accommodate their goals for wealth and power without strives and wars. The history of the Treaties on Amity, Commerce, and Navigation represents this eternal conflict between and among the nations of the world and their attempts to accommodate their controversial goals without going to war.

In order to understand the history of this treaty and its failure, one must understand the background history of the two young nations back in 1828. Although their history has similarities, it also possesses a great many dissimilarities. Both were young, energetic, large territorial countries with immense riches. Both have had a large presence of immigrants from all over the world and the presence of non-white indigenous populations (Indians) and the unfortunate migration of Africans as slaves. However, the similarities finish there. All the rest has been different. While the U.S. conquered

⁶² *Id.* at art. XXXIII.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

its independence in 1776 after long years of bloody war waged against Great Britain, its colonial power Brazil basically “earned” its independence most peacefully.⁶⁷ Its independence was the outcome of an accord between son (Pedro I of Brazil) and father (King John VI of Portugal), which resulted in the declaration of Brazilian independence in 1822.⁶⁸ There was no war, conflict, or animosity between the colonial power and the colonists in Brazil.⁶⁹ Thus, a smooth transition from an Imperial Portuguese nation to a new and independent Imperial Brazilian nation occurred.⁷⁰ It seems that there was conciliation, such as “you become independent but keep the same imperial nature of government as us.”⁷¹ It was almost like a father-son arrangement, an amicable arrangement that has lasted for many years.

In the U.S. from the very beginning of its history, there was abhorrence against monarchical forms of government as Great Britain in the American perception exuded the manifestations of intolerance, naked power, and an anti-democratic form of government vis a vis its own people.⁷² The “founding fathers” knew exactly what America went through in the hands of the British crown. Americans always abhorred the elite form of British government and the ways British society was formed. Illuminated by the works of French Enlightenment philosophers such as Descartes, Rousseau, Voltaire, Diderot, and D’Alembert, America built its own philosophical foundation; namely based on the philosophical works of the French philosopher Baron de Montesquieu, who first conceived the separation of the three powers as the democratic form of government; America

⁶⁷ *American colonies declare independence*, THE HISTORY CHANNEL: THIS DAY IN HISTORY (Jul. 4, 2015), <http://www.history.com/this-day-in-history/american-colonies-declare-independence> [hereinafter *American Colonies*]; *History of Brazil: The accident of independence: 1807-1825*, HISTORY WORLD, <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?groupid=888&HistoryID=aa88>rack=pthc> (last visited May 20, 2016).

⁶⁸ *History of Brazil*, *supra* note 67.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ CLODOMIR VIANNA MOOG, BANDEIRANTES AND PIONEERS 93 (George Braziller et al., 1964).

⁷² *See generally American Colonies*, *supra* note 67.

was born as the United States of America.⁷³ These were the pinnacles of the American form of government and the foundation of the new great nation.⁷⁴

Therefore it would only be natural that the early governments of the United States would look at the Brazilian Imperial government with suspicion.⁷⁵ In fact it was the only country in the entire American hemisphere that had, at the time, a non-Republican form of government. Several other countries throughout Latin America were also Republics, like the U.S., and Brazil was the only exception in the entire American hemisphere.

In fact, this suspicion had manifested several times throughout the first and second quarters of the nineteenth century in attempts, directly or indirectly geared by the U.S., to topple the Brazilian imperial regime.⁷⁶ Unfortunately the traditional history books on the relations between the two countries have been very timid in reflecting this reality.⁷⁷ But, there are abundant reliable accounts from the Brazilian historians to indicate this unfortunate trend:

Throughout history, Brazilians in general have always had a rather negative perception of the United States. In 1817, while Brazil was still a “United Kingdom to Portugal” (“Reino Unido a Portugal”), there was an insurrection sponsored by American traders aimed at implanting a Republic in the prov-

⁷³ Brenda Erickson, *Separation of Powers – An Overview*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx> (last visited Mar. 17, 2016).

⁷⁴ *Id.*

⁷⁵ JOSEPH SMITH, BRAZIL AND THE UNITED STATES: CONVERGENCE AND DIVERGENCE 12 (Lester Langley et al., 2010).

⁷⁶ *Contra id.* at 1.

⁷⁷ *Id.*

ince of Pernambuco, that is, to introduce the Washington plan in Brazil.⁷⁸ Further, there was not an intention without foundation and plausibility; the insurrection had connections with the U.S.⁷⁹

On a different historical account, the author established the historical ambience through which Peter I had lived, which only aggravated the situation of mistrust between the two countries after his son Peter II succeeded him:

The relations between the United States and the Empire of Brazil were established in a climate of mistrust and suspicion; the reasons resided in the differences of regimes and the structures of the two societies. The U.S. considered the monarchical system of Brazil as an “anomaly” in accordance with the evaluation of Secretary of State Henry Clay. Brazil perceived the U.S. as a focus of subversion. The Emperor Peter I ordered the hanging of an American sailor, James H. Rodgers who participated in the 1824 revolt in Pernambuco . . . The influence which the United States exerted was ideological by publicizing its Republican form of government.⁸⁰

The historical evidence then finally comes about:

At the end of 1842 and the beginning of 1843, the United States put pressures on Brazil to renew the Trade Treaty of 1828 which was about to expire. Once again the Americans claimed compensation for the capture of the vessels that attempted to flee the Pernambuco’s blockade (1824) and the Rio de La Plata (1826-28). President John Tyler (1841-1845) in his message, actually made threats⁸¹

⁷⁸ Luiz Alberto Moniz Bandeira, *Os Estados Unidos, na percepção do Brasil*, ORIENTE MÍDIA (Dec. 20, 2014), <http://www.orientemidia.org/os-estados-unidos-na-percepcao-do-brasil/>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

In summation, it becomes very evident that the reasons why Emperor Peter II did not want to renew the Treaty with the U.S. had to do with the Emperor's fears that the U.S. was plotting against its own monarchical regime.⁸² Of course, that was not in his best interest.

III. CONSEQUENCES OF THE ABSENCE OF A TREATY ON FRIENDSHIP, TRADE AND NAVIGATION BETWEEN BRAZIL AND THE U.S.

The republican form of government came late to Brazil on November 15, 1889.⁸³ It was the product of many factors working together. First, there was enormous discontentment within the military with the Imperial government about interference in military affairs.⁸⁴ Equally, the Church was unhappy with the Emperor's interference with religious matters for the same reasons.⁸⁵ From an economic point of view, the situation was not very good; the Imperial coffers were low and heavily indebted to Great Britain for the financing of the Brazilian war against Paraguay.⁸⁶ From a sociological point of view, both the middle and rural classes were unsatisfied with the Emperor for different reasons. The middle class was unsatisfied because of its degrading economic situation and progressive political influence, namely from Europe.⁸⁷ The propertied rural class was unhappy with the Emperor for the abolition of slavery in 1888, a real blow to the farmers' economy.⁸⁸ Finally the influence of a strong new philosophical movement in Europe ("Positivism") and

⁸² SMITH, *supra* note 75 at 2, 12.

⁸³ Rebecca Duran, *History of Brazil Republic*, THE BRAZIL BUSINESS (Feb. 13, 2014), <http://thebrazilbusiness.com/article/history-of-brazil-republic>.

⁸⁴ *Brazil: A Country Study* (Rex A. Hudson, ed., 1997), available at <http://countrystudies.us/brazil/13.htm>.

⁸⁵ *Id.*; COLIN M. MACLACHLAN, A HISTORY OF MODERN BRAZIL: THE PAST AGAINST THE FUTURE (LATIN AMERICAN SILHOUETTES), 33-34 (2003).

⁸⁶ Leslie Bethell, *The Paraguayan War (1864-1870)*, 6, 9 (1996), available at [http://sas-space.sas.ac.uk/3585/1/B28_-_The_Paraguayan_War_\(1864-1870\).pdf](http://sas-space.sas.ac.uk/3585/1/B28_-_The_Paraguayan_War_(1864-1870).pdf) ("The financial cost of the war put a great strain on Brazil's public finances.").

⁸⁷ *Brazil: A Country Study*, *supra* note 84.

⁸⁸ *Id.*

the works of the Masonry in Brazil all contributed to the demise of the Empire in Brazil.⁸⁹

The republican form of government has been in Brazil for the last 126 years.⁹⁰ However, it is surprising that throughout these years, Brazil and the U.S. have never had a new Treaty on Friendship, Trade, and Navigation.⁹¹ The non-existence of the Treaty can be attributed to a variety of causes.⁹²

First, Brazil and the U.S. grew at very different paces and directions during these years.⁹³ While the U.S. grew into an industrial powerhouse in the twentieth century and eventually became the world leader, Brazil lagged behind by insisting on a colonial mode of economy based on a single commodity (coffee) to obtain its hard currency reserves.⁹⁴ Thereafter, commodities, such as sugar, rubber, and other agricultural products were added (especially during World War II (“WW II”).⁹⁵ Industrialization began with the installation of Brazil’s largest steel mill called “Volta Redonda” which was ironically financed by the U.S. as a quid pro quo for Brazil’s siding with the U.S. in WW II.⁹⁶

It is very difficult to compile a list of economic privileges derived from a treaty providing for a free flow of goods, tax exemptions, and economic capitalist models between economies of such different degrees of development.⁹⁷ Otherwise, the weaker economic party likely reaps fewer benefits than the stronger economic

⁸⁹ SMITH, *supra* note 75 at 34.

⁹⁰ Duran, *supra* note 83.

⁹¹ BRAZIL IN FOCUS: ECONOMIC, POLITICAL AND SOCIAL ISSUES, 116 (Jorge T. Almeida ed., Nova Science Publishers, Inc., 2008).

⁹² *Id.*

⁹³ WERNER BAER, THE BRAZILIAN ECONOMY: GROWTH AND DEVELOPMENT 47 (5th ed. 2001).

⁹⁴ *Brazil The Coffee Economy, 1840-1930*, <http://www.country-data.com/cgi-bin/query/r-1732.html> (last visited Mar. 4, 2016).

⁹⁵ BRAZIL TODAY: AN ENCYCLOPEDIA OF LIFE IN THE REPUBLIC VOLUME 1 A-L 238 (John J. Crocitti & Monique M. Vallance eds., 2012).

⁹⁶ *Id.* at 263.

⁹⁷ *Manual for the Negotiation of Bilateral Tax Treaties Between Developed and Developing Countries*, UNITED NATIONS DEP’T OF ECONOMIC AND SOCIAL AFFAIRS 1, 4 (2003), available at <http://www.un.org/esa/ffd/wp-content/uploads/2014/09/UNPAN008579.pdf>.

party.⁹⁸ This has been the Brazilian perception. Once again, the Brazilian perception that the U.S. has been the “Giant of the North” ready to engulf the whole country of Brazil has persisted throughout the Brazilian republican history⁹⁹

However, particularly during the military governments in Brazil from 1964 to 24 years later, the U.S. and Brazil enjoyed much better relations.¹⁰⁰ During the Kennedy era, many great projects were instituted, such as the Peace Corps.¹⁰¹ American private investments soared during these years, and the U.S. has become the largest foreign investor in Brazil to this date.¹⁰²

And yet, during these golden years of opportunity to work out a treaty, which could have bridged the gap between the economies of the two giants, the United States took no such initiative.¹⁰³ In 2000, President Bush attempted to bring about a new hemispheric trade concept called “ALCA,” but once again met Brazilian resistance:

The idea was that, no matter what government might have been, Brazil would have to cooperate with the United States and it would have to accept ALCA as Washington conceived. Without Brazil, the largest economy in South America, ALCA would be irrelevant to the United States. Brazil has the most diversified economic structure in comparison to all other South American countries: its industrial structure is more integrated and competitive which is reflected in the quotas of its manufactured products, in its GNP and the export of its manufactures (more than 50% of total exports) exceeding now the export of commodities. The establishment of ALCA, if Brazil participated in it would affect the export of its industrial goods to other countries in South America. For no

⁹⁸ *Id.*

⁹⁹ SMITH, *supra* note 75, at 1.

¹⁰⁰ *Brazil: A Country Study*, *supra* note 84.

¹⁰¹ *Peace Corps*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY AND MUSEUM, <http://www.jfklibrary.org/JFK/JFK-in-History/Peace-Corps.aspx> (last visited Mar. 4, 2016).

¹⁰² JAY PROSSER, *LIGHT IN THE DARK ROOM: PHOTOGRAPHY AND LOSS*, 103-04 (2004).

¹⁰³ BRAZIL IN FOCUS, *supra* note 91, at 116.

other reason, in 2002, Luiz Inácio Lula da Silva, leader of the Labor Party (“Partido dos Trabalhadores”), a center leftist party, who was leading the polls in October, 2002 stated: ‘ALCA is not in fact a pact of free trade but a means to annex Latin America to the United States.’ That was the public opinion in Brazil clearly manifested.¹⁰⁴

The succeeding governments in the last twelve years under the Labor Party’s rule only aggravated the tensions between the U.S. and Brazil.¹⁰⁵ Brazil has clearly distanced itself from the U.S. by adopting clear enthusiastic support towards the socialist and communist governments in Latin America.¹⁰⁶ There has been an overt endorsement of the communist regime in Cuba and the increasingly socialist regimes in Venezuela and Bolivia.¹⁰⁷

Brazil has been paying a high price for all of its support to these countries, especially to Venezuela and Bolivia. Paradoxically, both countries, which the Brazilian Labor Party has supported, have done nothing short of taking hostile actions against Brazil and its companies. Accordingly, Evo Morales, president of Bolivia, ordered the confiscation of Petrobras’ facilities upon a military siege on its premises.¹⁰⁸ Likewise, the Venezuelan government abandoned its financial support of another Petrobrás refinery in Pernambuco (a state in northeast Brazil); this lack of support caused the complete

¹⁰⁴ Bandeira, *supra* note 78.

¹⁰⁵ MONICA HIRST, THE UNITED STATES AND BRAZIL: A LONG ROAD OF UNMET EXPECTATIONS (CONTEMPORARY INTER-AMERICAN RELATIONS) 38 (2004).

¹⁰⁶ Rebecca Duran, *Communism in Brazil*, COMMUNISM IN BRAZIL – THE BRAZIL BUSINESS, <http://thebrazilbusiness.com/article/communism-in-brazil> (last visited Mar. 4, 2016).

¹⁰⁷ Joshua Partlow, *Castro Insists Cuba Won’t Abandon Communism Despite Deal with the U.S.*, WASHINGTON POST (Dec. 20, 2014), https://www.washingtonpost.com/world/the_americas/obamas-new-cuba-policy-could-transform-washingtons-ties-with-latin-america/2014/12/20/8e6ee050-2180-409a-a15b-bc8806cc045d_story.html.

¹⁰⁸ *Bolívia confisca bens da Petrobrás, assusta Lula e depois congela decisão*, INSTITUTO HUMANITAS UNISINOS (Sept. 15, 2006), <http://www.ihu.unisinos.br/noticias/51-bolivia-confisca-bens-da-petrobras-assusta-lula-e-depois-congela-decisao>.

interruption of works and final abandonment of the project, and ultimately resulted in immense losses for the Brazilian oil company.¹⁰⁹

This is all part of a political scheme jointly conceived by the Labor Party and Itamaraty, the Brazilian Ministry of Foreign Affairs, which decided to opt for a presumably more “independent” position vis-à-vis the U.S. in relation to other nations throughout Latin America. However, this contradicts the well-established policy of the Brazilian foreign affairs office which is to remain neutral regarding interactions with other Latin American countries in order to avoid being viewed as anti-American.¹¹⁰

IV. CONCLUSION

Traditionally the U.S. has been the largest direct foreign investor in Brazil by far, accumulating an accumulated stock of about US \$34 billion from 1986 through 1995.¹¹¹ Throughout Brazil’s history of foreign investments, the U.S. has been Brazil’s top foreign investor, contributing an accumulated stock of investments amounting to 18% of Brazil’s total foreign investments, while Spain is in second place at 15%.¹¹² The U.S. investments encompass almost every area of the Brazilian economy including manufacturing of machinery, automobiles, train parts and components, pharmaceutical products, chemicals, fertilizers, computer hardware and software, farming, and services.¹¹³

¹⁰⁹ Fábio Fabrini, Andreza Matais & Lisandra Paraguassu, *Petrobás abriu mão de cobrar ‘calote’ da Venezuela em obras de refinaria*, ESTADÃO (Mar. 24, 2014), <http://politica.estadao.com.br/noticias/eleicoes,petrobras-abriu-mao-de-cobrar-calote-da-venezuela-em-obras-de-refinaria-imp-,1144316>.

¹¹⁰ Luiz Alberto Moniz Bandeira, *Los Estados Unidos en la percepción de Brasil*, LA ONDA DIGITAL <http://www.laondadigital.uy/archivos/4262> (last visited May 15, 2016).

¹¹¹ *Investimentos e reinvestimentos estrangeiros no Brasil*, BANCO CENTRAL DO BRASIL, <http://www.bcb.gov.br/rex/IED/Port/Pa%C3%ADsDaEmpresa-Ano/Htms/estados-unidos.asp> (last visited May 16, 2016).

¹¹² *Department of State: 2014 Investment Climate Statement*, U.S. DEP’T OF STATE, <http://www.state.gov/documents/organization/227130.pdf> (last visited May 16, 2016).

¹¹³ *Brazil-US Investments Map: Enhancing the Bilateral Economic Partnership*, APEXBRASIL (2015), <http://arq.apexbrasil.com.br/portal/Brazil-US-InvestmentsMap.pdf>.

The U.S. is also Brazil's major trading partner: the table below shows impressive data of the U.S. exports and imports to and from Brazil within the last 13 years.¹¹⁴

Ano/Mês	EXPORTS			IMPORTS			Balance		
	US\$ FOB (A)	Var. %	Part. %	US\$ FOB (B)	Var. %	Part. %	SALDO (A-B)	CORRENTE (A+B)	COBERTUR A (A/B)
2000	13,189,576,929	0.00	23.93	12,899,226,083	0.00	23.10	290,350,846	26,088,803,012	1.02
2001	14,208,572,954	7.73	24.38	12,905,492,013	0.05	23.21	1,303,080,941	27,114,064,967	1.10
2002	15,377,822,589	8.23	25.44	10,287,452,316	-20.29	21.78	5,090,370,273	25,665,274,905	1.49
2003	16,728,079,047	8.78	22.85	9,569,454,702	-6.98	19.80	7,158,624,345	26,297,533,749	1.75
2004	20,099,235,400	20.15	20.79	11,357,061,637	18.68	18.07	8,742,173,763	31,456,297,037	1.77
2005	22,539,731,875	12.14	19.02	12,666,508,176	11.53	17.21	9,873,223,699	35,206,240,051	1.78
2006	24,524,748,523	8.81	17.80	14,657,479,678	15.72	16.05	9,867,268,845	39,182,228,201	1.67
2007	25,065,048,412	2.20	15.60	18,723,280,625	27.74	15.52	6,341,767,787	43,788,329,037	1.34
2008	27,423,048,799	9.41	13.85	25,627,961,850	36.88	14.82	1,795,086,949	53,051,010,649	1.07
2009	15,601,628,031	-43.11	10.20	20,032,145,355	-21.83	15.68	-4,430,517,324	35,633,773,386	0.78
2010	19,307,295,562	23.75	9.56	27,044,361,398	35.00	14.88	-7,737,065,836	46,351,656,960	0.71
2011	25,804,628,156	33.65	10.08	33,970,288,813	25.61	15.01	-8,165,660,657	59,774,916,969	0.76
2012	26,700,854,915	3.47	11.01	32,362,684,966	-4.73	14.50	-5,661,830,051	59,063,539,881	0.83
2013	24,653,476,362	-7.67	10.19	36,018,510,576	11.30	15.02	11,365,034,214	60,671,986,938	0.68

¹¹⁴ Evolução Comércio, EXTERIOR BRASILEIRO -1950 a 2007 (Janeiro/Setembro), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAAahUKEwjMtdKY4aziAhWDziIAKHUqrD8M&url=http%3A%2F%2Fwww.desenvolvimento.gov.br%2Farquivo%2Fsecex%2Fevocomextbrasil%2Fevolucaocebrasileiro.xls&usq=AFQjCNG2pz3yLlwFYOHwnVr5dC-JVW9sSg&sig2=SwgP7HYVeGfssmPivq9Csw&bvm=bv.104317490,d.eXY> (last visited Mar. 4, 2016).

Brazil has become an important foreign investor in the U.S.¹¹⁵ For instance, Brazil is the largest Latin American investor in the state of Florida and is Florida's largest trading partner.¹¹⁶

In 2014, the U.S. investments in Brazil totaled US \$113 billion while Brazil's investments in the U.S. totaled about US \$16 billion.¹¹⁷ These are staggering sums!

All of the figures above show the economic relevance of these two countries in the Western hemisphere. It is unacceptable that throughout history, these countries, with their large growing economies, seem to have ignored each other regarding commerce and investment treaty negotiations.¹¹⁸ The two countries could only benefit by immensely increasing their mutual economic presence, which would create thousands of jobs and prosperity in each country. By liberalizing taxes and procedures for investments and trade, the two countries could enormously increase the above figures.

Now is the time for these two countries to leave behind resentment, differences, and faulty preconceived perceptions, which were exacerbated by Brazil's unjustifiable paranoia towards the U.S. The two countries have more to gain by working closely together than by ignoring each other. This article conclusively becomes an exhortation to policymakers of both countries to review their respective positions and soon work out treaties in the areas of trade and investments. While friendship has tied the two countries together for centuries, business should now bring the two countries closer than ever.¹¹⁹

¹¹⁵ Kerry Close & Doreen Hemlock, *Brazilian community in South Florida attracts companies in Brazil to US market*, SUN-SENTINEL (Aug. 17, 2014), http://articles.sun-sentinel.com/2014-08-17/business/fl-brazil-companies-invest-20140817_1_south-florida-restaurant-chain-banco.

¹¹⁶ *Governor Scott's Trade & Business Development Mission to Brazil*, ENTERPRISE FLORIDA, <https://www.enterpriseflorida.com/newsroom/international-trade-development-missions/governor-led-missions/brazil/> (last visited May 16, 2016).

¹¹⁷ *U.S.-Brazil Relations*, C-SPAN (Jun. 30, 2015), <http://www.c-span.org/video/?326870-1/news-conference-presidents-obama-rousseff>.

¹¹⁸ LAURA CARSTEN MAHRENBACH, *THE TRADE POLICY OF EMERGING POWERS: STRATEGIC CHOICES OF BRAZIL AND INDIA* 68 (2013).

¹¹⁹ *U.S.-Brazil Relations*, *supra* note 117.