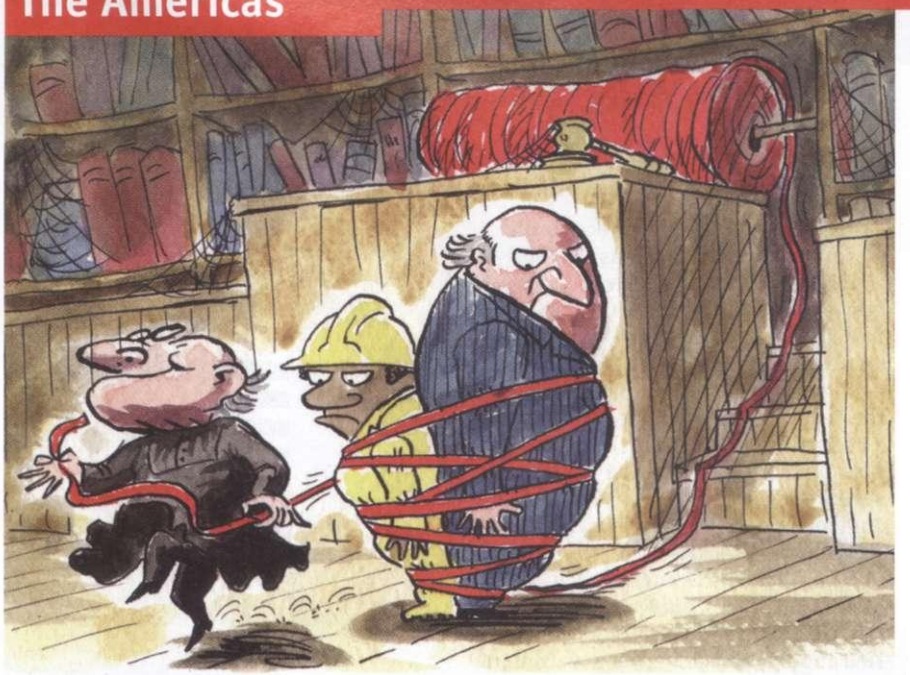

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Brazil's labour laws

Employer, beware

SÃO PAULO

An archaic labour code penalises businesses and workers alike

IN 1994 Ricardo Lemos (not his real name) and two friends bought a chain of pharmacies in Pernambuco, in Brazil's northeast. Immediately afterwards they were taken to court by four former employees of the pharmacies who claimed they were owed 500,000 reais (then $570,000) for overtime and holidays. Since the new owners lacked the payroll records, the labour court ruled against them-even though they had only just bought the business and the claimants had been in charge of payroll and work scheduling. The court froze their bank accounts, so they had to close the stores, with 35 redundancies. Seventeen years later three of the cases have been settled, for a total of 191,000 reais. The last drags on as the claimant's widow and son squabble over how much to accept.

Mr Lemos and his partners fell foul of Brazil's labour laws, a collection of workers' rights set out in 900 articles, some written into the country's constitution. They were originally derived from the corporatist labour code of Mussolini's Italy. They are costly: redundancies "without just cause" attract a fine of 4% of the total amount the worker has ever earned, for example. (Neither a lazy employee nor a bankrupt employer constitutes just cause.) Some are oddly specific: for example, annual leave can only be taken in one or two chunks, neither of less than ten days. In 2009,2.1m Brazilians opened cases against their employers in the labour courts. These courts rarely side with employers. The annual cost of running this branch of the judiciary is over 10 billion reais ($6 billion).

Businessmen have long complained that these onerous labour laws, together with high payroll taxes, put them off hiring and push them to pay under the table when they do. When Luiz Inácio Lula da Silva, a former union leader, became Brazil's president in 2003, they hoped he would be better placed than his predecessors to persuade workers that looser rules would be better for them. But scandals in his first term derailed these and other hoped-for reforms. More recently, as Brazil's economy has boomed, with record numbers of jobs created, the need for change has seemed less pressing (see box on next page). The laws are "very up-to-date", the labour minister, Carlos Lupi, said in December. He wants firing workers to become still pricier.

That many of the new jobs are formal (ie, legally registered) is despite, rather than because of, the labour laws. The trend to formalisation is largely a result of the greater availability of bank credit and equity capital on the one hand, and recent changes that make it easier to register micro-businesses on the other. And it coexists with two longstanding Brazilian weaknesses: high job turnover and low productivity growth.

Gustavo Gonzaga, an economist at Rio de Janeiro's Catholic University, notes that a remarkable one-third of Brazilian workers are made redundant each year, a fact he attributes in part to the labour laws themselves. These are extraordinarily rigid: they prevent bosses and workers from negotiating changes in terms and conditions, even if they are mutually agreeable. They also give workers powerful incentives to be sacked rather than resign. Generous and poorly designed severance payments cause conflict, Mr Gonzaga says, and encourage workers to move frequently. That churn affects productivity, as employers prefer not to spend on training only to see their investment walk away.

Recently, the cause of reform has gained a surprising recruit: the very trade union that Lula himself once led. The A B C metalworkers' union, which represents 100,000 workers in the industrial suburbs of São Paulo, is trying to make union-negotiated agreements binding in the labour courts. At present unions in Brazil cannot strike the sort of deals that are common elsewhere, such as accepting pay cuts during downturns in return for no job losses, since individual workers may later ask the labour courts to unpick them. Hélio Zylberstajn, the president of the Brazilian Institute of Employment and Labour Relations, a study group, thinks the initiative is promising. Unions with the power to negotiate might spend more time representing their members and less cosying up to politicians, he says. And employees' grievances might get resolved quickly in the workplace, rather than slowly in court.

The metalworkers' proposals could improve matters, at least for big companies. For smaller firms, and foreign investors, the best advice will still be "employer, beware". Ana Rita Gomes, of Mattos Filho ••

• Advogados, a São Paulo law firm, talks to potential clients about what she calls "pots of gold": practices that seem innocuous to the uninitiated, but lead straight to the labour courts. One example is stating salaries in a foreign currency. Exchange-rate fluctuations mean that this falls foul of a ban on ever paying an employee less one month than the previous one. Once her clients are suitably terrified, she explains why they should still proceed-with caution. "These difficulties put other investors off," she says. "That means less competition for them, and higher profits."

In Pernambuco Mr Lemos is turning his mistakes to good use by advising other businessmen. He tells them to walk away from a deal unless the seller can produce payroll records, settles all outstanding labour-court cases and promises compensation if further cases are brought regarding matters that predate the sale. The new owner will still be liable if the old one cannot pay, he says, but at least there is less scope for bad faith. He recently learned that before his own ill-starred purchase the seller told his staff that the new boss was rich, and that they should save up their grievances until the deal went through. ■

Measuring Brazil's economy

Statistics and lies

SÃO PAULO

Very big, but not the world's fifth-largest economy quite yet

THE release of last year's economic figures on March 3rd was cue for much crowing in Brazil. The economy grew by a blistering 7.5%, a rate unmatched since 1986. Since the currency started 2010 strong and ended it stronger, a GDP of 3.675 trillion reais converted at the year's average exchange rate into $2.089 trillion. This meant that Brazil overtook Italy to rank as the world's seventh-biggest economy (see chart). And income per head in Brazil has surpassed that in Mexico.

The president, Dilma Rousseff, welcomed the figures, but warned Brazilians not to expect a similar rise in 2011. Worried about overheating, her government is trimming 50 billion reais from this year's budget. On March 2nd the Central Bank raised interest rates by half a percentage point for the second time this year. The aim is for growth to ease to a more manageable annual rate of 4.5-5%.

But her finance minister, Guido Mantega, could not resist a little boosterism. Brazil had grown fifth fastest of the G20 countries, he said, adding that, if its GDP were calculated taking into account purchasing power, it had overtaken Britain and France, too. Some of his listeners inferred that it had become the world's fifth-biggest economy. (But the same trick bumps Russia and India up from tenth and 11th respectively to fourth and sixth, leaving Brazil seventh overall.)

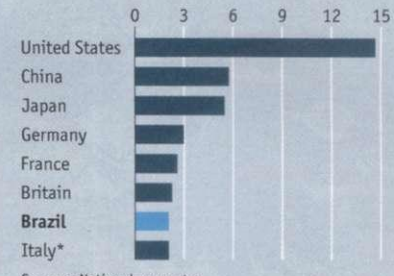
It was a confusing performance, and many were duly confused. The following day Brazilians were told by some of their newspapers that they were living in the world's seventh largest economy, and by others, the fifth. Jim O'Neill of Goldman Sachs, who coined the BRIC acronym in 2001, sent an e-mail to clients in which he asked why Brazil's ascension to the top five had attracted so little comment.

Converting currencies by purchasing power, rather than market rates, is useful when comparing living standards in different countries. But measuring GDP in current dollars shows an economy's international clout—and by that yardstick, Brazil needs no statistical smoke and mirrors. Even the modest 4.5% growth Ms Rousseff hopes for is likely to be more than France or Britain manages in 2011. And with interest rates and the price of its commodity exports rising, there is no sign of the real weakening much. Brazil did not break into the big five last year. But it may well do so during this one.

Brazil rising

Biggest economies, 2010 GDP

$trn at average exchange rates



Sources: National accounts; Thomson Reuters

*The Economist estimate

Fonte: The Economist, London, v. 398, n. 8724, p. 43-44, 12 e 18 March 2011.