



“Brazil has fully aligned with international standards”: IP experts react to USTR’s Section 301 investigation

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- USTR launches Section 301 investigation into Brazilian trade practices, citing IP concerns among others
- Brazilian trademark practitioners state IP system is robust, despite natural challenges
- Opinion divided on whether investigation is overreach or could lead to further policy and standardisation

The Office of the US Trade Representative (USTR) has initiated a [sweeping Section 301 investigation](#) into Brazilian trade practices, citing concerns that span from inadequate IP protection to restrictions on digital commerce.

The investigation, launched under Section 301 of the Trade Act 1974, marks a significant escalation in trade tensions between Brazil and the United States.

However, local IP experts opine that, while there are structural challenges common to developing nations, the country's IP enforcement mechanisms are robust.

Brazilian legal community disputes IP enforcement claims

The USTR's allegations of inadequate IP protection have drawn measured responses from leading IP practitioners in Brazil.

As a signatory to several international IP agreements (eg, the Paris Convention, the TRIPS Agreement and the Madrid System), "Brazil has fully aligned its IP law with international standards", insists [Rafael Rocha](#), partner at Daniel Law.

"Certain particularities" of the Brazilian system even benefit international IP owners, he contends. "These include the broad availability and historically low threshold for obtaining preliminary injunctions in civil litigation, even in complex matters such as trade dress, industrial designs, 3D trademarks and patents."

Elsewhere, Brazil's anti-counterfeiting law "is above standard in international comparison", argues [Gabriel Leonardos](#), senior partner at Kasznar Leonardos. Not only does it clearly state that the infringement of any IP right is a criminal offence, but *ex parte* preliminary injunctions are available to IP owners, he notes.

Customs authorities are also empowered to seize and destroy counterfeit goods "without the need of a court decision", Leonardos explains. This means that "the procedures for organising police raids to seize counterfeit goods are generally streamlined and do not involve overly complex court proceedings", Rocha adds.

Recent years have seen a "significant increase" in engagement from law enforcement authorities, Rocha says. Despite the "widespread presence" of counterfeit goods in Brazil, "hundreds" of actions seizing "millions" of infringing products take place each year, he insists.

Geographical and structural enforcement challenges

But challenges remain.

"Relatively low criminal penalties for IP infringement" have a limited deterrent effect, Rocha admits. "Criminal penalties for IP crimes (eg, counterfeiting) are generally low and rarely result in imprisonment," he says.

"The time frame to get a final decision in our courts and the low amount normally determined as compensation" are also primary challenges for trademark owners, says [Luiz Edgard Montauray Pimenta](#), senior partner at Montauray Pimenta, Machado & Vieira de Mello.

The complexity of Brazil's enforcement landscape extends beyond legislative frameworks to geographical realities, too. "One of the major challenges of trademark enforcement in Brazil is the lack of adequate supervision of the amazingly long

Brazilian land border, mostly inside the tropical forest, and with a total length of 16,800km," observes Leonardos.

This geographical challenge is compounded by sophisticated counterfeiting operations. "Falsified goods are in the vast majority imported (or smuggled) into Brazil, and not locally produced, with several layers of smokescreens: companies that exist only on paper, falsified invoices, phony addresses," Leonardos notes. "Behind all that, there are often large crime organisations that either profit directly or sell 'protection' to such activities."

Standardisation and reform on the horizon?

Through all of this, Customs is perceived to have generally effective mechanisms, albeit with room for standardisation.

Customs mechanisms "normally work quite well and are very effective", says Montauray Pimenta. "The main issue that needs to be adjusted is the different procedures adopted by the different customs authorities' offices for the same type of retention."

Rocha agrees: "Most customs units now handle seizures administratively, without the need for a court order, through a faster and more cost-effective process. However, challenges remain in standardising this procedure."

"Customs units still operate with a high degree of discretion and may adopt differing approaches... Furthermore, certain customs units remain reluctant to disclose the identity of infringers, often due to a misinterpretation of tax confidentiality rules," Rocha expands. "Revising customs legislation to standardise administrative procedures for seizing counterfeit imports would enable more effective border control."

Practitioners report more encouraging developments when it comes to online enforcement. Despite ongoing debates over platform liability, Brazil's major online marketplaces "have implemented relatively effective brand protection programmes", says Rocha, who has seen first-hand "the fast review and removal of infringing content, with a high success rate".

However, the reactive nature of these platforms means that "a large volume of counterfeit-related advertisements continues to circulate online", he admits.

"Increasing the severity of criminal penalties for IP infringement would undoubtedly have a significant impact on enforcement strategies in Brazil, helping to reduce the availability of counterfeit products and effectively disrupt counterfeiters' supply chains," Rocha suggests.

Both this and customs standardisation are already under discussion in the Brazilian Congress, he says. But a "lack of political prioritisation" means "there is currently no clear timeline for their implementation".

For Leonardos, though, meaningful improvements may not require legislative change. An increase in dedicated federal and state police personnel could result in "immediate, better results", he says. While police officers are "professional and competent", staffing shortages remain, "due to the general lack of funding in most areas of fighting crime in Brazil, a natural consequence of the fiscal challenges of a developing country", Leonardos says.

Investigation's broader trade implications

The Section 301 investigation encompasses other areas of concern beyond intellectual property, including digital trade restrictions, alleged "unfair, preferential" tariffs and anti-corruption enforcement.

The USTR alleges that Brazil may be "retaliating against [US companies] for failing to censor political speech or restricting their ability to provide services in the country" through digital trade. The agency also claims that Brazil provides preferential tariff rates to certain trading partners while disadvantaging US exports.

Yet local practitioners are cautiously optimistic about the impact the investigation may have for IP enforcement.

"At this early stage, it is difficult to assess the full impact of the investigation," admits Rocha. "Possible penalties may jeopardise diplomatic efforts. However, if the situation helps generate greater political interest in advancing the review of IP legislation, particularly regarding penalties for IP crimes and customs procedures, the outcome would be favourable to the interests of US companies and IP owners more broadly."

"This may bring tension in relation to issues that may be of interest to US IP owners, but on the other hand this may bring stronger actions in relation to combatting counterfeiting in places that are well known by the Brazilian authorities," adds Montaury Pimenta.

For Leonardos, however, the investigation may be an overreach. "The general view in Brazil is that this investigation, as far as IP enforcement is concerned, is an exaggeration of the shortcomings of Brazil in this area," he says. "We hope this misunderstanding between the two countries can be quickly resolved. Brazil is strongly committed to enforcing IP rights, and not because of foreign pressures, but because in the last 20 years Brazilians have come to realise that IP protection brings social justice, innovation and technology and improvement to the Brazilian people's life conditions."

The USTR has requested consultations with Brazil in connection with the investigation. It is due to hold a hearing on 3 September 2025. Interested parties have until 18 August 2025 to submit written comments and hearing requests.



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