

# Latin America\*

## I. Argentina

### A. FOREIGN INVESTMENT

Decree 1155/91, dated June 25, 1991, repealed the requirement of prior governmental approval of foreign investments in Argentine companies that receive benefits under industrial promotion regimes.

### B. INDUSTRIAL PROMOTION

Decree 1033/91, dated June 5, 1991, reactivates benefits under a number of industrial promotion regimes that were suspended by the Economic Emergency Law of 1989. The benefits are now available in the form of certificates that may be used to pay certain taxes.

## II. Brazil

### A. MARKET RESERVE

On June 25, 1991, the Brazilian House of Representatives approved a bill amending the Informatics Law (Law No. 7232/84). The bill provided, among other things, for expiration of the Brazilian market reserve for computer products. The Brazilian Senate was to have considered the bill in September 1991. Presidential approval was also required.

The main provisions of the bill were as follows:

1. The market reserve was scheduled to expire in October 1992. Thereafter, foreign-owned companies would no longer need special approval to, among other things, manufacture or assemble computer products.
2. "National capital" companies (Brazilian companies with Brazilian residents holding majority control of voting capital) would be entitled to tax incentives and other benefits of the Informatics Law.
3. Other Brazilian companies (those of foreign capital) doing business in the informatics area would be required to increase exports progressively to 25 percent of gross sales. Also, Brazilian companies of foreign capital would enjoy the same tax incentives and benefits available to Brazilian companies of national capital if they invested 5 percent of gross sales in research and development in Brazil.

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4. Brazilian companies of national capital would enjoy a preference when government-controlled entities purchased informatics products;
5. National capital and foreign capital companies could deduct from their income tax up to 50 percent of the research and development expenses spent in Brazil. Informatics products made in Brazil would enjoy a Federal Value Added Excise Tax (IPI) exemption until October 1999. Local content requirements were not established by the bill.
6. Companies of national capital would enjoy priority in receiving federal loans.
7. The National Council of Informatics and Automation (CONIN) would allow greater participation by business and sectorial associations.

#### B. TAX INCENTIVES

The Brazilian Congress passed Law No. 8,181, exempting consumers and end-users of certain products from IPI. The exemption, which applies mostly to machinery and equipment, will be in effect until March 31, 1993, and allows accelerated depreciation of such products until December 31, 1991. The Executive issued regulations under Law No. 8,181 by means of Decree No. 151. These regulations list 900 products entitled to the IPI exemption.

### III. Colombia

#### A. POLITICAL CONSTITUTION

On July 4, 1991, the National Constituent Assembly proclaimed the new Political Constitution of Colombia. The new Constitution abrogates Latin America's oldest constitution, which was enacted in 1886, and had been subject to few amendments. The new constitution is expected to have a stabilizing influence because representatives of most of the nation's political and social groups participated in its drafting. The new Constitution contains a somewhat wishful declaration of rights, but the portions concerning the judicial and legislative branches are widely regarded as providing appropriate remedies for problems that have prevailed for some time.

#### B. EXCHANGE CONTROLS

Using special powers vested upon it by Law 9 of 1991, the Monetary Board issued resolutions Nos. 55 and 57 dated June 20 and June 26, 1991, respectively.

Resolution 55, in effect from June 24, 1991, basically establishes that the Bank of the Republic will no longer purchase foreign currency directly from individuals and corporations, and that all such purchases must be carried out through commercial banks and other intermediaries at "free-market" exchange rates. The Bank of the Republic will continue to issue exchange certificates (*certificados de cambio*), which are negotiable instruments denominated in U.S.

dollars with a ninety-day maturity. Upon maturity, these certificates can be converted into pesos at the official exchange rate.

Resolution 57, in effect from October 1, 1991, effectively abrogates Decree 444 of 1967, Colombia's prior exchange control statute. The resolution liberalizes the remittances regime, which will be handled by commercial banks and other financial entities rather than the exchange office of the Bank of the Republic. It also implements the general provisions of Law 9 of 1991 that govern the Currencies Free Market (*Mercado Libre de Divisas*) and are based on the premise that all income in foreign currency that is not otherwise subject to the official currencies market may be freely possessed and negotiated.

### C. FINANCIAL LAW

Article 25 of Law 45 of 1990 empowered the President to issue an organic statute for the financial system "with the purpose of systematizing, integrating and harmonizing in a single legal body the current legal provisions governing the entities subject to the control and oversight of the Banking Superintendency . . . ." The government then promulgated Decree 1730 of July 1991 "[b]y which the organic statute of the financial system is issued." The decree unifies all of the legal provisions applicable to these entities and to the Banking Superintendency, thus making it easier to determine the regulations that apply to a specific case.

### D. CUSTOMS

Law 49 of 1990 (article 49) empowered the President to decriminalize the smuggling of goods across Colombian borders and a series of other acts previously punishable by imprisonment. Decree 1750 of July 1991 decriminalizes these actions as of November 1, 1991. From this point onward, offenders will be punished by the imposition of substantial fines. Jurisdiction over criminal proceedings for smuggling will be transferred to the Customs Office. Prior to November 1, 1991, currently pending smuggling investigations continued to be handled by the criminal customs jurisdiction.

## IV. Ecuador

### A. AUDITS—CORPORATIONS

Resolution No. 91-1-5-3-002, published in the Official Bulletin of February 14, 1991, establishes the minimum thresholds requiring audit of annual financial statements by external auditors, as follows: (1) companies with partial state ownership and corporations controlled by legal entities whose assets exceed 100 million sucres; (2) branches and corporations of foreign ownership whose assets exceed 100 million sucres; and (3) corporations, limited responsibility companies, and partnerships whose assets exceed 50 million sucres.

**B. BRANCHES OF FOREIGN CORPORATIONS**

Resolution 91-1-5-3-001, published in the Official Bulletin of February 14, 1991, clarifies that branches of foreign companies may capitalize their fixed assets, but may not capitalize the gains nor offset the losses that may result from said capitalization.

**C. CONSUMER PROTECTION**

Consumer protection regulations were published in the Official Bulletin of February 14, 1991. They further implement and develop the recently enacted Consumer Protection Law.

**D. CORPORATIONS—FINANCIAL STATEMENTS**

By resolution published in the Official Bulletin of April 22, 1991, the Superintendency of Companies issued a regulation requiring the publication of annual financial statements of publicly traded companies and companies that issue debentures. The publication must occur once in a major newspaper of the corporation's domicile.

**E. EXPORTS**

Agreement No. 179, published in the Official Bulletin of April 24, 1991, lists goods that cannot be exported and sets forth the export approval requirements and procedures for restricted goods.

**F. FINANCIAL SERVICES**

Resolution No. 91-628, published in the Official Bulletin of May 17, 1991, regulates brokerage and investment financing services in Ecuador. Brokerage and financing services may be offered only by entities previously authorized by the Superintendency of Banks. The regulations list the types of services these entities may offer and impose various restrictions on the activities they may carry out.

Resolution No. 91-643, published in the Official Bulletin of May 29, 1991, sets approval requirements for, and otherwise governs, the incorporation, organization, and modification of brokerage, investment financing, and leasing financing corporations in Ecuador.

**G. FREE ZONES**

On February 19, 1991, Ecuador enacted Law-Decree No. 1 on free zones. The law sets forth the general principles that govern all commercial activities performed within the free zones. The purpose of the new law is to promote employment, foreign investment, and transfer of foreign technology, to increase

exports of goods and services, and to develop depressed geographical areas of Ecuador. The law establishes a total exemption from indirect and direct taxes and import and export duties, complete liberalization of the exchange control and foreign investments regimes, and less stringent labor provisions.

#### H. GOVERNMENT PROCUREMENT

In the Official Bulletin of April 29, 1991, Ecuador published the Regulations on Government Procurement Contracts. The regulations further implement the provisions contained in the recently enacted law on government procurement contracts.

### V. Mexico

#### A. INTELLECTUAL PROPERTY; TRANSFER OF TECHNOLOGY

In June 1991 the Mexican Government promulgated the widely discussed Law for the Development and Protection of Industrial Property. It includes a comprehensive definition of industrial secrets, provides civil and criminal penalties for their unauthorized disclosure, extends the term of trademark protection from five to ten years, and provides for renewal of trademark registrations for additional ten-year terms. It also repeals the prior Law of Inventions and Trademarks (Official Gazette, February 10, 1976) and the Law regarding the Control and Registration of Transfers of Technology and the Use and Exploitation of Patents and Trademarks and its Regulation (Official Gazette, January 11, 1982, and January 9, 1990, respectively). The new law became effective one day after its publication in the Official Gazette of the Federation on June 27, 1991. Therefore, transfer of technology agreements no longer need to be submitted to the National Registry of Transfers of Technology for approval and registration.

### VI. Paraguay

#### A. DEALER LEGISLATION

In March 1991 the Paraguayan Government promulgated Decree Law No. 7, which regulates "representative, agency and distribution contracts between foreign manufacturers or firms and physical or juridical persons [legal entities] domiciled within Paraguay." Under this law, a foreign manufacturer or firm may modify, terminate, or refuse to renew a representative, agency, or distribution agreement without demonstrating "just cause" only if it pays the local representative, agent, or distributor the statutorily prescribed indemnity. All representative, agency, and distribution agreements executed after the effective date of this law must be registered with the Paraguayan Public Commercial Registry. Any waiver of the rights established under this law will be null and void.

## VII. Venezuela

### A. ENVIRONMENTAL LAW

Decree No. 1221 of November 2, 1990 (Official Gazette No. 34,678, March 19, 1991) contains the Regulations on Environmental Protection. The regulations establish the Environmental Protection Service (EPS), which is to be composed of various officers of existing government ministries and agencies, state and local authorities, as well as the National Guard. Among other provisions, the regulations require parties obtaining approvals, authorizations, concessions, or contracts affecting the environment and natural resources to register with the area National Guard Command, to allow officers of the EPS access to premises for inspections, and to supply them with information regarding activities affecting the environment and natural resources.

### B. TRADEMARKS

In a debt collection action, International Flavors and Fragrances Inc. obtained preliminary attachment of a defendant's trademark, an injunction of all advertising of products bearing the attached trademark, and an injunction barring any commercial establishment from selling products bearing that mark.<sup>1</sup>

### C. OPIC AGREEMENT

On June 22, 1991, Venezuela signed an agreement with the U.S. Overseas Private Investment Corporation (OPIC), which will allow OPIC to provide support for U.S. investment in Venezuela. OPIC is the U.S. government agency that promotes economic growth in developing countries by providing information services, financing, and investment assurances to U.S. investors.

### D. INCOME TAX; EMPLOYEE BENEFITS

In an extremely important decision, the Venezuelan Supreme Court held that amounts paid by a Venezuelan company as its contribution to a pension fund for employees are deductible, notwithstanding that the employee is a foreign national, that the contract creating the right to the contribution was executed outside Venezuela, that the employee will actually receive the funds upon termination of employment after he has become resident outside of Venezuela, and that the funds contributed by the Venezuelan employer are received and administered by a foreign corporation under a contract made outside of Venezuela.<sup>2</sup>

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1. *International Flavors & Fragrances Inc. v. Productos Mistolín C.A.*, Ct. of 1st Instance, Civ. & Comm. Matters, Jud. Cir. of Fed. Dist. & State of Miranda, Feb. 1991.

2. *Orinoco Mining Co.*, Sup. Ct., Dec. 6, 1990; *see also Shell Química de Venezuela, C.A.*, Sup. Ct., Dec. 6, 1990.