

1996

## Nations Update: Venezuela

---

### Recommended Citation

*Nations Update: Venezuela*, 2 LAW & BUS. REV. AM. 204 (1996)  
<https://scholar.smu.edu/lbra/vol2/iss3/7>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

---

# Nations Update:

## Venezuela<sup>1</sup>

### I. Natural Resources & Mining.

- A. OIL: OPENING OF THE SECTOR.
- B. ENVIRONMENT.
- C. MINING LAW: BILL ON MINING DEVELOPMENT LAW.

### II. Taxes.

- A. INCOME TAX REFORM BILL.
- B. ORGANIC TAX CODE REFORM BILL.
- C. INCOME TAX LAW AMENDMENT.
- D. TAX REMITTANCE LAW.
- E. FINANCIAL TRANSACTIONS TAX.

### III. Exchange Control.

- A. DECREE NO. 899 AND EXCHANGE AGREEMENT NO.2 - TWO OFFICIAL EXCHANGE RATES.
- B. THE SYSTEM FOR GRANTING FOREIGN EXCHANGE.
- C. DECREE ALLOWS PARTIAL EXCEPTION TO EXCHANGE CONTROL SYSTEMS.

### IV. Labor.

- A. LEGAL AND CONVENTIONAL PROFIT-SHARING. ITS EFFECT ON LABOR INDEMNITIES.
- B. PAYMENT OF LABOR BENEFITS.

### V. Copyrights.

- A. PARIS REVISION OF THE UNIVERSAL COPYRIGHTS CONVENTION APPROVED.
- B. NATIONAL AUTONOMOUS COPYRIGHTS SERVICE.

### VI. Consumer Protection: Price Marking.

### VII. Customs.

- A. SENIAT RESOLUTION NO. 85.
- B. CUSTOMS DRAW-BACK.
- C. OFFICIAL CIF PRICES.

---

1. Jointly authored by Elisabeth E. Eljuri, Roberto J. Mendoza, Maria Gabriela Sosa, Carlos A. Plaza, Rossana D'Onza, Juan Carlos Pro, Carlos Felce, Antonella Sciubba, Eugenio Hernández-Bretón, and Leopoldo E. Ustáriz.

---

## I. Natural Resources & Mining.

### A. OIL: OPENING OF THE SECTOR.

On July 4, 1995 the Venezuelan Congress approved an Agreement for the opening of the oil sector. The Agreement, formally known as "Risk Exploration of New Areas and the Production of Hydrocarbons in the Profit Sharing Scheme of 1995," sets forth the framework for new areas of private investment. The Agreement sets the stage for bidding on ten areas: five located in the west; three in the central zone; and two in the southern zone of Lake Maracaibo. After passing through a pre-selection process that began in August 1995, 77 qualifying companies will submit their bids in 1996. The Agreement is only the first step of the approval process because Congress must approve each of the ten joint venture agreements resulting from the bidding process.

According to the Agreement, the investor bears all risks in the exploration phase. The Venezuelan Government will become involved in the development and production phases only through a designated affiliate (*Corporación Venezolana de Petróleo*). This is very important from the standpoint of investors, since the exploration phase is not only extremely expensive, but is also the area where the greatest risk is involved.

The Agreement provides for several joint venture arrangements with safeguards assuring governmental control at various levels as required by Venezuelan law. The first safeguard entails the formation of a management committee, and the second calls for the creation of a mixed company in the form of corporation. The government maintains control in both cases: on the committee through a double vote, and in the corporation through veto power.

When a significant hydrocarbon discovery is made, the management committee and the mixed company will approve a development plan. A consortium will then be created between the affiliate and the investors for that specific area of development. The consortium will not constitute a legal entity and itself will not be subject to tax. The applicable income tax is 67.7 percent. The payment of royalty, totaling 16.66 percent per barrel, is treated as a deductible expense. Finally, there will be another company to carry out the development and production activities to be managed by the mixed company.

### B. ENVIRONMENT: OIL OPENING: A CONSTITUTIONAL CHALLENGE.

In December 1995, a petition was filed with the Venezuelan Supreme Court asking for a ruling on the constitutionality of conditions in the Congressional Accord approving the 1995 Exploration Bidding Round which took place in July 1995. The Conditions under question are summarized as follows:

1. Condition 2, paragraph 2, providing that *Corporación Venezolana de Petróleo* (CVP) will conduct the bidding process to select the Investors for participation in the Association Agreements.
2. Condition 4, dealing with the appointment of a Control Committee composed of members designated by investors and CVP to decide on matters of national interest in carrying out the Agreement.
3. Condition 10, which provides that the activities conducted under Association Agreements are not subject to Municipal or State taxes.

4. Condition 17 stating that all disputes arising from Association Agreements will be resolved by binding arbitration.

The filing of the action raises some interesting constitutional questions, which at first glance do not appear entirely unfounded. In Condition 17, arbitration is used as an appropriate forum for resolving disputes. This matter has never been decided by the Supreme Court, although there have been previous questions concerning the use of arbitration in national issues including the public debt.

Article 127 of the Constitution provides that "in contracts of public interest, if it is not otherwise inapplicable because of the nature of the contract," a clause providing for dispute resolution in Venezuelan courts under Venezuelan law. Unfortunately, the language of this provision leaves considerable room for argument due to the ambiguity of the phrase "if not otherwise inapplicable because of the nature of the contract." It is worth noting that there have been contradictory Opinions of the Attorney General's Office on this issue.

#### C. MINING LAW: BILL ON MINING DEVELOPMENT LAW.

The Ministry of Energy and Mines has submitted its Bill on the Mining Development Law for the consideration of Congress. As drafted, the Bill may become a significant hurdle to the development of the mining activity in Venezuela. For example:

1. The possibility to undertake free mining prospecting has disappeared. If potential investors cannot identify worthwhile properties, they will not be able to either request mining rights or participate in the bids to obtain them.
2. The discretionary (power) of the administrative entity in charge of enforcing the law has not been eliminated.
3. The authorization of the President of the Republic, in council of Ministers is added for the granting of mining rights. This will cause the number of concessions or associations approved annually in Venezuela to be abject with respect to the needs of the industry.
4. A state company to function as a mining "holding" is created. In a time of privatization, a new state entity will usurp all the country's interesting mining properties. This seems incredible. (A note: although PDVSA is a "holding" company of the Venezuelan State which has been successful in the oil sector, it is needed because the state reserves for itself all industrial and commercial activity of hydrocarbons. This is not the case with mines, unless the mining activity is also slated for nationalization).
5. We continue limiting mining rights to brief periods of exploitation time, typical of technologies from the middle of the century. Today, it is possible to exploit deposits for more than 100 years, depending only on the amount of the existing resource.
6. Mining rights are granted administratively according to law, or by bid. In other words, not anyone can request mining rights. How then can this "Law of Mining Development" be titled? How can anyone participate in a bidding process for a property that is unknown to bid, and how then can one calculate prices and special advantages that can be offered to the State to obtain it?
7. The Bill increases the control of the Ministry over the transfers of properties or mining rights, pretending to impose limitations, most likely unconstitutional, to the

property of mining investors. (The State) even pretends to prohibit the sale of shares in mining companies abroad, which is a legal and practical absurdity. How can these shares be registered in foreign capital markets to obtain the required financing? Who is going to accept a pledge on these shares?

The problem of the contracts entered into with the CVG has not been solved satisfactorily. The activity relating to these contracts has been slapped with an exploitation tax in addition to the royalty which was agreed upon, thus making these projects an unsound investment.

## II. Taxes.

### A. AMENDMENT TO THE RESOLUTION OF THE MINISTRY OF FINANCE WHICH REGULATES THE SYSTEM OF REIMBURSEMENT OF TAXES ON IMPORTS.

Resolution No. 2,923 of the Ministry of Finance, dated October 23, 1995 (Official Gazette No. 35,823 of October 25, 1995), contains some regulations for the reimbursement system of customs taxes or "draw back." As a whole, the changes were limited to substituting the General Sectorial Customs Direction for the SENIAT. However, the opportunity was used to introduce some in-depth changes, such as:

1. The reimbursement of business taxes is now established as a normal and ordinary system and is done instead of reimbursing the taxpayer;
2. All references to documents needed for reimbursement of funds have been eliminated; therefore, one must turn to the Regulation of the Organic Law of Customs and Special Customs Systems;
3. The 4-month time limit for submitting requests, as stated in Article 60 of the Organic Law on Administrative Procedures, has been eliminated. This time frame elimination will undoubtedly slow down the time for reimbursement and the granting of the Tax Reimbursement Certificates ("CERT"). In any case, the elimination of this provision does not exempt SENIAT from the obligation of resolving matters under the terms established in the Organic Law on Administrative Procedures.
4. The reimbursement shall be calculated by multiplying the percentage corresponding to each industrial activity by the FOB value in Bolivars of the export goods. This value in Bolivars shall be calculated at the preferential rate of exchange for selling, determined by the Central Bank of Venezuela at the date in which the customs declaration for exporting is registered. The percentages for reductions and losses are to be subtracted from the result.
5. A new provision is included which allow SENIAT to determine the percentages of reductions and losses, when in its view, the data submitted by the requesting party is insufficient for such determination. This, of course, increases the discretionary powers of the SENIAT regarding an element which directly influences the amount to be reimbursed;
6. Provisions regarding any other matters contained in Resolution No. 2,603 of June 10, 1994 are still in effect, although the resolution is expressly repealed.

## B. INCOME TAX REFORM BILL.

SENIAT recently introduced in Congress an Income Tax Reform Bill. The most controversial proposals contained in the Bill are: (I) the introduction of taxation as a worldwide basis, and (ii) a provision which would empower SENIAT to look through the form of a transaction to impose tax on the basis of the commercial substance. The bill also creates tax benefits for the oil, agricultural, cattle, fishing, fish breeding and forest industries; it clarifies the fiscal treatment of consortium and allows certain companies to maintain accounting books and records in U.S. dollars.

1. Taxation as a worldwide basis means that income earned by Venezuelan persons from activities conducted or assets located abroad will be taxed in Venezuela. However, the taxes paid in other countries may be credited against Venezuelan income tax liability and may be carried forward for three fiscal years. Obviously, a world wide tax system requires a complex and efficient legal and administrative infrastructure, which until now has only been possible in advanced industrialized countries like the United States. The proposed Venezuelan legislation is highly deficient and there is substantial doubt whether worldwide taxation may be administered wisely and well.
2. The Income Tax Reform Rule would, in effect, allow for the piercing of corporate veils and the disregarding of the existence of contracts, thereby expanding the powers of SENIAT. In order to characterize the true commercial substance of a transaction must prove that there is prima facie evidence of that taxpayer's intent to evade, avoid or reduce tax liability. While there may be some justification for a similar rule having the same effect in the case of an attempted evasion, it is universally recognized that parties are permitted to structure their transactions in a manner that avoids or mitigates tax liability. For this reason, the reach of the proposed rule is patently unreasonable. In addition, the proposed rule contemplates no procedure by which the taxpayer may overcome the presumption. Thus an open ended rule such as this may lead to serious abuses.

Generally, the other amendments represent benefits to the taxpayer. Oil industry joint ventures will be granted a credit for new investments of up to 12 percent. The credit may be carried forward for five years. A 20 percent credit for new investments is proposed for the agricultural, cattle, fishing and fish breeding industries, as well as an additional credit based on increased productivity, calculated on a progressive tariff of 10-80 percent.

Consortiums will be treated in a manner similar to partnerships: the tax would be paid by each consortium participant or its pro-rata share of net taxable income, and the determination of net taxable income would be made by the consortium. Consortium members would appoint a representative to determine the consortium's net taxable income and to comply with tax obligations.

Associations, partnerships, or companies formed under Article 5 of the Organic Law that Reserves Hydrocarbons to the State (the "Law") must maintain dollar denominated accounting books and records separate from the bolivar books and records required by Article 81 of the Income Tax Law. Transactions must be recorded in the books at the rate of exchange as determined by the regulations. In addition, those entities are excluded from the inflationary adjustment system entirely.

The possibility of dollar accounting has been heralded as a positive aspect of the Oil Opening. It will clearly improve the situation of the entities formed under Article 5 of the Law. It eliminates the distortions created by the inflationary adjustment system and facilitates reporting to parent companies abroad. However, the dollar accounting method will create some minor distortions for local currency transactions as a result of fluctuations in the exchange rate, and, more significantly, may raise some constitutional questions.

Restricting dollar accounting to the entities referred to above may be viewed as a discriminatory rule, particularly by other foreign-owned companies operating in Venezuela. In addition to violating the Constitution, it may also be contrary to the equality principle contained in the Organic Tax Code.

#### C. ORGANIC TAX CODE REFORM BILL.

Congress is discussing the reform of the Organic Tax Code (OTC) to reduce tax evasion by imposing stricter preventive and punitive measures. The bill includes the following: (i) imprisonment for tax evasion, (ii) joint and several liability of the purchasers of shares where the sales price is subject to withholding, (iii) the power of the Tax Administration to forgive penalties, and (iv) establishes new pre-judgement types of enforcement.

In the current OTC, imprisonment for tax evasion is only applied in cases of secret commerce in alcohol. In all other cases, tax evasion is subject to a pecuniary penalty, as well as confiscation of merchandise and/or closure of the premises. The bill would add a one to five year prison term. It also includes a six month to five year prison term for directors, managers and administrators of financial institutions who fail to pay over to the Treasury funds received for taxes and penalties.

Although the Stock Exchange is currently liable for taxes applicable to the sale of securities, the Organic Tax Code will make the purchaser of shares liable. The purchaser will be jointly and severally liable for taxes applicable to any sale authorized by the National Securities Commission and sold on a Venezuelan Stock Exchange.

As a tax payment incentive, the bill empowers the Tax Administration to excuse penalties by means of a general resolution and without the need for a special law or prior consultation with the General Comptrollers Office. Congress is also discussing a Tax Remission Law, pursuant to which the Tax Administration would be able to excuse penalties, taxes, monetary correction and interest for six months after publication of the law.

The new pre-judgement enforcement measures include closure of premises for up to ten days and confiscation of merchandise. These measures would be in addition to the attachment or sequestration of personal property and the prohibition against alienation or encumbrance of realty. During closure of premises, the employer must continue to pay workers, thereby avoiding an appeal for constitutional protection.

#### D. INCOME TAX LAW AMENDMENT.

The recent amendment of the Income Tax Law (Special Official No. 5,023 of December 18, 1995), exempts income derived from agriculture, cattle, fishing and forestry from income taxes. Taxpayers engaged in these activities are also exempt from inflation adjustment and from paying taxes on the goods used in these activities.

The amendment also modifies the tax system applied to companies engaged in the

production of hydrocarbons and related activities that are taxed at the rate of 67.7 percent by excluding them from companies producing natural bitumens which are now subject to the general corporate rate of 34 percent.

Additionally, interest on time deposits are also exempt from taxes, as well as interest from mortgage bonds and savings certificates. Earnings on investments in mutual funds or listed securities received by individuals are also exempt.

#### E. TAX REMITTANCE LAW.

In order to increase tax collections, SENIAT has sent to Congress a law that would enable the Tax Administration for a term of six months from the effective date of this Law, to pardon the penalties, interest and monetary correction set forth in the sole paragraph of Article 59 of the Organic Tax Code on past due taxes.

The purpose of the law is to encourage taxpayers to pay taxes before they are subject to penalties. Thus, those filing returns without paying the respective taxes, and those omitting income on their returns, or who fail to file their returns, may pay the tax currently without penalties, interest or monetary correction. Nonetheless, income taxes payable to the National Treasury by withholding agents, are excluded from the benefits of this law. SENIAT cannot assess deficiencies in respect of fiscal years for which remission has been obtained.

#### F. FINANCIAL TRANSACTIONS TAX.

A tax on withdrawals or debits effected at financial institutions governed by the General Law on Banks and Other Financial Institutions has again been proposed. Contrary to the tax on bank debits in effect during part of 1994, commercial companies only would be subject to this tax. The tax rate has not yet been established. The speculation is that it will be between 0.5 percent and 1.75 percent.

The tax on financial transactions will be deductible from income taxes pursuant to Article 27 of the Income Tax Law, all taxes paid in connection with economic activities, except those expressly set forth in the same providence, are deductible for purposes of calculating net taxable income. Since all activities that generate this tax may be deemed to be economic activities, by commercial companies engaged therein, the condition for deduction set forth in the Income Tax Law for their deduction is met.

#### V. Exchange Control.

##### A. DECREE NO. 899 AND EXCHANGE AGREEMENT NO. 2 — TWO OFFICIAL EXCHANGE RATES.

Through Decree No. 899 of 25 October 1995 (Official Gazette No. 35,824 of 26 October 1995), the National Executive authorized the Finance Minister to enter into a new Exchange Agreement ("No. 2 Agreement") with the BCV for purposes of setting one type of exchange rate for selling foreign currency to travel abroad for tourism and another for business, and tickets to travel abroad, and expenses made with credit cards while abroad. Likewise, the Decree authorized the Minister of Finance to set an exchange rate for the purchase of the foreign currency for non-residents who are obliged to sell currency when they enter the country on a tourist, business or other kind of visa. Agreement

No. 2 entered into by the Minister of Finance and the BCV was also published in the same Official Gazette.

According to the No. 2 Agreement, the BCV will determine, daily, the applicable rate of exchange to the items and operations mentioned in Decree No. 899. The applicable rate of exchange for the selling of foreign exchange shall be that which results from the weighted average price of the so-called "Brady Bonds" that are negotiated in the Caracas Stock Exchange and the Venezuelan Electronic Exchange on the day in which the determination is made. The applicable rate of exchange for the purchase of foreign currency of non-residents shall be the same as that of selling, less seventy-five cents. The daily determination of the rate of exchange shall govern the operations made by foreign exchange operators the working day following that of the determination. The BCV shall inform the operators of the rate of exchange by means of the electronic data transmission system it normally uses or through other means. The sale of foreign exchange for the items mentioned in Decree No. 899 is subject to availability, according to the amount determined by the BCV as set forth in Article 12 of Decree No. 714 of 14 June 1995.

Decree No. 899 and the No. 2 Agreement, eliminate the figure of the sole rate of exchange by establishing a second rate of exchange. The purchase of foreign exchange from non-residents at the new rate of exchange has been called discriminatory. To some, the difference established between residents and non-residents is unconstitutional.

#### B. THE SYSTEM FOR GRANTING FOREIGN EXCHANGE.

Decree No. 895 of 18 October 1995 (Official Gazette No. 35,821 of 20 October 1995) has introduced some amendments to the system for granting foreign currency to pay for the importation of goods and services, basically that the Decree refer to the processing of the requests for the authorized to purchase exchange and sale of foreign currency. Since the publication of that Decree, the requests for authorization to purchase foreign exchange to pay for importations have been studied and processed applying the criteria established by a committee made up of representatives from the Ministries of Finance, Development, Agriculture, and the Foreign Trade Institute. Said criteria is transmitted to the JAC, which instructs the OTAC to process the request for the authorization to purchase foreign exchange for the importation of goods and services, according to the need which results from applying the evaluation criteria.

Foreign currency to be used for the payment of importations nationalized as of the date in which the Decree comes into effect, and which have not been purchased as of that date, shall be paid in three parts: 30 percent once the shipment is nationalized and 35 percent to be paid at 90 and 120 calendar days following nationalization.

With the establishment of a new exchange system for importation, the Decree seems to have repealed Article 34 of Decree No. 714 (Official Gazette No. 4,921, Extraordinary of 16 June 1995), which states that if importation takes place by means of 2 payment in sight," the sale of the foreign currency could be made before the nationalization of the merchandise, as long as the importation was authorized by the JAC and the importer may had created sufficient guarantee for the National Treasury. However, we will have to wait for the administrative procedures (to take place) before we can determine exactly what is the position of exchange control bodies on the repeal of Article 34 of Decree No. 714.

The JAC may authorize sales plans different from those established by the Decree, for the importation of goods and services that have been declared essential, as well as for

imports used in the making of products which prices are subject to regulation by the Government. Finally, the Decree has not modified the special systems applicable to importations for amounts of less than US\$5,000 and for importations made through the Payments and Reciprocal Credits of ALADI.

#### C. DECREE ALLOWS PARTIAL EXCEPTION TO EXCHANGE CONTROL SYSTEMS.

Pursuant to Decree No. 1,018 published in the Official Gazette No. 35,876 of 10 January 1996, companies registered in Venezuela to perform projects of national interest or to benefit the general population may maintain foreign currency generated from activities in Venezuela. The foreign currency may be used to pay debts incurred in currency other than bolivars (including shareholder loans), to pay dividends to foreign shareholders and to repatriate capital.

Pursuant to Article 2 of the Decree, any amounts of foreign currency not used for the specific purposes must be sold to the Central Bank of Venezuela at the official rate of exchange. This means that these companies cannot enter into Brady Bond transactions to convert their foreign currency into bolivars.

For a company to qualify for this exception it must have authorization from the Ministry of Finance and meet the following requirements:

1. The company must make at least a \$50m investment in Venezuela.
2. The company must have at least 40 percent foreign participation.
3. At least 35 percent of the raw materials used must be from local sources.
4. At least 40 percent of the produce must be sold for exportation.

The Ministry of Finance will respond to companies requesting this status within 30 days from the date the application is filed. Once a company is approved for exceptional status, it may not apply for an Authorization to Purchase Foreign Exchange.

Unfortunately, Article 2 of the Decree tends to defeat the purpose for which the Decree was issued. The Decree does not state how or under what circumstances "excess amounts" are measured. Without clarification of these points, it will be almost impossible to obtain financing for major projects. The solution to the problem is to amend the Decree.

#### VI. Labor.

##### A. LEGAL AND CONVENTIONAL PROFIT-SHARING. ITS EFFECT ON LABOR INDEMNITIES.

Venezuelan labor legislation has recognized a financial participation for workers based on the benefits obtained by their employer, commonly known as profit-sharing. This is why it is sometimes said that employees have a "sui generis" partner condition with the employer, since they have the right to share in the profits, but they (the employees) do not assume losses. Profit-sharing has an effect in the calculation of labor indemnities (that is seniority indemnification). Almost five years after the publication of the Organic Labor Law, we would like to provide you with some "tips" on this matter which could be useful when calculating profit-sharing and its effect of labor indemnities, as well in measuring and planning the company's labor liabilities.

Labor indemnities are calculated based on normal salary, that is, the salary paid on a

regular and permanent day of work, earned by the employee as a fixed salary during the 30 days immediately prior to the date of termination of the contract or working relation. In the case of employees whose salaries are based on labor units, pieces, free-lance work or commissions, the salary shall be that earned in the previous year.

The companies, establishments and exploitations for profit are obligated to distribute among its employees, 15 percent of the net benefits obtained at the close of the fiscal year. During each fiscal year, the employees must receive a minimum payment of 15 days of salary. When no benefits have been obtained or those that are obtained are not enough to cover the minimum amount, the employer shall grant each employee a bonus for an amount equivalent to 15 days salary. The companies with a capital stock in excess of one million bolivars and, in addition hire more than 50 employees, may pay a maximum equivalent to four months of salary. If the employer does not comply with the first two requirements, he may pay a maximum of two months of salary.

Profit-sharing is paid according to full months of work. If the employee has not worked the entire year, it being understood as the employer's fiscal year, the participation in profit-sharing shall be equal to the proportional part corresponding to the full months of services rendered.

When the employer pays with resources coming from the 15 percent of net benefits obtained during the corresponding fiscal year, the profit earned by the worker shall be lawful.

On the contrary, when 15 percent of the liquid benefits obtained by the company during the fiscal year is not sufficient to cover the amount of the profit sharing paid to the worker, the portion of said profit sharing in excess of the 15 percent limit shall be conventional. To compute the years of service indemnity one should take into account the portion of legal profit sharing earned by the worker for services rendered from January 1 and the date of termination of the employment relationship. Legal profit sharing, however, should not be taken into account to compute interest accrued each year on the indemnity for years of service.

Conventional profit sharing should be taken into account for the total calculation of the indemnity for years of service along with all indemnities and benefits due to the worker upon termination of his employment relationship. As with legal profit sharing, conventional profit sharing should not be taken into account to calculate annual interest accrued on the indemnity for years of service.

Profit sharing should be included in the calculation of indemnity for years of service prior to 1 January after the closing of the fiscal year of the company, at which time it will be possible to determine accurately what portion of the profit sharing paid to each worker is deemed legal profit sharing and which is conventional profit sharing.

#### B. PAYMENT OF LABOR BENEFITS.

The Supreme Court upheld the decision of a Superior Labor Court holding that when an employer fails to pay vacations, weekends and holidays, as well as similar worker benefits on a timely basis, it must pay all of those benefits based on the last salary earned by the worker. The employer must also pay delinquent interest and monetary correction. The rationale of the decision is that when the salary is not paid to the worker when due, it loses purchasing power, and this can only be compensated for by calculating the corresponding benefits based on the value of the salary on the date of payment rather than

when the obligation arose. Furthermore, the employer must pay the worker interest on the amounts due, from the date of termination of employment to the date the judgement is enforced, calculated at the rate established by BCV for seniority indemnification. The ruling also establishes that the amounts owed by the employer must be adjusted, from the date of termination of employment to the date the judgement is enforced, based on the inflation indexes published by the BCV. (Supreme Court, *Sala de Casación Civil*. Decision of 21 June 1995).

## VII. Copyrights.

### A. PARIS REVISION OF THE UNIVERSAL COPYRIGHTS CONVENTION APPROVED.

The law approving the Paris Revision of the Universal Copyrights Convention of 24 July 1971 was published in Official Gazette No. 35,820 dated 19 October 1995. The Revision made minor amendments to the number of representatives comprising the Committees, and in the rules of adhesion to the Convention for States that are not parties to the 1952 Geneva Convention. It also sets forth several exceptions which may be made by developing countries, such as:

1. Any national of a treaty State may obtain from the authorities of that State, a compensated, non-exclusive license to translate or publish a work in his/her language three years after date of first publication (or a longer term, depending on national legislation) provided that translation into the language of the State has not yet been published. If the language in question is not of general use in one or more developed countries, the term will be one year. The license may be granted provided that the applicant proves that he/she was unsuccessful in locating the holder of the rights in order to obtain his/her authorization. The publication license will be valid within the territory of the State and will be used for educational and research purposes. The previous Convention Revision set forth a minimum term of seven years for granting the license.
2. The holder of the right to reproduce a literary, scientific or artistic work which has not yet been released for sale in a State may grant compensated non-exclusive licenses for reproduction, provided the applicant shows that he/she was unsuccessful in finding the holder of the right or in obtaining authorization. The term will be five years for all works, except for exact and natural sciences and technology, for which the term will be three years. For fiction, such as novels, poetry, drama, musicals and art books, the term will be seven years. These licenses may be granted only within the territory of the State in which the request has been filed.

### B. NATIONAL AUTONOMOUS COPYRIGHTS SERVICE.

Resolution No. 281 of the Ministry of Justice, dated 12 September 1995 (Official Gazette No. 35,799 dated 19 September 1995), authorizes commencement of activities of the National Autonomous Copyrights Service, except for registration of intellectual production which for the time being will continue to be registered in Civil Registries.

## VIII. Consumer Protection.

### A. PRICE MARKING.

Decree No. 985 (Decree) (Official Gazette No. 35,858 of 13 December 1995), requires importers, manufacturers and producers to mark a maximum price (P.M.) on food, medicine, personal hygiene products, cleaning products, spare-parts for automobiles and home equipment, electrical appliances and other equipment for home use, textbooks, school utensils and uniforms, sport items and sportswear. The P.M. establishes the ceiling for retailers in setting the public sales price or PVP. The PM is not a sales price because it does not substitute the PVP, or the maximum public sales price or PMVP that is set by the Ministry of Development.

Although the Decree does not expressly provide the maximum price refers solely to unregulated goods. For staples, whose PMVP has been set by the Ministry of Development, the importer, manufacturer or producer are required to mark the PMVP only. The maximum price must be established separately by each importer, manufacturer or producer, without collusion with competitors and it must be based on the structure of production or importation costs plus a reasonable commercial margin.

The maximum price poses some problems, both legal and commercial. The current Consumer Protection Law does not expressly contemplate the maximum price concept. Therefore, the Decree is based on Article 5 and other provisions, which empowers the National Executive to take measures it deems necessary to avoid undue increases in the prices of goods and services. Additionally, although the maximum price is set separately by each importer, etc., it is clear that free competition among retailers is restricted. Furthermore, the maximum price enables importers, manufacturers or producers to control the profit margins of each agents in the marketing chain.

Importers, manufacturers and producers have 45 days from the date of publication of the Decree to comply with the duty to mark maximum prices. Products that had been marked with the PVP prior to December 13, 1995, must be sold at that price. Any person violating the provisions of the Decree, may be subject to fines of between 20 to 2,000 days of the minimum urban salary.

## IX. Customs.

SENIAT Resolution No. 85 (Official Gazette No. 35,751 dated 12 July 1995) states that the unloading of shipments subject to customs inspection shall be performed in the presence of National Tax Control Agency officials who shall record information regarding quantity and characteristics of the shipments; carrier; port of embarkation; date and schedule of unloading operations; total number of packages stated in the customs declaration; total number of unloaded packages; and the warehouse where the goods will be stored. All information relating to unloading and disassembling of shipments shall be recorded on official forms unless the carrier presents cargo indexes.

---

A. CUSTOMS DRAW-BACK.

SENIAT Order No. 173, dated 9 November 1995 (Official Gazette No. 35,682 of 19 December 1995), authorizes the reimbursement to fifty-five exporting companies of taxes on imports. SENIAT Customs Management is the office in charge of enforcing the ruling.

B. OFFICIAL CIF PRICES.

In Resolution No. 3,001 of 19 December 1995 (Official Gazette No. 35,863 of 20 December 1995), official CIF prices applied to imports of products identified as benchmarks in the Andean Pricing System were adjusted. The revised prices are as follows: pork meat (US\$1,431 per metric ton), chicken pieces (US\$1,169/t), whole milk (US\$2,435/t), wheat (US\$227/t), yellow corn (US\$164/t), white corn (US\$194/t), white rice (US\$337/t), soy beans (US\$286/t), raw soy bean oil (US\$608/t), raw palm oil (US\$642/t), and white sugar (US\$418/t).

---