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## BRAZIL: RESTRICTING TAX AVOIDANCE

By Antonio Carlos Q. Ferreira and Clarissa Giannetti Machado

### Disregarding "dissimulated" transactions

The Brazilian Tax Code has been amended to provide tax authorities ability to disregard "dissimulated" transactions. On January 10, 2000, Complementary Law 104, amended Article 116 of the Brazilian Tax Code to introduce a paragraph stating that Brazilian tax authorities "might disregard any act or transaction implemented with the purpose of "dissimulating" the taxable event or the nature of the elements that trigger the taxable event, in accordance with procedures that would be established by law" (Article 116, paragraph of the Brazilian Tax Code).

This Law introduced the concept of "dissimulation", for which there was no previous definition under Brazilian legislation. From a perspective of definitions, to "dissimulate" can mean to hide, to conceal, preventing the disclosure of something. Some authors classify dissimulation as a "limited simulation" with

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## COSTA RICA: CIVIL AND CRIMINAL LIABILITY DUE TO ENVIRONMENTAL ISSUES

By Carlos A. Echeverría A.

In order to talk about Civil and Criminal Liability due to environmental issues, as they are contemplated in the Costa Rica's jurisdiction, it is appropriate first to give a general overview of the country and its environmental programs.

Costa Rica is a country located in the Central American isthmus, south of Nicaragua and north of Panama. Its area is only fifty four thousand square kilometers and has borders with both the Pacific Ocean and the Caribbean Sea. As of today, one fourth of the whole country is either a National Park or is under some kind of environmental "tutelage" and/or protection.

As the *INBio* Institute (Costa Rica's National Biodiversity Institute),<sup>1</sup> reported Costa Rica encompasses one of the most biologically diverse regions of the world. It is considered that at least 4% of all the world's species can be found within its national territory, even though the whole country comprises only 0.01% of the world's surface.

### National Conservation Context

In the last two decades, with the expansion of the Eco Tourism Industry and the signing of multiple International Treaties for the Conservation of the Environment, Costa Rica has seen an expansion and

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<sup>1</sup> The National Biodiversity Institute (*Instituto Nacional de Biodiversidad* – INBio) <http://www.inbio.ac.cr>

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# BRAZIL: RESTRICTING TAX AVOIDANCE

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the objective only of hiding something. It was, thus, unclear whether this concept in respect to the Tax Code had a different scope from the concept of “simulation” of the Brazilian Civil Code. Because in direct transactions that do not represent a simulation are accepted as valid for tax purposes and because of the general understanding that the Brazilian tax system does not allow a subjective interpretation of taxable transactions, it has been common sense among tax practitioners that the amendment provided in Article 116 was not self-applicable. As a result, further laws and regulations were needed to determine specifically transactions that could be disregarded, based on the amended Article 116.

The concept of “dissimulation” and the procedures to be followed in order to disregard transactions are now set under Provisory Measure 66 of August 29, 2002 (MP 66/02).<sup>1</sup> Among other provisions, MP 66/02 sets the basic concepts and the procedures to be followed by tax authorities in order to disregard “dissimulated” acts and transactions. Under this new rule, tax authorities may disregard legal acts or transactions designed to (i) reduce the amount of the tax obligation, (ii) avoid or defer the payment of taxes or (iii) hide the real aspects of a taxable event or the nature of elements that constitute the tax obligation. It introduces the concepts of *lack of business purpose* and *abuse of form* as the basis for disregarding legal acts or transactions.

The lack of business purposes can occur whenever the parties involved in a given transaction choose, among other forms, the more complex or burdensome form to practice a determined act with the sole purpose of achieving tax benefits. The abuse of form is defined as the performance of an indirect transaction that produces the same economic results of the “dissimulated act or transaction”. Either lack of business purpose or abuse of form should be present in an act or transaction to allow the assessment by tax authorities.

## Procedure when “dissimulation” is alleged

The new law created a specific procedure to be followed by tax authorities to disregard transactions. Under the new rules, the tax agent should notify the taxpayer of the basis for disregarding a specific transaction, by stating the facts that justify his action and the equivalent transaction(s) that were dissimulated by the taxpayer. The taxpayer will have thirty days to defend, clarifying his points and reasons and presenting proofs if applicable. The case goes then for decision to the agent that requested the audit and issued the specific tax audit order. If the decision is contrary to the taxpayer, he will have thirty days to make the payment of the tax considered due, plus interest and a penalty of 20%, for the delay of the payment of the tax. If the taxpayer does not make the payment, then the tax authority should prepare a regular assessment, in which case it is mandatory to include a 75% penalty.

The new legislation introduces the possibility for tax authorities to challenge the economic foundation of transactions, introducing a subjectivity element that was not acceptable before. If tax authorities understand the transaction as actually a “dissimulation” of the parties’ intent, with the primary or sole economic purpose of tax avoidance, under the new rules, the transaction can be disregarded.

However, Provisory Measure No. 66 still presents some relevant and controversial issues that need to be clarified. It will take some time to have an indication as to how Brazilian courts will react when inter-

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<sup>1</sup> <http://www.natlaw.com/brazil/topical/tx/smbtrtx/smbtrtx6.htm> (Ed. Note: A Provisional Measure (*Medida Provisória* – MP) is a Presidential order that has the force of law immediately upon issuance, but which lapses after a limited period unless enacted by the Brazilian legislature.)

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# BRAZIL: RESTRICTING TAX AVOIDANCE

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preting and applying these concepts and setting the limits between tax evasion and tax avoidance, as well as between dissimulation and tax planning. The new procedures might be questioned as contrary to certain principles set in the Brazilian constitution and as introducing taxation by analogy, which is prohibited under Article 108, 1<sup>st</sup> paragraph of the Brazilian Tax Code.

Finally, another aspect subject to argument is whether the possibility of disregarding transactions applies only for transactions that occurred after the enactment of MP 66/02, as of August 30, 2002, or whether these rules can be considered as a mere interpretation of the provisions already settled by Complementary Law 104/00, allowing, in this case, tax authorities to disregard acts or transactions taken place as of January 11, 2001. We understand that tax authorities will try to act retroactively. Because there was no previous definition of “dissimula-

tion” for tax purposes, however, there are also strong arguments to maintain that this concept is applicable only from August 30, 2002 on. ■

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## BRAZIL: TWO TAX RULES IN NEW MEASURE

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*By Trench, Rossi and Watanabe*

Provisional Measure No. 66/02, dated August 30, 2002, covered a number of areas in addition to that restricting tax avoidance, which is discussed in the preceding article.. Below is a discussion of two important topics included in this mini-reform on taxation.

### **Non-cumulative effect of the Social Integration Program contribution**

Effective December 1, 2002, there will be a new system for calculating the Social Integration Program (*Programa de Integração Social – PIS*) contribution. The purpose is to avoid the previous cumulative effect of this contribution as inputs were incorporated into products that were then sold or used in company activity. The change has been made via the grant of tax credits. According to the new system, the taxpayer is entitled to the credit related to the contribution in the following operations:

- (a) acquisition of goods for resale;
- (b) acquisition of goods and services to be used as raw materials for manufacturing products for sale or used in the rendering of services;
- (c) power consumption by legal entity establishments;
- (d) building, machinery and equipment lease payments to legal entities for such items used in the company's activity;
- (e) financial expenses resulting from loans and financing to legal entities;

- (f) acquisition of machinery and equipment to be used in the process of manufacturing products for sale, as well as in the acquisition of other goods incorporated into fixed assets;
- (g) constructions in and betterments to third parties' real estate;
- (h) return of goods.

The new system kept the gross revenue as basis for the contribution, although its rate was increased, going from 0.65% (zero point sixty-five percent) to 1.65%. (one point sixty-five percent).

This new system is not applicable to taxpayers already subject to the PIS one-time levy, such as the pharmaceutical and automotive industries, cooperatives, certain immune or exempt legal entities, legal entities subject to the income tax based on the presumed or arbitrated profit, financial institutions, health plan companies, private pension entities and insurance companies, among others.

The new system has also restricted the rule of exclusion of revenues from the sale of permanent assets (“*ativo permanente*”) from the PIS tax basis, provided in Law No. 9,718/98. Thus, allowing the exclusion only of revenues from the sale of fixed assets (“*ativo imobilizado*”). Therefore, revenues from the sale of permanent investments, such as permanent equity participation, and rights (deferred assets), will now be taxed with PIS.

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## BRAZIL: TWO TAX RULES IN NEW MEASURE

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Furthermore, the reform introduced new provisions, such as the express exclusion from the PIS tax basis of revenues exempt from the contribution or subject to the zero rate, and those earned by the reselling company in the resale of goods regarding which the contribution is due by the selling company as a tax substitute.

Concerning foreign trade transactions, the PIS non-levy rules were maintained regarding:

- revenues resulting from export of goods,
- rendering of services to individual or legal entity domiciled abroad with payment in convertible currency, and
- those earned from sales to trading companies with the specific purpose of export.

### Foreign trade transactions made by use of third parties' funds

Foreign trade transactions made by use of third parties' funds shall be presumed to be operations on account of and for the order of such

third parties for purposes of holding the purchaser of the imported good jointly liable for the Import Tax and for violations that may be practiced in the import process. The purchaser shall also, in this case, be considered an industrial establishment for purposes of the Federal Excise Tax (*Imposto Sobre Produtos Industrializados – IPI*) and be subject to the same rules regarding contributions to PIS and Social Security Funding (*Contribuição para Financiamento da Seguridade Social – COFINS*) that are applicable to the importer. ■

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*Trench, Rossi e Watanabe Advogados <<http://www.trenchrossiewatanabe.com.br>> is a Brazilian law firm with offices in Brasilia, Porto Alegre, Rio de Janeiro and São Paulo. It is associated with Baker&McKenzie, attorneys-at-law headquartered in Chicago, Illinois. With 64 offices in 35 countries, Baker & McKenzie is a full service firm founded in 1949.*

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## COSTA RICA:

## CIVIL AND CRIMINAL LIABILITY DUE TO ENVIRONMENTAL ISSUES

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juridical embrace of environmental issues within its legal system. The promulgation of special laws within the last 5 years such as The Environment's Fundamental Law (*Ley Orgánica del Ambiente*)<sup>2</sup> and The Biodiversity Law (*Ley de Biodiversidad*)<sup>3</sup> are prime examples of the validity of the last statement. As reported by The Biodiversity Institute (INBio) in its studies, Costa Rica as a country has made enormous progress in strengthening its conservation effort. Further, in the last forty years, the National Parks System has been enlarged, consolidated and complemented by other types of protected areas; all together, these represent 25% of the Costa Rican national territory.

The creation of the Ministry of National Resources, Energy and Mines (*Ministerio de Recursos Naturales, Energía y Minas – MIRENEM*) – currently renamed Ministry of Environment and Energy (*Ministerio del Ambiente y Energía – MINAE*) – helped integrate all activities related to the management and conservation of the country's natural resources. The Administrative Environmental Court is part of this Ministry.

In addition, the concern that these resources be managed adequately led to a national consensus to form a suitable structure for this purpose, called the National System of Conservation Areas (*Sistema Nacional de Areas de Conservación – SINAC*). SINAC is under the direct responsibility of MINAE, with support and participation of certain private organizations.

Costa Rica has, moreover, assumed the task of developing the National Biodiversity Program, aimed at conserving most of the country's existing biodiversity through the sustainable and equitable utilization of these resources. The program works according to the following strategies:

- a) Saving representative samples of Costa Rica's Biodiversity through the establishment of protected wild lands administered by SINAC (supported by several conservationist NGOs and the National System of Private Reserves; which has some involvement on the part of MINAE;
- b) Increasing knowledge about existing Biodiversity, particularly within the protected areas. This process is carried out by universities, the National Museum, scientists and the National Biodiversity Institute (INBio), among others;

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<sup>2</sup> <http://www.natlaw.com/cr/topical/en/stcren/stcren1.htm>

<sup>3</sup> <http://www.natlaw.com/cr/topical/en/stcren/stcren2.htm>

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- c) Searching for sustainable and rational uses of such Biodiversity.

Many different institutions of the Costa Rican society participate in this effort. Some of them are:

- 1- Clodomiro Picado Institute
- 2- Tropical Agronomic Center of Research and Education (*Centro Agronómico Tropical de Investigación y Enseñanza – CATIE*)
- 3- INBio
- 4- *Fundación Neotrópica*
- 5- FUNDAPARK
- 6- *Universidad Nacional*
- 7- *Instituto Tecnológico*
- 8- *Universidad de Costa Rica* amongst other Universities.

This national program is based on the framework defined at the international level in “The Global Biodiversity Strategy” (WRI, IUCN, UNEP, 1992)<sup>4</sup> and the June 1992 United Nations Conference on Environment and Development (“Earth Summit”), celebrated in Rio de Janeiro, Brazil. So fruitful have been the efforts to protect and strengthen the environment, that as a form of recognition, Costa Rica was declared as the home of the United Nations’ Earth Council.

### The Costa Rican Legal System

The Costa Rican Legal System is based on the principles of the Roman Germanic System of Law, with strong influence in its Civil System from the French Civil Code, which Costa Rica copied. As of today we find that in Costa Rica, the hierarchy of its Civil Legal System is as follows:

The Costa Rican Constitution<sup>5</sup>

International Treaties duly ratified by the Legislative Assembly

Laws duly passed by the National Assembly

For the Public Law System, the hierarchy is as follows:

The Costa Rican Constitution

International Treaties duly ratified by the Legislative Assembly

Laws duly passed by the National Assembly

Executive Decrees and associated Bylaws

<sup>4</sup> Global Biodiversity Strategy: Guidelines for Action to Save, Study, and Use Earth’s Biotic Wealth Sustainably and Equitably, 1992, by the World Resources Institute, The World Conservation Union, United Nations Environment Programme, Food and Agriculture Organization of the United Nations, United Nations Educational Scientific and Cultural Organization.

<sup>5</sup> <http://www.natlaw.com/cr/primary/prcr1.htm>

According to both the Civil Procedure Code and the Criminal Procedural Code, a judge when ruling on a case, must use, in order to justify his/her ruling, that same hierarchy and in case of vagueness of the Law, the judge must use the Principles of Law, Jurisprudence and Common Sense as a source and in the given order.

The only exception to the previously mentioned rule will be jurisprudence that comes out of the Constitutional Chamber of the Costa Rican Supreme Court. Effects of such Jurisprudence are to be considered enforceable *erga omnes* (against all) and such jurisprudence should be applied by all judges of the Republic at all times.

As of today, in Costa Rica the general ground rules on civil and criminal liability for environmental issues are given by the following Laws:

- 1- Constitution
- 2- Environment’s Fundamental Law (*Ley Orgánica del Ambiente*)
- 3- Biodiversity Law (*Ley de Biodiversidad*)
- 4- Jurisprudence of the Constitutional Chamber
- 5- Public Health Law.<sup>6</sup>

It has been established in the Environment’s Fundamental Law and the Costa Rican legal system, that the Government of the Republic must:

- a) Protect all water sources for human consumption;
- b) Ensure proper disposal of all sewer waste and pluvial waters;
- c) Ensure proper collection and management of all solid wastes;
- d) Control atmospheric contamination;
- e) Control sound pollution; and
- f) Control chemical and radioactive substances.

### Civil Liability for Environmental Damages Legal Basis

In the Costa Rican Legal System there is not an express definition of environmental damage and liability per se. The Environment’s Fundamental Law or EFL, gives a vague definition when it defines environmental damage as “*a crime against society*” since such damage affects the existence of society itself; “*a crime against the economy*” since it affects the means of production; “*a crime against the community*” since it affects the way of life of any given community of individuals or mankind and “*as an ethical crime*” since it affects present and future generations.

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<sup>6</sup> <http://www.natlaw.com/cr/topical/md/stcrmd/stcrmd1.htm>

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From the point of view of jurisprudence, “*damage*” has been defined as “*the lessening of somebody’s rights and assets whether susceptible to an economic appraisal or not.*” Since the Costa Rican legal system defines the environment as “*humanity’s property,*” the environment is common to us all; therefore, there exists, not only the possibility but the duty of all of us to defend it.

Article 50 of the Costa Rican Constitution declares that all people have a right to a healthy and balanced environment and that it should be the State’s duty to warrant, defend and preserve said right. The Costa Rican Constitutional Chamber has declared that:

*“...the right to the environment can not yield to economic considerations since it is a non-patrimonial right and of enormous importance, not only to today’s citizens but to the future generations.”* (Vote #1886-95)

Said vote and many others have defined the right to a healthy environment as a “diffused right” as well, hence giving us all the possibility of actively defending it, granting not only to the “*affected*” individuals but to any member of society the possibility of requesting injunctions before the Constitutional Chamber against anybody (*natural or legal, public or private*) that was harming the environment. Also, it has been considered by the Constitutional Chamber that the right to the environment is intimately related to the right to life itself, hence granting anybody the capacity to defend nature against unnecessary damages.

It is of vital importance to consider the role that is played by the Health Law, within the Costa Rican Environmental Protection System, since most of the time, environmental damages have human health related consequences. One of the most used means by both the Costa Rican Government and the Administrative Environmental Court to stop the propagation of environmental damage has been to revoke or order the cancellation of the health permit of a specific entity or operation if corrective actions are not taken.

### **What Constitutes Environmental Damage**

In the Costa Rican Legal System, one is considered liable the moment one commits an act that has been labeled as “illegal” by the Laws. Under the Legal System, however, it has been considered impossible to have a “*zero emissions*” society and that a “*tolerance level*” should exist, but that emissions should be small enough to let the environment regenerate. If the case were otherwise, it would justify application of control measures and eventual sanctions.

The Costa Rican Constitution, in its article 4, establishes the right of any individual to pursue in the Court of Law the reparation to any damage that has been done to his property, rights and interests. Since all people have the “Right to a Healthy Environment”, anybody could initiate an action for violations or damages to such environment. It is important to note that the State or Government is equally subject to Environmental Laws in Costa Rica and could be and is as liable for its action or inaction as any other person or legal entity. The Costa Rican Legal System, as far as the Environment is concerned, has as a fixed intention, preventing and minimizing environmental damages.

The Environment’s Fundamental Law created the Administrative Environmental Court (the “Environmental Court”). This entity is authorized to establish punitive damages for environmental violations but also is authorized to enforce changes in behavior, either corporate or by individuals, to achieve not only restitution in an economic sense, but to reestablish the environment. It could force individuals and corporations either to do or to stop doing.

### **Civil Liability Due to Actions and/or Omissions**

According to the Costa Rican Legal System, environmental damage and civil liability may be established because of actions or omissions that could be attributed to either persons or corporations. For example, the Forest Law establishes an obligation to denounce, i.e., to report, a forest fire in order to stop its spread and limit its consequences.

The Environment’s Fundamental Law establishes and lists administrative sanctions which will apply due to violations of the law itself and/or due to behaviors that harm the environment. Such conduct could be the result of the abuse of a right (such as a permit). Just proving the link between an action or omission and a consequence could cause the birth of eventual liability. As noted above, if an action or omission causes the environment to degenerate faster than it can regenerate, there exists a responsibility to fix the damage and/or pay its consequences.

The Costa Rican Legal System has applied its contractual legislation and theories to the environment, a system in which if a person were to cause damage, he/she must have it repaired. Said principle is enunciated in article 1,045 of the Costa Rican Civil Code.

For example, in a scenario in which an industry is authorized to start operations within certain guidelines and fails to respect these guide-

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lines, it would be liable for whatever damages were caused because of its actions or omissions. The absence of a permit would be considered an aggravating factor when establishing responsibility.

In an extra-contractual scenario, the claimant must show the guilt of the defendant, because of an action or omission, and the burden of proof lays with the claimant.

In a practical sense, Costa Rica has the problem of not having a “superfund” as in other jurisdictions, for the Environmental Court to use. The Court has found that most of the time, the economic reparation or fines imposed are less than the actual environmental damage – hence their practice of enforcing “environmental rectification” and actual environmental reparations, such as replanting trees, cleaning of a river, etc., instead of plain economic reparation. The Court believes that, since reparation monies are sent to enlarge the National Treasury and are not used specifically for environmental purposes, it serves the environment better to act this way. There is proposed legislation to correct this situation and to create an Environmental Fund, but its creation and approval are not in the near future.

Since it has been felt by the Administrative Environmental Court that their rulings not only deal with environmental issues but could have economic consequences for the community as well, it has become common for the Court to give a “violation” the possibility or opportunity to repair the damage done.

A clear example has been the way the Administrative Environmental Court has managed all the coffee mills in Costa Rica, which had a long tradition, in the processing of coffee, of dumping their wastes in nearby rivers. Since the Court came into action, most of the coffee mills, instead of being closed down, were given both “an environmental plan” and “time” to put that plan into practice. The idea behind this approach was to stop the pollution-creating factors and help the environment regenerate, while minimizing the economic consequences to the community that would occur if the mills were shut down.

It is customary for the Court to force the “physical” reparations of the environment instead of “economic” reparations. For example if one were to cut down an acre of forest without a permit, one could be compelled to re-plant, not only the acre that was cut down but also whatever is needed to replenish the oxygen that was lost because of the cut trees. If the latter were not possible, because of lack of space for example, then an economic sanction or reparation could be enforced.

There is a hotel chain in Costa Rica that, in 2001, was found “guilty” of the destruction of two hectares of wet lands. Since the economic value of the wet lands was very low, but the environmental damage enormous, the Court accepted the giving to the State of two thousand hectares of primary forest land located behind the hotel complex and the transformation of that land into a “National Forest.”

The Court also has ordered the closing of companies and their activities when it would be impossible to correct a situation and the Court finds that situation to be harmful to the environment beyond repair. Such a situation exists when the rate of regeneration is not as fast as the rate of degeneration.

### **Joint Liability: Civil and Criminal**

As far as both civil and criminal liability is concerned, the Environment’s Fundamental Law makes it clear that not only is he/she who commits the damage responsible, but also those who, having the duty to oversee compliance with the law, failed to do so.

It could, therefore, be possible that the General Manager, Director or other personnel of a corporation could be found liable for damage to the environment, as long as it can be proven that such individuals had the duty or obligation to oversee the actual “violation”.

All assets of the guilty party, be that party an individual or corporation, are subject to forfeiture and are treated as being connected to their actions as is the case in contract law. A judge could, thus, impose a lien upon all the assets of individuals and/or corporations and may force sale of these assets in public auction to pay for any economic reparation. Also a freeze in bank accounts is a possibility.

### **Statute of Limitations: Civil and Criminal**

For both the civil and criminal liabilities, both the Laws and the Courts hold that the Statute of Limitations starts to run once the action or inaction ceases and not when it started. In cases when the damage to the environment is manifested afterwards, the principle would be that the Statute of Limitations starts to run once the effects or the damages are known to the eventual claimant.

In the Civil Jurisdiction, the Statute of Limitations for seeking reparations is three years. In the Criminal Jurisdiction, for felonies, the rule is that the Statute of Limitations is equal to the maximum jail term contained within the violated norm, but it cannot be more than 10 years nor less

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than three years. For misdemeanors, the Statute of Limitations runs after two years.

### **Criminal Liability**

As of now in Costa Rica, criminal liability due to Environmental Damage is specified by the Penal Code and special laws such as the Forest Law. It is important to note that, because of the way the Costa Rican Legal System works, there is always a civil action whenever there is a criminal action but not vice versa.

An important difference between the Civil Liability and the Criminal Liability is that, in the instance of Criminal Liability due to environmental violations, we face mostly a consummated act. Such is the case when water has been contaminated, trees have been cut down, etc. In very few opportunities, we find ourselves analyzing an attempt to commit an environmental crime, because generally the “*noticia criminis*” comes after, for example, the dumping happens and not before. It is not common for somebody to denounce that a factory is about to “dump” waste in the river.

The absence of intent is a mitigating factor and the existence of it would be the opposite. As in Civil Liability, one can be found liable for action and/or inaction. A violation of one’s duty to be “vigilant” could make one criminally liable, as in the case of the Regent of a Reforestation Project, the health inspector, etc.

Such is the case of the administrative or governmental employee or inspector who because of his negligence while performing his duty could also be criminally responsible for whatever violations have happened within his jurisdiction. Perhaps that is why we have not had one single criminal case (besides water and forest violations) for damages to the environment.

Within the Costa Rican Penal Code, the following rules apply to environmental issues:

- 1- Article 272 Bis establishes up to 30 days of jail for a person found guilty of polluting the environment.
- 2- Article 417 punishes with up to 30 days of jail the industrialist found guilty of polluting the environment with unauthorized emissions of smoke, vapor or gas. The same punishment would be applied if the General Health were to be compromised.
- 3- Article 407 and 413 establish up to 30 days of jail for violations of the Forest Fires Bylaws and for the propagation of plagues.

Among the special laws related to environmental issues and to the protection of the environment:

- a) The Water Law, in article 161 establishes punishments of up to a year in jail for the pollution of rivers and lakes. Also if found guilty of crimes against the water system, cancellation of permits for exploitation or operation can occur.
- b) The Wild Life Protection Law establishes penalties that go up to 45 days in jail for hunting of protected species.
- c) The Forest Law mandates that the Regent of a Reforestation Project is criminally responsible for its violation (Art. 21) and for non-compliance.

Interestingly, another way of becoming Criminally Liable for Environmental Issues would be if one were to disobey mandates of the Administrative Environmental Court, that had, for example, ordered the closing of a factory or ordered the implementation of an environmental plan.

Article 307 of the Criminal Code establishes up to a year in jail for disobeying an order that emanates from legally appointed authority. As interpreted, if found disobeying a mandate from the Administrative Environmental Court, you would land within the purview of this article, making you criminally responsible.

It is important to mention that on September of this year, legislation was proposed to the Legislative Assembly to create then Environmental Penal/Criminal Jurisdiction. This new jurisdiction is intended to have judges that have been educated as specialist in Environmental Law. It is estimated that this legislation will be discussed within the next year. As of now it falls within the duties of the criminal courts to analyze the cases in which there is a criminal liability for damages to the environment.

### **Conciliation Possibilities within the Criminal Procedure**

In Costa Rica, it is possible to end some criminal procedures if proper reparations are complete and the victim is in agreement.

Article 30 of the Criminal Procedure Code establishes such a possibility and its applicability must be accepted if no violence against humans has been exerted and no intent was found in connection with the defendant’s behavior.

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**Conciliation Possibilities within the Environmental Court**

Due to the lack of severity that is implied in the punishment for violations against the environment, within the Criminal Jurisdiction, the Administrative Environmental Court prefers to apply civil consequences and administrative punishments rather than criminal penalties.

Another reason to follow this course of action lies in the need to obtain not only an effective environmental protection program but also sustainable development. The Court is well aware that even though the Environment should not yield to economic development, the Court must consider the social consequences of their rulings and actions. The aim of the system as a whole is not to close factories down and put heads of family out in the street, but to give them the chance to implement techniques friendly to the environment that will enable them to keep producing and developing, helping the economy grow with them.

**Conclusion**

There is proposed legislation pending in the Costa Rican Legislative Assembly. The proposal, which has been called the Environmental Liability Law, reaffirms the right that exists for the development to

occur as long as it is done in a sustainable way. It also increases the responsibility and liability for environmental damages as a means to keep the environment safe for future generations.

This proposed legislation is a direct consequence of the signing of the "Earth Summit", celebrated in Rio de Janeiro, Brazil, that establishes in article 16 the need for the signatory States to establish accountability on the part of those that pollute and harm the environment, using the principle that he who harms must, as a matter of principle pay the consequences. This environmental legislation is far from being voted on. To predict what may come out of the National Assembly would be an impossible task. What is true is that the only active lobbying that is being carried out regarding this proposed legislation is being done by environmental groups alone. ■

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**Prospects for a Free Trade Area of the Americas (FTAA)**

George Washington University - Washington, DC - Thursday, November 21<sup>st</sup> 2002

This conference will explore the prospect of profitable business opportunities and will address the pressing uncertainties in the FTAA negotiations as the United States and Brazil take over as co-chairs in the negotiating process. For complete event info:

<http://www.gwu.edu/~clai/ftaa/ftaa.htm>

# MEXICO: PROPOSAL ON VALIDITY OF ELECTRONIC SIGNATURES

By Roberto Salazar Baena

On April 30, 2002 the representative of the Parliamentary Group of the National Action Party (*Partido Accion Nacional – PAN*) presented to the Mexican Congress a proposal (*proyecto do decreto*) to amend, and add articles to, the Mexico's Commercial Code in matters of electronic commerce. Below is a summary of general aspects of the proposal.<sup>1</sup>

## TITLE SECOND OF ELECTRONIC COMMERCE CHAPTER I - Concerning Data Messages

**Article 89** – The articles of this Title will govern in the Mexican Republic in matters of commercial order, without prejudice to stipulations contained in international treaties to which Mexico is a party.

The activities regulated by this Title will be guided in interpretation and application by the principles of neutral technology, free will, international compatibility and functional equivalence of the data messages with the documented information that is presented in no electronic means and of the electronic signature with the autograph signature.

In the commercial acts and in the formation of the same, there may be used electronic, optic or any other technological means. The following terms are defined for effect under the Commercial Code:

- Certificate
- Information of the creation of the signature
- Consignee
- Electronic Signature
- Advanced or Reliable Signature
- Signer
- Intermediary
- Data message
- Trusting Party
- Lender of Certification Services
- Secretary
- Information System
- Holder of the Certificate

**Article 89 et seq.** – There will be no denial of legal effect, validity or enforceable duty to any kind of information for the sole reason that it is contained in a data message.

**Article 90** – A data message will be presumed to come from the issuer, if it is sent:

- I. by the issuer itself;
- II. using identifiable means, such as keywords or passwords of the

issuer or by any authorized individual acting in the name of the issuer in regard to that data messages; or

- III. from an information system programmed by the issuer or in his name to operate automatically.

**Article 90 et seq.:** It will be presumed that a data message has been sent by the issuer and therefore, the addressee or the party that acts in reliance upon that message, as the case may be, can so act, when:

- I. the procedure previously agreed with the issuer – with the purpose to establish that the data message comes effectively from him – had been correctly applied or
- II. the data message, received by the addressee or the party that acts in reliance thereupon, results from acts of an intermediary that had access to method used by the issuer to identify a data message as his/her own.

**Article 91** – Unless agreed to the contrary between the issuer and the addressee, the moment of reception of a data message will be determined as follows:

- I. If the addressee has designated an information system for the reception of data messages, reception will take place the moment that the data message enters into the said information system; or
- II. If the data message is sent to an information system of the addressee that is not the designated information system, or if a designated information system does not exist, in the moment that the addressee recovers the data message; and
- III. If the addressee has not designated an information system, the reception will take place when the data message enters into an information system of the addressee.

The stipulations of this article will apply even though the information system is located in a place that is different from the one where the data message is deemed to have been received in accordance with article 94.

**Article 91 et seq.-** Unless agreed to the contrary between the issuer and the consignee, the data message will be considered to have been issued when entered into an information system that it is not under the control of the issuer.

**Article 93.** – When the law requires a written form for acts, agreements or contracts, this requirement will be complied with in relation to a data message, provided that the information contained

*continued on next page*

<sup>1</sup> <http://www.natlaw.com/smmxec/smmxec2.htm>.

The proposal would amend articles 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110 and add articles 89 et seq., 90 et seq., 91 et seq., 93 et seq.

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# MEXICO: PROPOSAL ON VALIDITY OF ELECTRONIC SIGNATURES

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*continued from previous page*

in such message will remain complete and accessible for future consultation, without regard to the form in which it occurs or is represented.

**Article 94** – Unless agreed to the contrary between the issuer and the consignee, the data message will be considered as having been issued in the place where the issuer has his/her office and having been received in the place where the consignee has his/her office.

## CHAPTER II - Concerning Signatures

**Article 96** – The articles of the present code will be applied in a way that they do not exclude, restrict or deprive of legal effects any method for creating an electronic signature.

**Article 97** – When the law requires, or the parties agree to, the existence of a signature in relation to a data message, an electronic signature that is used will be understood as complying with such requirement if results are appropriate for the purposes for which that data message was generated or communicated.

## CHAPTER III

### Concerning Rendering of Certification Services

**Article 100** – The certification service can be rendered, with the previous authorization of the Secretary by the following persons:

- I. Public Notaries as well as the merchandise brokers (i.e., a certified merchandise broker who also performs the services of a notary public but focusing in commercial transactions [*corredor público*]);
- II. Individuals or Corporations of private character provided that their social object does not prohibit such activity; and
- III. Public Institutions, in accordance with applicable laws.

**Article 101** – The people who render the certification service may perform activities, including but not limited to, any or all the following activities and those related to them:

- I. To verify the identity of the users and their connection with the electronic means of identification.
- II. To confirm the integrity and sufficiency of the data message of the applicant and to verify the electronic signature of whom realize the verification.

- III. To register elements identifying signatories and information which has served to verify compliance in respect to the trustworthiness of the electronic signature and to issue the certificate.

## CHAPTER IV - Acknowledgement of Certificates and Electronic Signatures

### Foreign Certificates and Signatures

**Article 110** – In determining whether a certificate or a foreign electronic signature produces legal effects, or to what extent it produces such effects, the following is irrelevant and cannot be taken into consideration:

- I. the place where the certificate has been issued or where the electronic signature was created or utilized or
- II. the place where the office of the certification service giver or of the signer is located.

All certificates issued outside the Mexican Republic will produce the same legal effects in Mexico as the ones issued in the Mexican Republic, if such certificates present a grade of reliability equivalent to the ones contemplated for this Title. Likewise, any electronic signature created or used outside the Mexican Republic will produce the same legal effects in Mexico as an electronic signature created or used in the Mexican Republic, provided the former has a equivalent degree of reliability.

For purposes of determining whether a certificate or an electronic signature presents a grade of reliability equivalent to what is required by the two above-mentioned paragraphs, consideration will be given to international norms recognized by Mexico and any other appropriate means. When, without prejudice to what is stated in the last paragraphs, the parties agree between them upon the utilization of specific kinds of electronic signatures and certificates, that agreement will be recognized as sufficient for the effects of the frontier acknowledgment, unless the agreement is invalid or ineffective in accordance with applicable law. ■

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## BANKRUPTCY

### PERU: New Insolvency Law

The Peruvian Congress passed a new General Law of the Insolvency System (*Ley General del Sistema Concursal – Ley N° 27809*), published August 8 2002, with the consensus of most of the entities of the public and private sector and with a comfortable majority of vote in Congress. The bill was proposed by the National Institute for Defense of Competition and Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI*), which is part of the Ministry of Industry, Tourism, Integration and International Commercial Negotiations. The bill was drafted taking into account the opinions of interested sectors of the economy, including various Ministries, the Superintendence of Banks, the Central Bank of Peru, Customs, representatives of the textile, industrial and food sectors, among others.

Under the new law, procedures are simplified and reduced to two types: Preventive Insolvency Proceeding and Ordinary Insolvency Proceeding. In addition, cross-border insolvency is regulated, allowing creditors to recover from debtor's assets located abroad. The so-called "suspicious" period is set at one year, to declare null the fraudulent acts of the debtor. (The suspicious period is a legally set period of time, during which the bankruptcy court will consider all the activities carried out by the debtor to dispose of his patrimony as fraudulent. Any such activities are declared null by the court.) The debtor is obligated to present periodic reports to INDECOPI and the board of creditors, with respect to the administration or liquidation of the estate.

The law sets forth minimum requirements for any agreement to liquidate the estate entered into between the debtor and the creditors. It establishes that at least 30% of the annual flow of the company shall be destined to pay labor debts. In addition, it provides that the liquidators must immediately pay debts during the liquidation period, when there is the equivalent in funds of 10% of the recognized debts.

In order to ensure the representation of the labor creditors in the Creditor's Board, the law foresees that the number of creditors (*i.e.*, the number of employees) shall be the criteria to designate the employee's representative and not the amount of their joint credits. In addition, employees shall be exempt from sales tax when their credits are paid.

<http://www.indecopi.gob.pe/eventos/aprobaLGSC.pdf>  
<http://www.natlaw.com/peru/topical/br/pebr.htm>

## CONSUMER LAW

### VENEZUELA: Footwear and Apparel Labeling

The Venezuelan government issued two resolutions to establish the minimum information required to be included in the labels of footwear and apparel sold in Venezuelan territory. The resolutions, which came into force October 7, 2002, were drafted to take into

account the standards of the WTO Technical Barriers to Trade (TBT) Agreement. They provide that any footwear or apparel sold in Venezuela, must be labeled, in Spanish, with the following information: (i) name of the maker; (ii) trademark; (iii) the words "made in Venezuela" or in the corresponding country; (iv) size; (v) information on the materials used to make the footwear or apparel—in the case of apparel, the precise percentages of types of textiles used must be indicated; (vi) care instructions in the case of apparel; (vii) Venezuelan taxpayer number of the maker or importer—this number called *Registro de Informacion Fiscal* is granted by the Venezuelan tax administration; and (viii) registration number of the maker or importer before the standards and measurements authority (*Servicio Autónomo Nacional de Normalización, Calidad, Metrología y Reglamentos Tecnicos – SENCAMER*). This latter registry of SENCAMER is created pursuant to the resolutions, and the certificate of registration will be valid for one year. The importer must present the original certificate to the customs authorities along with the customs declaration.

Under the resolutions, SENCAMER can make periodic visits to manufacturers to ensure compliance with the norms. And in cases of breach, SENCAMER can commence administrative procedures against the infringer. Sanctions can be imposed upon importers or manufacturers who fail to register with SENCAMER and comply with these requirements within a term of three months as of the entry into force of the resolutions. *Gaceta Oficial*, Sept 23, 2002  
<http://www.natlaw.com/venez/topical/cs/rsvecs/rsvecs1.htm>  
<http://www.natlaw.com/venez/topical/cs/rsvecs/rsvecs2.htm>

## CUSTOMS

### ARGENTINA: Goods for Scientific/Technological Research

Argentine Law No. 25,613, approved July 3, 2002, exempts importation of goods intended for scientific/technological research from payment of import duties and all other customs-related taxes, levies, contributions, tariffs or rates, present or future, with the exception of fees for services. The exemption covers importation originating in gratuitous transfers of property, effected by foreign or international entities not based in the country and formally accepted by the donee. The following entities are entitled to the exemption:

- a) Agencies and entities of the State, provinces and City of Buenos Aires that are responsible for conducting scientific or technological research; and
- b) Public welfare agencies responsible for conducting scientific or technological research.

Agencies and entities claiming the exemption must be entered, at the date of the request, in the Registry of Scientific and Technological Agencies and Entities to be established by the Secretary for Technology, Science and Productive Innovation. The exemption covers all live animals, animal and vegetable products, raw materials, semi-manufactured and manufactured products, machines, appliances and equipment and their parts and accessories, imported for the purpose of being used directly and exclusively for scientific and

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technological research. Beneficiaries of the exemption may be borrowers, gratuitous transferees or transferees for valuable consideration of exempted goods. The Federal Public Revenue Administration will arrange for inward customs clearance with the corresponding exemption upon presentation of a certificate issued by the Secretary for Technology, Science and Productive Innovation.

Excluded from the exemption are goods imported for use by administrative services or services for maintenance and preservation of building infrastructure, notwithstanding the fact that they technically further the pursuit of scientific or technological research; likewise excluded are new and used vehicles subject to Law No. 21,932 (Production of Auto Parts and Importation of Automobiles) and its regulatory norms.

Exempted goods must be used exclusively for scientific and technological research conducted by beneficiaries and may not be alienated for five (5) years from the date of inward customs clearance. However, the Secretary for Technology, Science and Productive Innovation may, during this period and in advance, authorize alienations or loans to other agencies or entities that are themselves entitled to the exemption.

Violators of this law will forfeit the exemption and will be obligated to pay back taxes, contributions or fees waived, in addition to other relevant penalties, and will be excluded for five (5) years from the Registry of Scientific and Technological Agencies and Entities.

The Secretary for Technology, Science and Productive Innovation will be the authority for application of this law, and is expressly authorized to interpret and determine, on a case by case basis, the scope of the norms. Likewise, the Secretary may control which goods may not be supplied, with respect to quality, price or sufficient quantities, because of national production of these items. *Boletín Oficial*, July 31, 2002

<http://www.natlaw.com/argentina/topical/cu/starcu/starcu7.htm>

## **ARGENTINA: Ban on Importing Used Tires**

Law 25,626, passed July 17, 2002, bans importation of used and retread pneumatic tires, per items 4012.10.00 and 4012.20.00 of the Common Nomenclature of MERCOSUR.

*Boletín Oficial*, August 9, 2002,

<http://www.natlaw.com/argentina/topical/cu/starcu/starcu10.htm>

## **MEXICO: Lower Tariffs on Iron and Steel Products**

A Mexican decree dated September 24, 2002, modifies diverse charges under the tariff of the General Tax Law on Importations and Exportations in respect to iron and steel products. Tariffs on iron and steel imports had been raised over the past year in response to world overproduction in that industry and resulting high inventories and falling international prices, exacerbated by the deceleration of U.S. economy and the strength of the Mexican peso. The new decree aims to lower these tariffs and to do so in a manner that avoids a sudden change and that offers certainty to

producers and users for their medium- and longer-term business planning. The decree, therefore, lowers tariffs on named products effective September 2002—returning many of them to the level set in September 2001. Further reductions (of about seven percentage points, i.e., from 25 to 18 percent in most cases) are specified for September 1, 2003 and still lower rates for named products effective April 1, 2004.

<http://www.natlaw.com/dcmxcu/dcmxcu88.htm>

## **E-COMMERCE**

### **DOMINICAN REPUBLIC: New E-Commerce Law**

The Dominican Republic's new Law on E-Commerce, Digital Documents and Signatures (*Ley sobre Comercio Electrónico, Documentos y Firmas Digitales*) governs the information contained in digital documents or data messages. The law, which came into force on September 4, does not apply to the obligations of the Dominican Republic State assumed under international agreements or treaties, and warnings legally required to be incorporated into certain consumer products.

The law provides that any legal requirement that information be submitted in writing, will be satisfied with a digital document or a data message, provided the information contained therein is accessible for future review, and the digital document or data message complies with the validity requirements established in the Law. The same applies to signatures. In effect, when a signature is required, the digital signature shall suffice and shall have the same effects as a manuscript signature, provided the digital signature complies with the requirements of the Law.

The law further establishes that digital documents and data messages shall be admissible as evidence and shall have the same effect as private documents. Also, electronic messages shall be considered valid instruments for the formation of a contract, in so far as they express the party's agreements.

Finally, national and foreign entities, and chambers of commerce and production, may act as "certifying entities." These entities are authorized, among others, to create digital signatures, register the chronological transmission and reception of data, provided the entities have an authorization from the Dominican Telecommunications Institute (*Instituto Dominicano de las Telecomunicaciones – INDOTEL*).

[www.natlaw.com/domrep/topical/ec/stdrec/stdrec1.htm](http://www.natlaw.com/domrep/topical/ec/stdrec/stdrec1.htm)

[www.listindiario.com.do/antes/050902/cuerpos/republica/rep6.htm](http://www.listindiario.com.do/antes/050902/cuerpos/republica/rep6.htm)

## **ENERGY**

### **Mexico: Controversial Electricity Changes Proposed**

On August 16, 2002, the Mexican President Vicente Fox Quesada presented to the Mexican Congress a far-reaching and controversial set of proposed legal changes that, if passed, would reform, add to, abolish and create different laws and/or Constitutional articles in regard to electric energy. The issue is likely to generate considerable

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debate before any decision is reached. Generally speaking, the controversy surrounding these proposals stems from the Mexican view, shared by many political leaders, citizens and unionized workers, that electric energy, as well as oil, is part of national patrimony and only the State can own it. The views underlying the proposals by President Fox is that allowing foreign investment in the electricity sector will benefit the Mexican economy; that there will be a better supply of needed electricity; and that consumers will have better service and, over time, better tariffs. The main goal of the modifications described below is to allow and regulate foreign investment in this now restricted area.

Of the present generation capacity of electric energy in Mexico, 83.2 percent corresponds to the Federal Electricity Commission (*Comisión Federal de Electricidad* – CFE), 1.9 percent to the Light and Power of the Center (*Luz y Fuerza del Centro*), 4.2 percent to Mexican Petroleum's (Pemex) and the remainder to others, including cogeneration and auto-supplying. The CFE, which is a state generation, transmission and distribution monopoly, distributes to all Mexican territory with the exception of the Federal District and parts of the following Mexican States: Morelos, Hidalgo and Puebla, which are the States that are covered by Light and Power of the Center. Proposed modifications are as follows:

1. Decree to reform articles 27 and 28 of the Mexican Constitution, which would declare the State to be the sole entity permitted to render public service of electrical energy; would permit private entities to generate and sell electric energy to the State or to those consumers whose usage surpasses a minimum to be established by law; and the State will guarantee non-discriminatory access to and use of the transmission and distribution networks.
2. Decree to reform, add to, and abolish diverse articles of Public Service of Electric Energy Law (*Ley del Servicio Público de Energía Eléctrica*), under which CFE and Light and Power of the Center would continue current services to the public without regard to the consumer's level of usage; would allow those consumers whose usage for industrial, commercial or service activities exceeds 2500 megawatt hours per year to opt for self-supply or to register with the Energy Regulatory Commission (*Comisión Reguladora de Energía* – CRE) in order to contract with private electricity generating entities or to purchase on the market; would permit private entities to obtain permits to serve such registered consumers using bilateral contracts; would retain the role of the federal executive to promote rural electrification and programs for low-income consumers; and would give a new entity, the National Center for Energy Control (*Centro Nacional de Control de Energía* – CENACE), authority to ensure non-discrimination and to operate transmission so as to select the lowest cost plants available for satisfying demand. (An estimated 500 companies could qualify as registered users.)
3. Decree to reform, add and abolish diverse articles of Regulatory Energy Commission Law (*Ley de la Comisión Reguladora de Energía*), which assigns to the CRE authority to set terms,

conditions and rates for public service, for transmission through the grids, and for the services of the new governmental entity, CENACE.

4. Decree that creates the Organic Law of the Federal Electricity Commission (*Ley Orgánica de la Comisión Federal de Electricidad*), under which the CFE would continue its current public service; would also be able to sign bilateral contracts with those registered (i.e., larger) users; would be able to offer value added services; and would make CFE an autonomously administered agency, while retaining acquired rights of workers and third parties.
5. Decree that creates the Organic Law of the National Center of Energy Control (*Ley Orgánica del Centro Nacional de Control de Energía*), which would become effective June 1, 2006, or when 12.5% of national electric generation is acquired by registered users, whichever comes first.

Independently of the legal issues mentioned above, at present there is much concern in Mexico about the high cost of electricity; one demonstration took place on September 17, 2002, when a group of protesters blocked the border with the U.S. at Nogales, Sonora, Mexico.

<http://www.natlaw.com/pubs/spmxeg3.htm>

<http://www.gasandoil.com/goc/news/ntl23817.htm>

## GOVERNMENT ADMINISTRATION

### BRAZIL: Videoconference for Deposing Prison Inmates

The Court of Justice of the State of Sao Paulo tested for the first time in September, the use of videoconference to take depositions of inmates. This technology is being used in order to avoid the risks involved in transferring inmates to and from the criminal courts.

[http://www.uj.com.br/online/noticias/noticias\\_imprimir.asp?id\\_noticia=15176](http://www.uj.com.br/online/noticias/noticias_imprimir.asp?id_noticia=15176)

## LABOR

### BRAZIL: Damage Award to Employee for Body Searches

As a result of a decision of Brazil's Superior Labor Court (*Tribunal Superior do Trabalho*), a department store will have to pay damages to an ex-employee who had been subject to repeated body searches, including stripping, when leaving the premises at any time of the day. The Court found that the company's search policy was degrading and affected the dignity and privacy of the employee and noted that there are other efficient ways to prevent theft via control of stock.

<http://www.natlaw.com/pubs/spbrlb1.htm>

### Mexico: Vessels Subject to Pressure and Boilers

Norm NOM-020-STPS-2002, issued August 28, 2002, establishes the minimum work safety requirements applicable for operating vessels subject to pressure, and boilers. This measure aims to prevent risks to workers and damage to facilities. This measure covers all

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the Mexican territory and will be applied in all the work places that have vessels subject to internal or external pressure, boilers or cryogenic vessels. Until October 28, everything that has already been authorized for operation, as well as permits being processed, will continue to be regulated by NOM-122. New installations, procedures, operating manuals, after that date, must use the new standard.

Related norms to be consulted for correct interpretation of the present norm are the following valid norms (or the ones that may replace these):

-NOM-018-STPS-2000 (System for identification and communication of dangers and risks for dangerous chemical substances at workplaces);

-NOM-026-STPS-1988 (Colors and signs of security and hygiene, and identification of risks for fluids concluded in pipes);

-NMX-B-482-1991 (Training, grade, and certification of test personnel.)

In regard to the present norm, it should be noted that Mexican norm NOM-015-STPS-2001, issued June 14, 2002, governs workers' safety and hygiene conditions, levels and maximum permissible periods for workers to be exposed to extreme thermal conditions of a sort that, because of their characteristics, kind of activities, level, time and frequency of exposition, would be capable of altering workers' health. This norm applies in all job centers in national territory in which workers are exposed to thermal conditions, caused by sources that can make the workers' body temperature lower than 36°C or higher than 38°C.

*Diario Oficial*, Aug. 28, 2002, and June 14, 2002

<http://www.natlaw.com/wsmxlb/wsmxlb72.htm>

<http://www.natlaw.com/wsmxlb/wsmxlb71.htm>

## TAXES

### **BRAZIL, U.S.: WTO Panel on Florida Citrus Juice Tax**

The World Trade Organization (WTO) accepted a Brazilian request for the establishment of a three-member Dispute Settlement Panel to consider a complaint against the an Equalizing Excise Tax (EET) imposed by the State of Florida of United States on processed orange and grapefruit products. A 1970 EET law in Florida had imposed the tax on all non-U.S. source processed citrus; as a result of a suit brought by multinational companies, this law was amended in July 2002 to apply the EET on all processed citrus from outside Florida, i.e., the EET was extended to processed citrus from the other States of the U.S. The tax amounts to \$40 per ton or about three cents per gallon with the proceeds used to finance advertising, marketing and research. Brazilian is a major exporter of frozen concentrated orange juice and has sales of US\$80m million to Florida, where the juice is blended with local juice. Brazil's complaint

is that the remaining EET is still in violation of the General Agreement on Tariffs and Trade, that the panel should also rule on the EET as it existed prior to July 2002 to ensure that the State court ruling that led to the July change is not overturned or changed in some way, and that the way in which the funds are used is for the promotion of Florida-grown products thus constituting a form of discrimination against the imported product. Brazil has also announced that it will request consultations with the U.S. concerning the U.S.'s domestic support program for cotton and with the European Union concerning EU policies on sugar and on EU tariff classifications for types of chicken meat.

See DS250 at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm#2002](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm#2002)

<http://fas.usda.gov/hp/News/News02/08-02/8-23-02%20KD.htm>

<http://news.tradingcharts.com/futures/3/0/31183703.html>

<http://www.mre.gov.br/infocred/info379-02.htm>

*Folha de S.Paulo*, Aug. 20, 2002

## TRANSPORTATION

### **BRAZIL: Divided Responsibility in Contributory Negligence**

The Superior Court of Justice (*Superior Tribunal de Justiça*) decided that fault must be divided between a railroad and a victim, when, on the one hand, the victim has contributed to the harm caused to him or herself by behavior that increased his risk and, on the other hand, there also exists an element of negligence on the part of the transportation firm. The decision (*Processo*: Resp 388300) overruled a lower court that had assigned all responsibility to the victim.

[http://www.stj.gov.br/webstj/Noticia/detalhes\\_noticias.asp?seq\\_noticia=6366](http://www.stj.gov.br/webstj/Noticia/detalhes_noticias.asp?seq_noticia=6366)

## TREATIES

### **ARGENTINA: International Convention Against Transnational Organized Crime**

Law No. 25,632 adopts and enacts the United Nations International Convention against Transnational Organized Crime. The Convention deals with the fight against organized crime in general as well as with some of the major activities that transnational organized crime is commonly involved in, such as money-laundering, corruption and the obstruction of investigations or prosecutions. Supplementing the more general measures found in the Convention are the Protocol against the Smuggling of Migrants and the Protocol against Trafficking in Persons. Countries must become parties to the Convention itself before they can become parties to any of the Protocols. A third Protocol, dealing with illicit manufacturing of and trafficking in firearms, parts and components, and ammunition, remains under discussion.

*Boletín Oficial*, August 29, 2002

[http://www.undcp.org/odccp/crime\\_cicp\\_convention.html](http://www.undcp.org/odccp/crime_cicp_convention.html)

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