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REGIONAL DEVELOPMENTS

Latin America*

I. Argentina

A. Deregulation

President Menem issued Decree No. 2284, effective November 1, 1991, which, inter alia: (1) eliminates most import and export quotas; (2) eliminates trade controls (except those relating to health and environmental protection); (3) closes federal agencies that have regulated the production and sale of such commodities as beef, grain, sugar, tobacco, and wine; (4) grants stamp tax exemptions for many transactions, such as transfers of securities on the Buenos Aires Stock Exchange and capital increases; (5) grants a transfer tax exemption for transfers of securities on the Buenos Aires Stock Exchange; (6) grants an income tax exemption for sales of securities by foreign persons; and (7) eliminates rules requiring employers to negotiate wages with national unions rather than at the company level.

B. Labor Law

A new labor law (Law No. 24,013) took effect on December 17, 1991. The law is relatively advantageous to employers: (1) severance pay for termination without cause has been limited; (2) temporary employment is permitted (up to a certain percentage of the work force); and (3) fixed-term employment is permitted for the launching of a new activity. The law also establishes a government-managed unemployment insurance system.

C. Oil and Gas

Oil and gas exploration has been substantially deregulated. Twenty-five-year concessions for 140 sites will be granted through auctions. The concessionaires

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will not be required to form associations with the state-owned oil company (YPF) or sell their crude oil to state refineries.

D. Free Zone

A new industrial free zone has been established in the port of La Plata in the Province of Buenos Aires.

E. Banking

Central Bank Communication A1874 creates an incentive for private banks to lower interest rates on loans. Banks charging more than the specified "reference rates" are required to have higher capital.

F. U.S.-Argentina Bilateral Investment Treaty

On November 14, 1991, Argentina and the United States signed a Bilateral Investment Treaty. The treaty guarantees investment rights no less favorable than those available to domestic or third-country investors and provides for free transferability of capital and compensation. The treaty should also facilitate arbitration of investment disputes between an investor from one country and the government of the other. The treaty contains each country's express consent to any such investor's submission of any such dispute for arbitration to the International Centre for the Settlement of Investment Disputes or in accordance with UNCITRAL arbitration rules.

II. Bolivia

As of November 19, 1991, foreign investors may invest in the Bolivian mining industry. The Bolivian Constitution prohibits privatization of Bolivian mines, but a new law authorizes foreign investment.

III. Brazil

A. 1991 Tax Reform Act

1. *Repeal of the Supplemental Income Tax*

Prior to its repeal, the long-standing and highly burdensome supplemental tax was due whenever, over a three-year period, the average net dividend a Brazilian company paid to its foreign parent exceeded 12 percent per year of the parent's foreign currency investment (and reinvestment) registered with the Brazilian Central Bank. The supplemental tax was levied at progressive rates (40 percent, 50 percent, and 60 percent) on the excess remitted.

The 1991 Tax Reform Act repealed the supplemental tax as of January 1, 1992. Hence, distributions made in 1992 will be free of the supplemental tax regardless of the history of prior distributions.

2. *Reduction of Income Tax Withholding on Dividends*

Commencing on January 1, 1993, the withholding tax levied on dividend distributions will be reduced from 25 percent to 15 percent.

3. *Royalty Payments*

As of January 1, 1992, local subsidiaries are able to pay (and deduct for local purposes) royalties and fees to their nonresident parents for trademarks, patents, and technical assistance, provided that the underlying licensing agreement is registered with the Brazilian Patent Office.

4. *Corporate Income Tax Payments*

As of January 1, 1992, local companies are required to pay their income tax every month on the basis of balance sheets closed for the month immediately preceding payment. As an alternative, local companies may pay their income tax on an estimated basis in monthly installments.

IV. Colombia

A. Tariffs

A planned three-year phase-in of lower tariffs was accelerated to take effect in 1991. The new tariff structure has four rates: 0 percent (inputs, raw materials, and intermediate and capital goods not produced locally); 5 percent and 10 percent (inputs, raw materials, and capital goods produced locally); and 15 percent (finished consumer goods, such as clothing).

B. Exchange Controls

On October 1, 1991, Colombia's central bank, the Banco de la República, ended its monopoly on foreign exchange transactions. Commercial banks and financial institutions may now freely engage in foreign currency trading.

C. Foreign Investment

On October 22, 1991, Resolution Nº 51 modified Colombia's foreign investment regime, implementing ANCOM Decision No. 292 of March 22, 1991. Among other changes the resolution allows foreign investors to remit 100 percent of net annual profits. Previous rules limited annual profit remittances to 100 percent of the foreign investor's registered foreign investment.

V. Mexico

A. Abolition of Exchange Controls

On November 10, 1991, the Mexican Government effectively abrogated all remaining exchange controls in Mexico.

B. Value Added Tax (VAT)

A decree published in the Official Gazette on November 10, 1991, reduced the general rate of VAT from 15 percent to 10 percent. The VAT on luxury items was reduced from 20 percent to 10 percent. Transactions consummated in border areas, previously taxed at 6 percent, will now be taxed at 10 percent.

C. Income Tax

Amendments to the Income Tax Law (ITL) effective January 1, 1992, significantly impact foreign companies doing business in Mexico. Among the more important reforms are the following:

1. *Permanent Establishment*

As before, foreign residents with "permanent establishments" in Mexico are subject to Mexican income tax on their income attributable to such establishments. However, as of January 1, 1992, under an expanded definition of "permanent establishment," any foreign resident who "acts in Mexico through a person, either natural or legal," who (a) assumes risk in the name of the foreign resident, (b) acts subject to detailed instructions or the general control of the foreign resident, (c) performs activities that economically correspond to the foreign resident and not to the person individually, or (d) receives guaranteed remuneration irrespective of the results of his activities, is also deemed to have a permanent establishment in Mexico.

2. *Fixed Base*

The amendments to the ITL introduce the concept of a "fixed base" of a foreign resident. Under the ITL a foreign resident "civil company or association" (for example, a professional partnership) having a "fixed base" in Mexico, through which it renders personal independent services, is subject to taxation on all income attributable to that fixed base. A fixed base is defined as being any place in which independent personal services of a scientific, literary, artistic, educational or pedagogical, or professional nature are rendered.

3. *Tax on Foreign Resident Individuals*

In the past, salary payments to foreign resident individuals paid by foreign resident employers for services rendered in Mexico were not subject to Mexican taxation. As of January 1, 1992, however, a 30 percent tax was to have been imposed on such salary payments when the foreign resident individual renders services in Mexico for more than fifteen days over a period of twelve months. By resolution published in the Official Gazette on February 14, 1992, the Ministry of Finance reduced this rate to 20 percent for foreign resident individuals who render services to maquiladora companies. The new approach raised considerable concern and objections. Additional changes are anticipated.

4. *Partial Deduction of Mandatory Profit Sharing*

As of January 1, 1992, Mexican employers may deduct, on a limited basis, amounts distributed to employees as mandatory profit sharing (amounting to 10 percent of pretax profits). Under the 1992 amendments to the ITL, employers may deduct the difference between the profits shared with the employees and the nontaxable benefits paid to the employees as part of their compensation.

5. *Automobiles—Limited Deduction*

The amendments to the ITL permit taxpayers to deduct investments in automobiles only if certain requirements are met. For example, the automobiles must be considered utilitarian and must, among other things, (1) all be of the same color, (2) bear the name and logo of the company, (3) not be assigned to specific individuals, (4) only be used during business hours, and (5) only be used for business purposes. Furthermore, the deduction for each qualifying automobile cannot exceed 60 million pesos.

VI. Paraguay

In September 1991, Paraguay deposited its instruments of accession to the Berne Convention for the Protection of Literary and Artistic Works. The Convention entered into effect in Paraguay on January 2, 1992, when Paraguay became the eighty-ninth member of the Berne Union. Paraguay was already a member of the Universal Copyright Convention; it was also a member of the Buenos Aires Convention. Unlike the Berne Convention, however, both of these conventions require that a particular notice be affixed to the copyrighted work in order to protect it.

VII. Peru

A. Criminal Code

The Peruvian Legislature recently enacted a new Criminal Code that specifically defines copyright infringement as a criminal offense. The Criminal Code also provides for the confiscation of infringing items.

B. Privatizations

In a series of decrees effective late in 1991, Peru liberalized rules regarding private participation in a wide variety of sectors including, inter alia, ownership of shares and acquisition of assets of state enterprises, mail services, railroads, electricity, water and sanitation services, telecommunications (excluding television stations), roads, energy, education, and transportation.

C. Mining

Decree No. 708, effective December 13, 1991, includes measures to promote national and foreign investment in mining activities. Under this decree, income

tax will be levied on dividends only, and dividends and profits may be freely remitted.

D. Labor

In a series of decrees effective in late 1991, Peru replaced its existing labor code, simplified employee terminations, recognized new forms of short-term employment agreements, liberalized the employment of foreigners, and permitted private health and pension systems.

E. Antitrust

Decree No. 701, which is to come into effect thirty days after the organization of a National Commission of Free Competition, will prohibit monopolistic practices impeding, distorting, or limiting free competition.

VIII. Uruguay

A. Tariffs

Lower tariffs were established to take effect as from September 1, 1991. The new tariff structure has four rates: 0 percent, 10 percent, 20 percent, and 30 percent. Beginning April 24, 1992, these rates were reduced to 10 percent, 17 percent, and 24 percent, and starting January 1, 1993, will be reduced to 10 percent, 15 percent, and 20 percent.

B. Privatization

On September 27, 1991, the Uruguayan Congress passed Law No. 16,211, the Public Entities Law, which gives the executive branch and public agencies authority to subcontract services now performed by such public agencies to private parties or to public-private joint venture companies. This law contains special provisions regarding the aircraft, communications, energy, and fishing industries.

IX. Venezuela

A. New Income Tax Law

On August 13, 1991, the Venezuelan Government published a substantial reform of the Income Tax Law to be effective for tax years in progress on September 1, 1991. Among the major changes introduced by the amended law are: (1) elimination of taxation on dividends distributed out of earnings arising after the effective date of the amended law; (2) reduction of the maximum corporate tax rate from 50 percent to 30 percent; (3) reduction of the maximum individual income tax rate from 45 percent to 30 percent; (4) elimination of

consolidation rules; (5) reduction of the withholding tax on interest payments to nondomiciled foreign financial institutions from 20 percent to 5 percent and taxation of interest on loans from parent corporations to their affiliates at a 5 percent rate; (6) elimination of the taxation of passive foreign source income; and (7) establishment of a system of inflationary adjustment of the value of nonmonetary assets and liabilities.

In a transitory provision, the amended law provides for the current taxation of all accumulated earnings and profits of corporations existing as of September 1, 1991. Such earnings and profits are deemed to be distributed at the close of the corporation's current fiscal year and taxed at the rate that was in effect at the time the earnings and profits were generated.

B. Environmental Law

On January 1, 1992, Venezuela published a Criminal Law of the Environment. The law, which enters into effect on April 2, 1992, establishes criminal penalties for certain violations of the existing environmental legislation (Organic Law of the Environment of June 16, 1976, as amended, and the regulations thereto). It prescribes sanctions ranging from fines and community work to arrest and imprisonment and expressly applies to legal entities as well as to natural persons. The law contains separate chapters classifying crimes according to the type of environmental damage they produce, for example, water pollution, environmental damage to coastal areas, soil pollution, air pollution, and hazardous waste. It specifically contemplates criminal liability for individual officers and directors of legal entities found to have committed environmental crimes.

C. Antitrust Law

On December 30, 1991, Venezuela enacted the Law to Promote and Protect the Exercise of Free Competition. This law is written in broad terms to prohibit anticompetitive practices. Among its specific prohibitions are bans on price-fixing, market-sharing and tying agreements, price and other forms of commercial discrimination, unjustified refusals to deal, and economic concentration resulting in market domination. Unfair competition is prohibited, especially by means of false or misleading advertising, including false advertisements disparaging a competitor's goods or services, commercial bribery, breach of trade secrets, and the "passing-off" of one's own goods as those of a competitor. The antitrust law creates an enforcement agency, the Superintendency for the Promotion and Protection of Free Competition, with broad subpoena powers to investigate, enjoin, and penalize anticompetitive practices. The Superintendency is authorized to act in response to complaints by private parties, or upon the order of the Superintendent. Penalties provided for in the law include fines of 10 percent to 20 percent of the violator's sales for the fiscal year immediately preceding the date the fine is imposed; subsequent offenses can increase the fine

to 40 percent. Failure to comply with orders of the Superintendency subjects violators to additional fines of up to Bs. 1,000,000 (approximately U.S. $15,000), which could be increased for failure to pay the fines. The law also creates private rights of action for damages.

X. Regional

A. ANCOM Free Trade Zone

Pursuant to the Caracas Act, signed May 17-18, 1991, a free trade zone was officially created on January 1, 1992, between the five ANCOM member countries. Colombia, Venezuela, and Bolivia removed most tariffs on regionally produced goods, while Ecuador and Peru were scheduled to follow suit within six months. Excepted from the tariff removals are agricultural products and automobiles, which will be dealt with separately. Colombia and Venezuela also went forward without Bolivia, Ecuador, and Peru by implementing, as of January 1, 1992, the common external tariff schedule for 1992-94: 5 percent for capital goods and raw materials; 10 percent for intermediate goods not produced within the region; 15 percent for intermediate goods available from producers in the region; and 20 percent for finished goods. After 1994, the maximum common external tariff is scheduled to be 15 percent.

B. Chile-Mexico Free Trade Agreement

Chile and Mexico signed a free trade agreement that came into force as of January 1, 1992. The agreement provides for the elimination of nontariff barriers and the gradual elimination of most duties by 1998.

C. Central American Common Market

The Ministers of Economy of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua agreed on August 1, 1991, to lower duties on regional goods, with the goal of creating a regional free trade zone in 1992.

D. Southern Cone Common Market (Mercosur)

The Treaty of Asunción, signed on March 26, 1991, by Argentina, Brazil, Paraguay, and Uruguay, came into effect on November 29, 1991. The treaty governs a transition period to the creation of a common market by 1995.