International Lawyer

Volume 24 | Number 3 | Article 17

1990

Latin America

Recommended Citation

Latin America, 24 INT'L L. 824 (1990)

https://scholar.smu.edu/til/vol24/iss3/17

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abolished are the following penalties: the issue of shares without a prospectus duly authorized by the COB; and failure by publicly listed corporations and their affiliates to publicize certain information (especially their inventory). These changes do not mean an end to sanctions. Rather, sanctions have changed in nature to pecuniary measures that the COB can enforce.

D. Various Other Rules

Among other changes introduced by Law 89-531, the most notable are the following:

(1) disciplinary powers of the stock exchange;
(2) creation of a Disciplinary Board for the Organizations for the Collective Investment in Shares (OPCVM);[17] this Board intervenes in cases of breach of stock exchange regulations and also when professional rules are infringed to the detriment of the public interest; and
(3) the harmonization of EEC rules concerning OPCVM assets.

Latin America*

I. Argentina

A. Relationship with Great Britain

Argentine and British officials met in January 1990 in Madrid to discuss normalization of relations between the two countries. The two Governments are lifting commercial and financial restrictions imposed after the 1982 war. Great Britain will also cause certain EEC restrictions to be lifted. The Argentine Government, by Decree No. 1146 of November 11, 1989, eliminated the restrictions previously imposed by Law 22,591 on British subjects and their assets in Argentina.

B. Privatization and Rationalization of State-Owned Business

The privatization and rationalization process has begun for several state-owned activities. Bids for certain state-owned television channels have been opened and are expected to be awarded before year-end. In addition, a decree

17. The French name is *Organismes de placement collectif en valeurs mobiliers*.

* Contributions by Jorge Cubas, Gonzalo Fernandez, Sergio Leiseca, Javier Maldonado, Sebastião Mattos, Miguel Noyola, Alonso Rey, and Paul Slocomb, all of Baker & McKenzie, Chicago.

regulating the privatization of the national telephone company (Entel) has been enacted, contemplating bidding and the award of licenses by June 28, 1990. A decree has also been enacted furthering the intended complete deregulation of the oil industry. It provides for two international public bids. One bid will be for exploration, development, and exploitation rights regarding oil fields of "secondary interest" (i.e., those inactive for at least five years or having low production in 1988). The other bid will be for rights to provide technology and assistance to the state oil company (YPF) in exchange for a percentage of the production of other oil fields. A rationalization plan for the state-owned railroads is being designed, with the aim of eliminating its U.S. $850 million annual deficit. The sale of a significant number of "unnecessary" parcels of state-owned real estate has been announced. New emergency taxes on increases in the net worth of banks, on capital, and on car ownership have been proposed. An effort to reduce public expenditures has included elimination of an extraordinary budget facility of U.S. $400 million, and elimination of a special committee that had been set up to implement a move of the country's capital from Buenos Aires to the City of Viedma. That move was a U.S. $5 billion project supported by the prior administration.

C. Foreign Investments

As mentioned in earlier updates, the Economic Emergency Law provided for elimination of government approval requirements previously applicable to certain foreign investments. The executive branch, through Decree 1225/89 of November 9, 1989, has now implemented these measures. Foreign investors may now invest in the country by purchasing existing businesses, whether owned by national or foreign investors and regardless of the amount involved, or by establishing new ones, under conditions equal to those applicable to local investors. The so-called Application Authority will still maintain a Registry of Foreign Investments. The registration of investments, however, continues to be optional. The procedure is reduced to a single page filing. Foreign investors' purchases of publicly offered stock are now registrable and are permitted even when they transform the issuing company into a local company of foreign capital, regardless of the amount involved. As in the past, investments made by means of External Public Debt Bonds (e.g., Bonex) may not be registered, unless the bonds are in the process of being redeemed.

Decree 1225/89 also establishes that, when exchange controls are in effect, registered foreign investors will have access to foreign currency to remit dividends and repatriate their investments, provided they comply with the requirements to be elaborated by the Central Bank. Nonetheless, and despite any requirements the Central Bank may impose, registered foreign investors will be authorized to remit dividends with the foreign currency obtained through their export sales. If the executive branch declares a "difficult foreign payments situation," registered

foreign investors will have the right to receive foreign currency denominated bonds (e.g., Bonex) for the remittance of profits abroad. Except for the addition of the right to remit dividends out of export earnings, these rules are comparable to those that have been in place for some time.

Finally, Decree 1225/89 provides for a six-year suspension of the Additional Profits Tax, which had previously been applied at rates ranging from 15 percent to 25 percent on remittances of profits on registered investments of over 12 percent per annum of the amount of the registered foreign investment. A bill making its way through Congress would eliminate the Additional Profits Tax altogether (see E. below).

D. Buy Argentine Law

Decree 1224/89 implements the provisions of the Economic Emergency Law regarding the "Buy Argentine" regime. The previous rules, requiring state-owned entities to purchase national goods and services rather than foreign goods and services under certain circumstances, have been abolished. Decree 1224/89 establishes a new set of similar rules.

E. Tax Reform

Congress is presently discussing the administration's drafts of tax reform and tax evasion laws. The main changes from prior law are as follows: (1) the corporate income tax rate is reduced from 33 percent to 20 percent; (2) the income tax withholding rate on dividends to foreign residents is increased from 17.5 percent to 20 percent, but the overall effective tax rate on dividends to foreign residents is reduced from 44.725 percent to 36 percent; (3) the branch income tax rate is reduced from 45 percent to 36 percent; (4) the income tax rate on interest paid abroad on loans made by unrelated parties is reduced from 15.75 percent to 14.40 percent, and the income tax rate on interest paid abroad on loans made by related parties is established at 21.6 percent; (5) the income tax withholding rate on fees for technical services not available in the country is reduced from 27 percent to 21.6 percent; (6) the income tax withholding rate on royalties is reduced from 36 percent to 28.8 percent; (7) the Additional Profits Tax provided for in the Foreign Investment Law is eliminated (see C. above); (8) VAT is applicable to almost all transactions, including services, but its rate is reduced from 15 percent to 13 percent; (9) a companies capital assets tax will be levied at the rate of 1 percent of the value of certain assets; (10) the tax on banking debits is reduced from 0.7 percent to 0.3 percent; (11) certain products are exempted from national, provincial, and municipal sales taxes; and (12) taxpayers are permitted to deduct loss carryforwards from their entire income, rather than from only one-half of their income, in each of the five years following the loss.

F. Royalties, Technical Assistance, and Intellectual Property Fees

The exchange control rules on foreign currency remittances for royalties, technical assistance, and intellectual property fees have been liberalized. Previously, such payments could be legally remitted only in the form of Bonex. Now, the Central Bank allows remittances of foreign currency. Up to U.S. $15,000 will be remittable automatically at the so-called "official rate of exchange." Additional amounts are subject to the filing of a simple sworn statement with the Central Bank. Note that this exchange control liberalization does not change the rules regarding approval and registration of license agreements for royalties, technical assistance, and/or transfer of technology, nor does it change the tax effects.

II. Brazil

In March 1990 a new administration took office. President Fernando Collor de Mello, is the first democratically elected Brazilian president in the last thirty years. Mr. Collor de Mello has indicated that the thrust of his administration will be to dismantle the state-owned enterprise sector, eliminate sectorial subsidies, balance the public budget, enforce tax collection and prosecute evaders, liberalize foreign trade, eliminate currency exchange controls, strictly enforce antitrust legislation, and the like. The aim is to emphasize a market-oriented economy, as opposed to a centrally planned economy.

In light of the avowed intention to enforce the antitrust legislation, the remainder of this section summarizes the current rules. The emphasis is on product pricing and limitations on production, which we believe may be the most visible areas of antitrust enforcement.

A. Applicable Statutes

Brazilian antitrust rules are based on two main statutes. The first is Law No. 1521, enacted on December 26, 1951. Law No. 1521 is denominated *Lei de Crimes Contra a Economia Popular* (Crimes Against the Popular Economy, or, better stated, Crimes Against Consumers). The purpose of Law No. 1521 is to restrict certain types of economic abuses that have a direct effect on consumers and on the Brazilian economy (e.g., cut-throat competition, restraint of trade).

The second statute is Law No. 4137, enacted on September 10, 1962. Law No. 4137 is denominated *Lei de Repressão a Abuso do Poder Econômico* (Law to Restrict Abuses of Economic Power). Law No. 4137 is popularly known as the Brazilian Antitrust Law. The purpose of Law No. 4137 is to restrict the creation of monopolies and cartels and to reduce price discrimination and similar activities.

B. Antitrust Rules

1. *Law No. 1521—Crimes Against Consumers*

Under Law No. 1521 the following acts or activities can be deemed a crime against the *economia popular:*

(a) agreements or arrangements, the purpose or effect of which is to fix the price of a product or group of products;

(b) sale of products below their cost for the purpose of restricting competition;

(c) merger of resources, enterprises, or companies aimed at restraining trade or competition; and

(d) causing price changes or fluctuations by entering into fictitious transactions (i.e., transactions that do not have a true and legal business purpose), or by any other means.

Because Law No. 1521 is a penal statute, suits involving violations must be brought before criminal courts by the Public Attorney's Office or by third parties with the intervention of such Office, and the procedural rules of the Brazilian Code of Criminal Procedure must be followed. Penalties for violation of Law No. 1521 include fines and imprisonment for from three months to ten years for officers, managers, owners, or directors involved in the wrongdoing. Also, depending on the circumstances, the criminal court is empowered to issue an injunction ordering the company or enterprise to cease its activities.

2. *Law No. 4137—Antitrust Law*

Under Law No. 4137 the following acts or activities can be deemed antitrust violations:

(a) creating monopolies or monopolistic conditions (whether by acquiring companies or assets, by entering into joint ventures, or by other means) thereby restricting trade or competition, or creating difficulties for new companies that are trying to enter the market, to compete in the particular sector, or to compete with the particular product or service;

(b) maintaining a de facto or a "natural" monopoly (i.e., a monopoly resulting from circumstances, rather than from purposeful elimination of competition), if such monopoly increases prices for the purpose of increasing profits without a corresponding increase in production;

(c) using or creating a monopoly or an oligopoly by means of undue purchases of goods or materials (cornering the market), or by using artificial means to change prices (causing price fluctuations), to the detriment of competitors or sellers of materials or products; and

(d) organizing an economic group (or groups), thereby causing price discrimination or forcing tie-in clauses on buyers or suppliers.

Law No. 4137 defines a "monopolistic situation" as one in which an enterprise, or group of enterprises has such effective control over the production, distribution, or sale of a product, or over the performance of a service, that it has

a preponderant influence on the price of such product or service. Hence, if an enterprise is in a "monopolistic situation," and if such enterprise uses its position to obtain an undue advantage in the marketplace, or acts to the detriment of actual or potential competitors, or prejudices the public by unduly increasing prices, technically the enterprise is in violation of Law No. 4137.

Penalties for violation of Law No. 4137 include fines, court appointment of managers of the infringing company, taking of assets or exerting control over the infringing company, liquidation and dissolution of the infringing company, and the like.

III. Colombia

Most attention of Colombian authorities continues to be focused on the drug problem. But at least one development is significant for foreign investors.

By Decree 2279 of October 7, 1989, the arbitration rules of the Civil Procedure and Commercial Codes were replaced by new rules. There are now three kinds of arbitration in Colombia: technical, in law, and in equity. The arbitrators are required to be Colombians only when the parties are Colombians, the dispute originates in Colombia, and the contract is to be performed in Colombia. The new rules specifically recognize that international arbitrations may be regulated by treaties.

IV. Ecuador

By Law No. 56, published on December 22, 1989, the Ecuadoran Government modified its tax legislation. The new law, which became effective on January 1, 1990, overhauls Ecuador's rather confusing taxation system, broadening its application and simplifying calculations.

The new tax system maintains the same territorial scope as the prior legislation. Some of the most significant changes are outlined below.

A. Income Tax

1. *Rates*

Progressive rates ranging from 10 percent to 25 percent now apply to resident individuals. The corporate rate is 25 percent. The rate on branches of foreign companies is 36 percent, unless the profits are reinvested in Ecuador, in which case the rate is 25 percent on the amount of the reinvested profits.

Dividends remitted, paid, or credited abroad are subject to a 36 percent withholding tax (the 25 percent paid by the domestic company on its profits is creditable against this tax). By contrast, dividends paid to a domestic shareholder are exempt from tax. A final 36 percent withholding tax applies to royalties paid abroad. Foreign natural persons who are not residents of Ecuador are subject to a 25 percent tax on gross earnings from occasional services rendered in Ecuador.

2. *Monetary Correction*

For purposes of determining taxable income a system of internal monetary correction of financial statements will be implemented starting in 1991. As a corollary, starting in 1990 all financial earnings will be treated as income. The official inflation component is to be deducted from financial earnings.

3. *Miscellaneous*

Resident companies may carry forward their losses for five years, but the deduction in any year is limited to 25 percent of the profits for that year. In addition, a system of "overall objective estimation" (*estimación objetiva global*) is established for taxpayers, such as professionals, who are not required to keep accounting books.

B. VALUE ADDED TAX (VAT)

VAT at a rate of 10 percent applies to most transfers of goods (i.e., commercial sales and the import of goods) and certain services (e.g., leasing of goods and equipment, hotels, computer services, air tickets, and insurance).

V. Mexico

A. TAX TREATY

On November 9, 1989, the United States and Mexico signed an agreement to exchange tax information. The agreement authorizes both governments to exchange tax information. This exchange functions to facilitate the assessment and collection of taxes and to prevent, within their respective jurisdictions, fiscal evasion and fraud.

B. NEW MAQUILADORA DECREE

On December 22, 1989, the Mexican Government published in the Official Gazette a new decree that regulates the maquiladora industry (the Decree). The Decree abrogates the prior maquiladora decree of August 9, 1983. With the Decree the Mexican Government further liberalizes the legal framework of the maquiladora industry and provides for a streamlined government approval procedure for the establishment and operation of maquiladoras. For example, in the past, applications for governmental approval for the establishment of a maquiladora had to be filed with several different agencies. Now a "single window" approach has been adopted. A single maquiladora application may be filed with the Ministry of Commerce and Industrial Development (SECOFI).

Under the prior regulations a maquiladora program had a duration of two years and had to be renewed each time it was about to expire. Now a maquiladora program will have indefinite duration.

The Decree also liberalizes a maquiladora's ability to sell to the local market. In the past a maquiladora could sell up to 20 percent of its production to the local market, subject to SECOFI approval. Now a maquiladora can sell up to 50 percent of the value of its annual exports to the local market if it has a "balanced foreign currency budget." A balanced foreign currency budget is deemed to exist when the foreign currency generated by the maquiladora's export activities exceeds the foreign currency paid for goods imported on a definitive basis for incorporation into the finished products to be sold in the local market.

C. New Transfer of Technology Regulations

New regulations to the Mexican Transfer of Technology Law (the Regulations) were published in the Official Gazette on January 9, 1990. The Regulations abrogate the transfer of technology regulations of November 25, 1982. Without amending the Transfer of Technology Law (the TTL), the Regulations ease some of its limitations.

1. *Management Agreements*

The Regulations liberalize the registration requirements for certain management agreements. In the past management agreements of all kinds had to be approved by, and registered with, the National Registry of Transfer of Technology (the NRTT). Now only those agreements that grant to the foreign licensor the ability to intervene directly in the company's decision-making process are subject to registration.

2. *Software License Agreements*

The Regulations also liberalize the approval and registration requirements for software license agreements. In the past all software license agreements had to be registered with the NRTT. Now only those agreements that grant to the local licensees the authority to produce, distribute, or market software programs must be registered. Agreements with end-users need not be registered.

3. *Franchise Agreements*

The Regulations introduce a new procedure for the registration of franchise agreements when the franchisor intends to execute an agreement with two or more franchisees. In such cases a franchisor is only required to register a model franchise agreement with the NRTT, as well as any modifications thereto. Subsequent franchise agreements need only make reference to the file and page number of the registration certificate under which the model agreement was filed. Every six months, the franchisor must file with the NRTT signed copies of all the franchise agreements based on the model that were executed in the interim.

4. *"Objectionable" Clauses*

The Regulations liberalize the interpretation of many of the so-called "objectionable" clauses listed in the TTL. For example, under the Regulations:

(a) a tie-in provision will be admissible if the technology agreement establishes trademark rights and the licensor agrees to supply certain inputs to the licensee in order to maintain the quality, prestige, and public image of the products manufactured under the agreement;

(b) a clause establishing minimum production levels will be admissible if the agreement grants an exclusive license to the licensee;

(c) a confidentiality clause extending beyond the term of the agreement will be admissible if a risk of public disclosure of the technical know-how covered by that clause is demonstrated; and

(d) a confidentiality clause in a registered amendment agreement covering substantial improvements to licensed technology previously supplied by the licensor will be effective for up to a period of ten years from the date of the amendment, regardless of the duration of the original agreement, provided that the improvements will increase the production, quality, and competitiveness of the licensee.

Some of the other areas liberalized by the Regulations include those relating to export restrictions, warranties, and consulting agreements executed by local subsidiaries of foreign companies.

The Regulations also restrict the discretionary powers of the NRTT. In the past the NRTT could object to any agreement even if its provisions did not fall within the scope of the TTL's objectionable clauses. Now the NRTT cannot refuse to register an agreement based on grounds other than those expressly set forth in the TTL and the Regulations.

5. *Article 53 of the Regulations*

Even if an agreement contains one or more objectionable clauses, under article 53 of the Regulations the NRTT may still register the agreement if the following conditions are met:

(a) the agreement does not fall within any of the registration exceptions set forth by the TTL or the Regulations;

(b) the execution of the agreement benefits the country in any of the following ways (1) generates employment; (2) improves the technical qualifications of local human resources; (3) gives access to new markets in other countries; (4) makes possible the local manufacture of new products, especially if they replace importations; (5) improves the foreign currency balance; (6) reduces unitary costs of production, as measured in constant pesos; (7) develops local suppliers; (8) uses technologies that do not contribute to the deterioration of the environment; or (9) fosters research and technological development activities at production facilities or related technical research centers; and

(c) the licensee declares before the Ministry of Commerce and Industrial Development, under oath, that it wishes to enter into the agreement as submitted, that execution of the agreement will result in any of the benefits

described in (b) above, and that it will demonstrate the latter within a period of three years from the date of registration of the agreement.

6. *Royalties*

The prior transfer of technology regulations contained certain guidelines pursuant to which the NRTT could object to royalties payable to a licensor under an agreement. Based on those guidelines, the NRTT typically objected to royalty payments for technical know-how that exceeded a 3 to 6 percent range. In the case of trademark licenses the NRTT permitted, at most, royalty payments in the range of ½ to 1 percent, and in many cases the NRTT objected to any royalty payments at all.

Although under the TTL the NRTT still has the authority to object to royalty rates when they are unreasonable and excessive, the Regulations no longer contain the guidelines. They are now silent on the subject of royalties. Moreover, the Ministry of Commerce and Industrial Development has recently made statements to the effect that Mexican industry has matured sufficiently to negotiate its own payment terms and, therefore, the NRTT will no longer object to royalty clauses that are freely negotiated between the parties.

D. 1990 Amendments to the Mexican Asset Tax Law

On December 28, 1989, the Mexican Government published amendments to the Asset Tax Law (ATL) in the Official Gazette. The ATL, in effect since January 1, 1989, subjects Mexican business taxpayers[1] to a tax on business assets at a flat rate of 2 percent on the value of such assets.

One of the significant changes introduced by the 1990 amendment is the manner in which a taxpayer can credit its asset tax obligations. Under the original text of the ATL, taxpayers were required to pay the asset tax to the Mexican Treasury and were then permitted to credit asset tax payments against their annual corporate income tax liability. Effective January 1, 1990, this crediting mechanism has been reversed. Instead of crediting asset tax payments against income tax liability, taxpayers subject to the asset tax will now credit their Mexican income tax payments against their asset tax liability for the current year. This new credit mechanism may enable certain foreign taxpayers to obtain a foreign tax credit in their home jurisdiction for the entire amount of the income taxes paid in Mexico. The 1990 amendments to the ATL also provide that if the income tax payments exceed the asset tax liability for the current year, the

1. Under the Asset Tax Law, business taxpayers subject to this tax include: (1) individuals or companies resident in Mexico that are engaged in business activities; (2) individuals or companies resident abroad with a permanent establishment in Mexico; and (3) other entities (including foreign residents) that grant the right to temporarily use goods in the business activities of individuals or companies included in foregoing categories (1) or (2).

taxpayer may request a refund of asset taxes paid during the three prior fiscal years. The refund will equal the amount of the excess.

VI. Peru

A. Foreign Investment and Technology Transfer

By Resolution No. 5-89-EF/35, of November 14, 1989, the National Committee for Foreign Investment and Technology (CONITE) amended the regulations concerning foreign investment and technology transfer to bring them in line with Decision 220 of the Andean Pact. The main changes are:

(1) A national investor may now transfer its shares to a foreign investor, provided the latter can show benefits to the Peruvian economy.

(2) Profits may be remitted abroad, subject to the following requirements:

(a) up to 100 percent per annum of the amount of direct foreign investment may be remitted abroad by: (i) corporations that export 80 percent or more of their annual production; (ii) corporations engaged in the tourism sector; (iii) corporations in basic products and services sectors, including any type of mining, liquid and gaseous hydrocarbons, oil pipelines, and forest exploitation; and (iv) corporations otherwise legally authorized to do so;

(b) up to 40 percent per annum of the amount of direct foreign investment may be remitted abroad by: (i) corporations that export more than 50 percent, but less than 80 percent, of their annual production; (ii) corporations using national raw materials in a proportion greater than 50 percent of the total value of raw materials; and (iii) corporations located outside of the Provinces of Lima and Callao; and

(c) up to 20 percent per annum of the amount of direct foreign investment may be remitted abroad by others.

Despite these changes in the foreign investment law, note that a long-standing suspension of profit remittances was extended to July 31, 1990, by Supreme Decree No. 001-90-EF, published on January 5, 1990:

(3) regarding technology transfer, CONITE may now authorize payment for royalties from a subsidiary to its parent. It will not authorize technology transfer agreements executed between a Peruvian branch and its head office abroad.

B. Free Zones

By Law No. 25100, published on September 29, 1989, Peruvian authorities created Industrial Free Zones and Zones with Special Treatment under an extraordinary customs and foreign trade regime. Companies established in these Free Zones are exempt for fifteen years from: import and export duties, exchange controls, Decision 220 restrictions, and any tax other than Social Security, National Housing Fund (FONAVI), and the National Service for Training in Indus-

trial Employment (SENATI). There are two Industrial Free Zones, both harbors located in the south of Peru: Matarani and Ilo.

C. Dividend Taxes

The withholding rate on dividends remitted to foreign shareholders of Peruvian corporations has been raised from 15.4 percent to 30.8 percent. The corresponding withholding rate on dividends paid to Peruvian shareholders has been set at 10 percent (Supreme Decree No. 302-89-EF, published in *El Peruano* on December 29, 1989).

VII. Venezuela

Venezuela has substantially amended its rules governing direct foreign investments, technology transfer agreements, and local borrowings by foreign companies. The amendments are contained in Decree No. 727 of January 18, 1990, which was published in Official Gazette No. 34397 of January 26, 1990. Some of the more important changes are described below.

A. Foreign Investors

A foreign investor may now own 100 percent of the capital stock of a Venezuelan company engaged in local marketing activities. Decree No. 1200 had restricted foreign ownership of marketing companies to 49 percent. Now, for the first time since January 1, 1974, a foreign investor may organize a local subsidiary to import its product and distribute its goods within Venezuela.

A foreign investor may register a local branch without approval from the Office of the Superintendent of Foreign Investments. Previously, local commercial registries would not process applications by foreign investors to register local branches absent approval from the Office of the Superintendent of Foreign Investments. The Office of the Superintendent of Foreign Investments usually would deny the request for approval unless the local branch was required by the foreign investor to perform a specific contract with the Venezuelan Government, or an agency or dependency thereof, or a state enterprise.

A foreign investor may freely receive and remit any and all dividends declared and distributed to it by the Venezuelan company in which the direct foreign investment is made. Previously, the amount of the dividend the foreign investor could receive from the Venezuelan company could not exceed an annual amount equal to the sum of 20 percent of the foreign investor's direct foreign investment then registered at the Office of the Superintendent of Foreign Investments plus three-month LIBOR as quoted by the Venezuelan Central Bank, net of withholding tax.

A foreign investor may now freely acquire stock and other equity interests in a Venezuelan company, whether or not owned by Venezuelan investors. Before