

# Inter-American Trade Report

PUBLISHED BY THE NATIONAL LAW CENTER FOR INTER-AMERICAN FREE TRADE

Volume 10 - Number 9

October  
2003

## IN THIS ISSUE

Mexico: Foreign Investment,  
Corporations and Labor  
..... Cover

New Drawback Regime in  
Ecuador ..... Cover

Argentina: Financial Entities  
and the Central Bank  
..... Cover

Electronic Documents and  
Signatures and the  
Secured Transactions  
Model Law ..... Page 2

Brazil: New Law on  
Services Tax ..... Page 3

## Recent Developments

Page 10-15

Agriculture  
Banking & Credit  
Consumer Law  
Customs  
E-Commerce  
Energy  
Labor  
Taxes  
Transportation  
Treaties

ISSN 1097-2838

## MEXICO:

### FOREIGN INVESTMENT, CORPORATIONS AND LABOR

*By Fernando Cuesta*

#### Foreign Investment

Over the past two federal administrations, Mexico has continuously expanded the areas in which foreign investment is allowed. In some activities, foreign participation is specifically restricted in either the Constitution or the Foreign Investment Law and, thus, reserved to Mexican investors or the Mexican Government. In general, however, current policies encourage foreign participation in the capital stock of Mexican business entities.

Furthermore, Mexico's Foreign Investment Laws include a classification called "neutral" investment. A "neutral" investment is that contributed into Mexican corporations through shares with limited corporate

*continued on next page 7*

---

## NEW DRAWBACK REGIME IN ECUADOR

*By Esteban Ortiz Mena*

The concept of customs duties refund, referred to as drawback, is the mechanism available to exporters of locally-manufactured goods to be reimbursed an amount of money paid for customs duties that were charged for materials used in producing the goods being exported. Drawback is aimed basically at conferring upon local producers a right to obtain the refund of customs duties paid on imported raw materials, inputs or intermediate goods that will be transformed in the country or incorporated into the final product and later re-exported. Imported tinsplate that is later exported as a container for a locally-manufactured product illustrates the transformation to which imported goods are subjected. Iron ingots that are transformed into machines and later exported is another example.

*continued on page 4*

---

## ARGENTINA:

### FINANCIAL ENTITIES AND THE CENTRAL BANK

*By Mariano P. González and Pablo F. Ferraro-Mila*

Law N° 25,780, published in the official gazette (*Boletín Oficial*) on September 8, 2003, makes certain amendments to the Financial Entities Law and to the Charter of the Argentine Central Bank. The new Law authorizes the Central Bank to lend to the National Treasury up to ten percent (10%) of the aggregate annual tax collection funds in cash. However, these funds cannot exceed 12% of the monetary base (i.e., circulating currency plus deposits in current and special accounts of financial institutions with the Central Bank), with the exception of those funds that have been disbursed to cancel obligations with

*continued on page 6*

## BOARD OF DIRECTORS

**BORIS KOZOLCHYK**  
*PRESIDENT*

**JOHN MOLLOY**  
*SECRETARY*

**HECTOR ARANA**  
*FENNEMORE CRAIG P.C.*

**JOSE ASTIGARRAGA**  
*ASTIGARRAGA, DAVIS, MULLINS & GROSSMAN*

**CARMEN BERMÚDEZ**  
*MISSION MANAGEMENT & TRUST CO.*

**CAROL COLOMBO**  
*COLOMBO & BONACCI*

**CRISTOBAL EYZAGUIRRE**  
*CITICORP LATIN AMERICA*

**SALLY FERNANDEZ**  
*THE FERNANDEZ GROUP*

**BLAKE T. FRANKLIN**  
*GIBSON DUNN & CRUTCHER*

**DALE BECK FURNISH**  
*ARIZONA STATE UNIVERSITY*

**KENNETH R. HOFFMAN**  
*BLACKWELL SANDERS PEPPER MARTIN LLP*

**STEPHEN HOYT**  
*BANK OF AMERICA ARIZONA*

**PAUL KARON**  
*GLOBAL FACTORY*

**JAY KITTLE**  
*PALO SECO CORPORATION*

**CARMEN MARRIOT**  
*RAYTHEON*

**GERARD MORALES**  
*SNELL & WILMER*

**BURGESS RABY**  
*RABY LAW OFFICE*

**LUIS E. RAMIREZ**  
*LEWIS & ROCA LLP*

**MARK RAVEN**  
*RAVEN AWERKAMP, P.C.*

**PHILIP A. ROBBINS**  
*ROBBINS & GREEN P.A.*

**JAMES E. ROGERS**  
*SUNBELT COMMUNICATIONS Co.*

**LIRAIN URREZTIETA**  
*BANK ONE*

**JOEL VALDEZ**  
*UNIVERSITY OF ARIZONA*

**TOM WOODS**  
*WOODS & DWYER*

**INTER-AMERICAN TRADE REPORT**  
*EDITOR*

**MINA GOLDBERG**

**CONTRIBUTING EDITORS**

**GRETCHEN ROBINSON**

**MARIA ALEJANDRA RODRIGUEZ**

**EDWARD D. LETTER**

---

# ELECTRONIC DOCUMENTS AND SIGNATURES AND THE SECURED TRANSACTIONS MODEL LAW

*By Mariana Silveira*

How do the Inter-American Rules for Electronic Documents and Signatures (IAREDS) fit in with the Model Law on Secured Transactions that was adopted by the Organization of American States (OAS) at its Sixth Inter-American Specialized Conference on Private International Law (known as CIDIP-VI based upon its Spanish acronym)?<sup>1</sup> The IAREDS were originally included in the OAS agenda to provide basic enabling provisions for electronic transactions to assist the OAS in preparing two of the other agenda topics: a) standardized commercial documentation for international transportation (an inter-American bill of lading); and b) the model law on secured transactions.

Specifically, the report of the Meeting of Government Experts to Prepare for CIDIP-VI (Miami, November 2000) emphasized that “in writing the Draft Model Law [on secured transactions], consideration should be given to electronic commerce, message transmission security, and electronic signatures, as well as to the validity of electronic documents.”

The connection between IAREDS and the Model Law is organic and inseparable. Security agreements and filings need to have the flexibility to adapt to new technologies and, in particular, to the electronic environment. The purpose of IAREDS is to establish a common denominator, a basic set of rules to enable electronic transactions and the validity of electronic signatures and documents within the framework of security interests. Likewise, the Model Law does not provide a technical foundation for the validity and authentication of an electronic registration system; this foundation is enabled by IAREDS.

The IAREDS provide a basic framework that will assure the legal validity and acceptability of electronic transactions throughout the Americas, while reinforcing the significance of the principles of party autonomy and technology neutrality. While some of the basic notions are drawn from the 1996 UNCITRAL Model Law on Electronic Commerce and other international instruments, the IAREDS

*continued on next page*

---

<sup>1</sup> See <http://www.natlaw.com/novedad/novedades-pdf/mar02.pdf>

---

## Inter-American Legislative Research Service and Translation Service

The National Law Center for Inter-American Free Trade, through its Research and Translation Services, is available to research original language Latin American laws, decrees and regulations. It can also prepare translations of any original language document upon request. The Translations Service translates private documents as well. Thus, translations may be of contracts, laws, specifications, standards, decrees, or other documents.

For further information and fees, please contact: [natlaw@natlaw.com](mailto:natlaw@natlaw.com)

---

---

# ELECTRONIC DOCUMENTS AND SIGNATURES AND THE SECURED TRANSACTIONS MODEL LAW

---

*continued from previous page*

complete and, in some instances, update and enhance the original provisions, adapting them to the reality and practices prevailing in Latin American countries. In addition, the draft has incorporated concepts and models set forth in other sources, including the Uniform Electronic Transactions Act (UETA), the European Union's Electronic Signatures Directive and the 1994 Inter-American Convention on the Law Applicable to Contracts. Drafting efforts have also remained conscious of emerging legislation and proposals in several Latin American countries. Hence, it can be said that IAREDS have drawn from a variety of sources: international efforts, commercial practices and recent legislation and proposals throughout the Americas.

The IAREDS are thus designed to serve as part of an integrated body of international law. From that, it can easily be concluded that it would have been much preferable if such rules had been an integral part of the Model Law on Secured Transactions, rather than a separate and

independent document. As all those involved know, time and other considerations played in the final decision, which resulted in a resolution (CIDIP-VI/Res. 6/02) that merely invited Member States to examine the principles embodied in IAREDS and consider the advisability of incorporating them into their national law.

One cannot overstate the significance of circulating both documents together, so that countries considering the enactment of the Model Law can also incorporate the enabling provisions of IAREDS. However, it should also be stressed that IAREDS could also be used independently, to promote electronic commerce in general. ■

---

*Dra. Mariana C. Silveira is a Uruguayan attorney and is Research Director at the National Law Center for Inter-American Free Trade. She holds an LLM degree in International Trade Law.*

---

## BRAZIL: NEW LAW ON SERVICES TAX (ISS)

*By Antonio Carlos Q. Ferreira, Simone D. Musa and Karen K. Franco Marks*

The Brazilian Services Tax (*Imposto Sobre Serviços de Qualquer Natureza* - ISS) is a Municipal Tax, levied and regulated by each city, but under a common umbrella of Federal legislation. On July 31, 2003, Complementary Law No. 116, which governs the ISS, was enacted.<sup>1</sup> The new Law introduces relevant changes in the legislation of the ISS (some articles of Decrees-law Nos. 406/1968 and 834/1969 as well as Complementary Laws Nos. 56/1987 and 100/1999 were revoked by the new Law). Complementary Law No. 116 sets forth additional tax burden; the most relevant changes are highlighted below

Although Complementary Law No. 116 entered into force on Aug. 1, 2003, each Municipality and the Federal District (Brasília) must regulate changes introduced by the Law via enactment of a Municipal Law. In accordance with Brazilian law, most of the new provisions concerning ISS will apply to individuals and legal entities only as of January 1st of the year following enactment of the respective Municipal Law. Thus, for those municipalities that regulate the ISS before the end of 2003, the relevant provisions shall be effective as of Jan. 1, 2004.

Pursuant to the new Law, ISS shall be levied not only on services rendered in Brazil, but also on "importation of services," i.e., services originating from abroad or which rendering was initiated abroad. In such cases, each Municipality may set forth in the relevant municipal law that the recipients or agents of the services in Brazil are liable for collecting the tax due. Complementary Law No. 116 also sets forth that export of services abroad shall not be subject to ISS, except for services developed in Brazil and where the results occur in Brazil, even if the payer is a foreign resident.

Thus, the Law indicates that the source of payment is not relevant to determine whether the service is subject or not to ISS. What is relevant is where the service produces its effects, that is, where the results of the service are verified. Therefore, services rendered abroad that do not produce immediate effects in Brazil, even if paid by a Brazilian source, should not be subject to the ISS. This topic will probably be discussed in Courts, and only future precedents may clarify this issue completely.

Additionally, Complementary Law No. 116 lists the services that shall be subject to the ISS taxation. The list includes several services that were not encompassed by the prior legislation, apart from certain services

*continued on next page*

---

<sup>1</sup> <http://www.natlaw.com/brazil/topical/tx/lebrtx/lebrtx49.htm>

---

# BRAZIL: NEW LAW ON SERVICES TAX (ISS)

---

*continued from previous page*

that were maintained, e.g., the assignment of trademark use and advertising signals; assignment or license for use of computer programs; franchising; improvement, recondition and congenous now extended to encompass objects intended for industrialization or commercialization; maritime agency; installation and assembly of products, parts and equipment related to the execution of civil construction works, among others.<sup>2</sup>

---

<sup>2</sup> Interestingly, a recent Court decision held that preparation of cards with magnetic strips constituted a rendering of a graphic service and thus subjected the activity to the ISS rather than the Tax on Industrialized Products (*Imposto sobre Produtos Industrializados – IPI*). <http://www.natlaw.com/brazil/topical/tx/smbctx/smbctx13.htm> (Processo: RESP 437324) In another case, a Federal appeals court in São Paulo held that commissions earned in mercantile and futures exchanges (*Bolsas Mercantis e de Futuros*) were subject to ISS, as such activities were not subject to authorization by the Central Bank and were not analogous to dealings in securities, financial assets and negotiable instruments, items which are subject to the tax on financial operations (*Imposto sobre Operações Financeiras*). <http://www.natlaw.com/brazil/topical/tx/smbctx/smbctx14.htm> (Processo: RESP 257239).

The collection of ISS on trademark licenses will also give rise to challenges on the grounds that a license does not encompass rendering of services (which is the basis for collection of the ISS tax). ISS rates may vary from two percent (2%) to the maximum of five percent (5%). The minimum 2% rate is set forth in the Brazil's Federal Constitution (Constitutional Amendment No. 37/2002).<sup>3</sup> ■

---

<sup>3</sup> <http://www.natlaw.com/brazil/primary/prbr21.htm>

*Antonio Carlos Q.Ferreira and Simone D. Musa are partners and Karin K. Franco Marks is an Associate of Trench, Rossi e Watanabe Advogados, in São Paulo. Trench, Rossi e Watanabe <<http://www.trenchrossiewatanabe.com.br>> is a Brazilian law firm with offices in Brasília, Porto Alegre, Rio de Janeiro and São Paulo. It is associated with Baker&McKenzie, which is headquartered in Chicago, Illinois, and is a full service firm with 64 offices in 35 countries.*

---

# NEW DRAWBACK REGIME IN ECUADOR

---

*continued from cover*

In Ecuador, the current Organic Customs Law (*Ley Orgánica de Aduanas*)<sup>1</sup> provides for refund of customs duties in specific cases. The purposes are to allow the exporting sector to avail itself of this special customs regime, foster production, and enable the sector to benefit from total or partial refund of the taxes paid on imports of goods to be later exported. Specifically, Article 64 of the above-mentioned law provides for refund of taxes, subject to certain conditions, paid only in the following cases:

- a) for raw materials that have been subjected to a transformation process in Ecuador;
- b) for materials incorporated into the products; and
- c) for containers and other packaging materials.

In order to be competitive, producers must allocate funds to investment. If such funds come from exports and are taxed, the competitiveness of the exporting sector is reduced. For this reason, and for the purpose

of creating conditions that enable the Ecuadorian exporting sector to raise its competitiveness and of facilitating the refund process for customs duties and the value added tax (VAT) levied on such goods in the import phase, the Government has issued Drawback Regulations by means of Executive Decree No. 653 published in Official Register No. 144 dated August 11, 2003.<sup>2</sup>

Such regulations establish the basic parameters to be used for refund of customs duties to exporters, and enable the actual application of Article 64 of the Organic Customs Law for the purpose of encouraging and strengthening this sector, which according to *Análisis Semanal* magazine<sup>3</sup> has been affected of late by a lack of competitiveness due to a steady inflation in a dollarized and rigid system, while competing countries devalue their currencies, which results in a handicap for Ecuadorian exporters in the market. The drawback mechanism helps exporters in becoming more competitive.

*continued on next page*

---

<sup>1</sup> <http://www.natlaw.com/ecuador/topical/cu/steccu/steccu5.htm> and <http://www.natlaw.com/ecuador/topical/cu/steccu/steccu4.htm>

<sup>2</sup> <http://www.natlaw.com/ecuador/topical/cu/rgeccu/rgeccu3.htm>

<sup>3</sup> Year XXXIII No. 31, August 11, 2003

---

# NEW DRAWBACK REGIME IN ECUADOR

---

*continued from previous page*

In Ecuador, tax refunds for imports may be obtained for both customs duties and the VAT. VAT refunds are governed by specific rules through the Internal Revenue Service (*Servicio de Rentas Internas*). Beneficiaries of customs duties refunds are the exporters that have actually paid for the raw materials, inputs, containers and other packaging materials set forth in Article 64 of the Organic Customs Law that have been either imported directly or purchased locally from direct importers, and incorporated into, transformed through, or used in the process to manufacture goods that will be later exported. In other words, at the time of exporting the goods it must be determined that they have undergone a transformation process and that the raw materials used were imported.

Exporters are entitled to refund of customs duties and surcharges in proportion to the ratio of exports to total sales of the exporter. This factor will be determined on the basis of the ratio of exports to total sales as shown on the VAT returns filed by the exporter for the 12 immediately preceding months, by means of a certificate issued by the Internal Revenue Service promptly—i.e., within a period not to exceed two days—and valid for six months. In no event may the refund exceed five percent (5%) of the FOB value of the related exports. If the amount to be reimbursed exceeds 5% of the FOB value of the exports, the exporter may claim for the balance upon the following exports.

In order to seek refund of customs duties and surcharges, exporters must file the following documents with the customs authority (*Corporacion Aduanera Ecuatoriana*):

1. For each exported product, a list certified by the exporter of the inputs, raw materials, containers and other packaging materials that have been incorporated into, transformed or used in the manufacturing thereof. This list need be filed only once and must be immediately updated upon occurrence of any change.
2. A certificate of the exports to total sales ratio, taking into account that in no case may the amount refunded exceed 5% of the FOB value of the related exports.

The reimbursement will be effected by means of credit notes issued by the customs authority in the amount of the refund. The customs authority must issue such credit notes within a period not to exceed ten business days as of the date of filing of the application for refund. Such notes may be fractioned and are negotiable.

These regulations do not apply to VAT refund to exporters, which falls within the powers of the Internal Revenue Service, the entity in charge of controlling local taxes in Ecuador that uses its own collection and control mechanisms.

Since the conditioned tax refund or drawback regime is a special regime, the new regulations establish the situations in which it is inapplicable. This occurs in the following cases:

1. When imports of inputs, raw materials, containers and other packaging materials have been made under certain special customs regimes. In the event that such imported goods, that are incorporated into, or transformed or used in, the manufacturing process of goods that will be later exported, shift from the special to the local-consumption regime, the exporter will be automatically entitled to request the pertinent refund established in the regulations;
2. In relation to hydrocarbon exports whether by the public or private sector.

The new regulations for implementation of the drawback mechanism aim to facilitate the refund of customs duties for the benefit of producers that are engaged in exporting transformed inputs that have been manufactured with imported raw materials and, thus, to facilitate investment and to improve the competitiveness of Ecuador's productive sector. ■

---

*Dr. Esteban Ortiz Mena* <eortiz@pbplaw.com> is an associate at *Perez, Bustamante & Ponce Abogados* law firm, in Quito, Ecuador <www.pbplaw.com>.

---

**Bankruptcy Law Developments and Secured Financing in Latin America** © 2003 NLCIFT—discusses substantive and procedural aspects of the bankruptcy systems of Argentina, Brazil, Guatemala, Mexico, and Panama and reviews the manner in which such systems treat security interests. 260 pages. US\$250/copy. Please call (800) LAW-FIND or email us at [natlaw@natlaw.com](mailto:natlaw@natlaw.com)

---

The Editorial Advisory Board provides editorial advice to the Inter-American Trade Report. Views reflected in the Inter-American Trade Report do not necessarily reflect those of the Editorial Advisory Board. This publication may not be reproduced or transmitted in any way without the express permission of the NLCIFT. Copying this publication violates federal copyright laws. Violators may be subject to criminal penalties as well as liability for substantial monetary damages. This publication is designed to provide accurate, authoritative information. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. Contents should not be considered a legal opinion for any specific business or transaction.

---

# ARGENTINA: FINANCIAL ENTITIES AND THE CENTRAL BANK

*continued from cover*

multilateral credit institutions. All advances shall be reimbursed within 12 months from the time they were made; failure to reimburse upon expiration of such term shall prevent further advances until all owed amounts have been reimbursed.

Also, the new Law sets forth a system to protect directors and officers of the Central Bank, by establishing that “the opportunity, merit and suitability” (*oportunidad, mérito y conveniencia*) of all decisions taken by the Central Bank or by the Superintendence of Financial and Exchange Institutions (*Superintendencia de Entidades Financieras y Cambiarias*) “shall only be reviewed by the courts and in cases of evident unreasonableness and arbitrariness”.

Among the most relevant new provisions, one can mention the following:

- (i) More power is granted to the Central Bank in order to carry on proceedings for the exclusion of assets and liabilities of financial entities in process of sale, merger or liquidation, with more flexibility in making the valuation of them. Such assets shall be evaluated in accordance with accounting standards applicable to financial statements of financial institutions, adjusted to their net realization value. Assets subject to mortgage or pledge may be excluded in calculating the net value by subtracting the nominal value of the credit from the market value of such asset;
- (ii) the Central Bank may authorize and request the transfer of such excluded assets and liabilities in favor of other financial institutions, or to transfer those assets in fiduciary property into financial trusts. In case of transfers of all or part of the assets to financial trusts, one or more participation certificates shall be issued for the nominal values of the excluded liabilities. The financial entity shall assume the role of beneficiary or trustee, as applicable;
- (iii) In cases of suspension of financial entities, the Central Bank must request the judicial intervention of such entity, replacing the authorities that may be in office at that time;
- (iv) the judicial intervention shall be effective immediately and the Central Bank shall designate the new authorities of such financial institution. The new authorities shall have such powers as granted by the Central Bank and shall remain in office until full compliance with their commitments;
- (v) all resolutions taken by the Central Bank in relation to such assets and liabilities or those related to the restructuring of a financial entity, shall not require prior judicial approval;
- (vi) With the exception of creditors with special preference (mortgages or pledges) and labor creditors included in the Financial Entities Law (*Ley de Entidades Financieras N° 21.526*), the ranking of secured creditors in cases of liquidation of financial entities has been modified as follows:
  - i) depositors (either individuals or legal entities and one person per deposit) have a general preference up to \$50,000 or its equivalent in foreign currency;
  - ii) deposits for higher amounts, which exceed the amount in (i); and
  - iii) liabilities arising from credit lines related directly to international trade;
- (vii) financial entities may not request their own insolvency nor bankruptcy proceedings. As long as the authorization to operate as a financial entity is not revoked by the Central Bank, the bankruptcy of a financial institution may not be declared;
- (viii) while the emergency law N° 25561 is effective (currently due to expire at the end of 2003, but could be extended), the Central Bank may grant financial assistance to financial entities with liquidity or solvency problems;
- (ix) in order to assure that the Central Bank is the exclusive entity for the issuance of national currency, the Charter of the Central Bank forbids the issuance of instruments that could be directly or indirectly forced or induced to be used for canceling any kind of debts or, if issued, are in denominations whose nominal value is equal to or less than ten (10) times the value of the highest-denominated bill in circulation;
- (x) general rules in effect for the Public Administration are not applicable to the Central Bank, in particular, if they imply any “limitation to the capacity or powers” granted by the Charter;
- (xi) the National Auditing Agency (*Auditoría General de la Nación*) shall be the external controlling agency of the Central Bank. ■

---

*Mariano P. González is a Junior Partner <mgonzalez@beccarv.com.ar> and Pablo F. Ferraro-Mila <pferraro@beccarv.com.ar> is an Associate at the law firm Estudio Beccar Varela <<http://demessing.com/beccar>> in Buenos Aires, Argentina. Their practice concentrates in corporate finance, mergers & acquisitions and corporate debt restructuring.*

---

# MEXICO: FOREIGN INVESTMENT, CORPORATIONS AND LABOR

---

*continued from cover*

rights or without voting rights, as well as by means of trusts (*fideicomisos*) authorized under the Foreign Investment Law.<sup>1</sup> This type of investment is not considered in calculations made in order to determine the percentage of foreign participation in the corporate capital of Mexican companies. The investments made by international financial development institutions into the capital stock of corporations may also be considered “neutral” investment, with the prior authorization of the National Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*).

## Main Rights, Obligations and Registrations

Mexico welcomes foreign direct investment (FDI), granting to foreign investors “national treatment”, i.e., the same rights to which Mexican investors are entitled. Foreign investors are required only to register with the National Foreign Investment Registry (*Registro Nacional de Inversiones Extranjeras* - RNIE), which is part of the Ministry of Economy, and to comply with certain reporting requirements.

Foreign investors, such as corporations with foreign capital and foreign individuals doing business in Mexico, must register with the National Foreign Investment Registry (RNIE) and submit the requested economic and statistical information to the National Foreign Investment Commission which is also under the control and supervision of the Ministry of Economy. In addition, foreign investors must provide notice of any variation in corporate capital, in order to maintain the validity of their registration and to remain in good legal standing before the RNIE.

## Areas with Restrictions

### Strategic Areas

The following economic areas are considered strategic by the Mexican Constitution and the Foreign Investment Law, and are therefore restricted from foreign investment:

1. **Activities reserved to the Mexican Government.** These include petroleum and some basic petrochemicals, radioactive minerals, nuclear energy, electricity, telegraphic and satellite communications, the postal system (but not courier services), among others.

2. **Activities reserved for Mexican Citizens and Corporations.** In the following areas no FDI is allowed, (except as neutral or indirect investment): land transportation of passengers and freight (currently limited to 51% until January 2004 when 100% foreign participation will be allowed, excluding courier services where 100% participation is already allowed); distribution of gasoline and liquefied petroleum gas; radio and television services (excluding cable and direct satellite TV); credit unions; development banking institutions; and certain professional and technical services, among others.

### Other Areas

There are other activities where FDI is restricted to specific percentages provided by law; for some enterprises, such as air transport, the maximum limit is 25%; others, such as insurance companies, most financial services (except for banking, financial brokerage and financial holding activities where 100% FDI is allowed subject to certain requirements), certain telecommunication operations (satellite pathways and their frequencies, band of frequencies, and public telecommunication nets), administration of ports, most fishing activities, guns and their supplies as well as newspapers, are subject to a maximum limit of 49% foreign ownership.

### Areas Requiring Special Permits

Finally, an investor must have a special permit from the National Foreign Investment Commission to hold more than the 49% of the stock in certain other enterprises, including, among others: schools, port services, cellular telephony, insurance brokerage, legal services, securities qualifiers, operation of railroads and trains and drilling of gas and petroleum.

## Corporations

There are various kinds of corporate vehicles regulated by the General Law of Commercial Entities; however, two types are the most commonly used. One is the *Sociedad Anónima*, or “S.A.,” which operates very similarly to a “C” corporation in the United States, and the other one is the *Sociedad de Responsabilidad Limitada* or “S. de R.L.,” which shares some similarities with an LLC or LLP in the United States.<sup>2</sup>

An entity in Mexico must be created by means of a public deed (either through a Notary Public or Public Broker). The entity must also be

*continued on next page*

---

<sup>1</sup> *Ley de Inversión Extranjera*, <http://www.natlaw.com/stmxfi/stmxfi2.htm>

---

<sup>2</sup> *Ley General De Sociedades Mercantiles*, <http://www.natlaw.com/stmxb/stmxb2.htm>

---

# MEXICO: FOREIGN INVESTMENT, CORPORATIONS AND LABOR

---

*continued from previous page*

registered in the Public Registry of Commerce and the Federal Taxpayers Registry.

## **Sociedad Anónima**

This type of entity offers limited liability to its shareholders (limited to their capital contributions). The shares of a S.A. may be freely transferred provided that the rights of the other shareholder(s) are observed.

**Minimum capital stock:** For the S.A. there is a minimum capital stock of \$50,000.00 Mexican pesos (approximately US\$5,000.00). However, it is generally advisable that the value of the company's capital stock be consistent with the size of the entity's operation.

**Number of shareholders:** The General Law of Commercial Entities requires that an S.A. have at least 2 shareholders, which may be individuals or business entities of any nationality. In general terms, one shareholder may hold the vast majority of the shares, subject to the limitations stated in the Foreign Investment Law and other laws regulating specific areas of the Economy.

**Administrative Body:** The administrative body of this entity may be composed of either one person (sole administrator) or a board of directors composed of various members. Typically the board is granted the broadest authority; however the supreme authority of the corporation is the general shareholders meeting, whose authority supersedes that vested in the board. Board members have authority only as an administrative body and not individually, however members may be granted individual authority by the general shareholders meeting or by the board itself.

Decisions of the board are usually made by majority vote, with the Chairman having a tie-breaking vote when the board is composed of an even number of members. In Mexico, the board is usually composed of a Chairman, a Vice-Chairman and a Secretary. Board members may or may not be required to guarantee their performance through a bond and they may or may not be compensated for their position in the board.

The officers of the Company are the General Manager and other managers of the company which may be granted general or special powers of attorney to represent the Company.

**Examiners:** In the S.A., the examiner is a Mexican-licensed accountant whose task is to supervise and oversee the transactions and operations of the corporation on behalf of the shareholders. S.A. corporations with foreign capital oftentimes appoint their external auditor as the Examiner.

## **Sociedad de Responsabilidad Limitada**

This entity (S.R.L.) also offers the limited liability of an S.A. Some of its unique characteristics are:

- Its partners' interests may be transferred with a series of restrictions and requirements and cannot be marketable securities nor may the company increase its equity through a public offering (in contrast to the S.A. de C.V.)
- A US partner's income from an S.R.L. may be considered partnership distributions under US tax law, subject to certain rules and restrictions of such US laws.

**Minimum capital stock:** For an S.R.L., the minimum capital stock is MX\$3,000.00 (around US\$300.00).

**Number of shareholders:** For this type of entity, the same rule applies as in the S.A.; there must be at least two shareholders. However, in this case there is a maximum limit of 50 shareholders.

**Administrative Body:** A similar structure applies as in the S.A. (See above). However, the administrative body of an S.R.L. is called the sole manager or if collective, the Board of Managers.

**Examiners:** An Examiner is not required in an S.R.L.

## **Other Investment Vehicles**

In addition to incorporating a Mexican entity, the most commonly used vehicles to distribute and sell in Mexico, are the following:

- **Distribution agreement.** The distributor is an independent contractor who purchases products in order to resell them in a specified territory. There is no employment relationship between the manufacturer, and the distributor or the distributor's employees. Generally speaking, the distributor will not represent the manufacturer legally, unless specifically granted a power of attorney, and therefore it cannot assume any obligations on behalf of the manufacturer. A written agreement outlining the above is strongly advisable.
- **Representation agreement.** This is very similar to a commission agreement. It is not as broad as the distribution and agency agreements, and its purpose is limited to the specific instructions provided by the principal for certain acts. The compensation of the representative is to be negotiated between the parties, and usually consists of a commission based on sales.

*continued on next page*

# MEXICO: FOREIGN INVESTMENT, CORPORATIONS AND LABOR

*continued from previous page*

- Agency agreement. The agent is a commercial intermediary (broker) between the manufacturer and the final consumer. Its main purpose is to promote and close deals. The income of an agent is normally based on the results or the deals closed. The agent must generally cooperate with the principal for the conclusion of the transaction, and he/she is usually responsible for delivering the goods, collecting the price on behalf of the principal and providing any post-sale service required.
- Joint Venture agreement. The purpose of a JV is generally the creation of a new entity, or to participate in an already existing company. According to Mexican law, this kind of agreement is considered mainly as a preliminary agreement or an agreement between the signing partners, unless it is incorporated into the by-laws of the company where it becomes binding for any existing or future partner.
- Branch or Subsidiary. Mexican law recognizes in favor of foreign entities the same legal capacity that they have in their country of origin and have an independent existence apart from their shareholders. In order to conduct business activities in Mexico, these foreign entities must either incorporate a subsidiary or operate directly by registering at the Public Registry of Commerce (*Registro Público de Comercio*) and comply with certain foreign investment requirements.

## Labor Law

Management of human resources in Mexico is quite sensitive, since in most instances Federal labor laws provide far-reaching protection to employees and in case of a conflict the burden of proof is on the employer. The advice of a labor expert is specially necessary because a labor relationship may arise even without the consent of the entity receiving the service, depending primarily upon the degree of subordination.

A peculiarity of Mexican Labor Laws is that there is no employment at will. Therefore, in order to dismiss employees either the employer demonstrates that there is a just cause contemplated in the law and complies with certain notification formalities, or otherwise the employer grants a severance payment consisting of approximately 3 months of wages, with wages that increase with seniority.

## Hiring employees and labor contracts

Employees in Mexico are commonly hired through an individual employment agreement. Although it is not mandatory to sign an

agreement to retain an employee, it is highly advisable to do so in order to establish the terms and conditions of the relationship.

In addition to individual agreements it is highly advisable that a company operating in Mexico executes a Collective Bargaining Agreement with a Union and publishes a set of Internal Regulations in order to establish the working conditions and general duties of the employees. These are preventive measures that provide security and aid in preventing prospective labor conflicts for the Company.

## Benefits and Labor Rights

The main rights of employees include:

- Salary equal to or above Minimum Wage.
- Compensation for working overtime and holidays.
- A minimum of six days of vacation per year increasing with seniority.
- Holidays (including, among others, Christmas, New Year, Constitution Day, Labor Day, Independence Day)
- Year-end bonus (*aguinaldo*).
- Profit-sharing, payable in May.

## Minimum wage

The minimum wage standard is determined annually by a federal commission composed of representatives of the government, of major unions and of major employers' associations. The country is divided into three zones for which there are different minimum wages. The minimum daily wage is the minimum amount that must be paid to a worker for a full 8-hour day of work. The minimum daily wage in 2003 for Mexico City (zone "A") is MXN\$43.65 pesos (about US\$4.0), for zone "B" MXN\$41.85 pesos, and for zone "C" MXN\$40.30 pesos.

## Foreign Employees

Hiring foreign employees is a fairly common practice in Mexico, especially for high-level positions. One of the first steps that must be taken in order to hire foreigners is to obtain the applicable immigration permit from the National Immigration Institute. This will usually be an FM3 for Executive Employees.

The relationship of a company operating in Mexico with foreign employees is governed by Mexico's Federal Labor Law<sup>3</sup> and the employees are entitled to the protection provided by the same. Therefore, an Individual

*continued on next page*

<sup>3</sup> Ley Federal del Trabajo, <http://www.natlaw.com/stmxmlb/stmxmlb2.htm>

---

# MEXICO: FOREIGN INVESTMENT, CORPORATIONS AND LABOR

---

*continued from previous page*

Employment Agreement that complies with Mexican labor law should be executed.

## Payroll Taxes

Salaries are subject to the following taxes:

- **Income tax:** According to a percentage established by law which is based on the level of income.
- **Social Security tax:** This is a two-part payroll tax, paid partly by the worker, and partly by the employer. This contribution includes access to benefits such as a retirement pension, insurance against labor-related accidents and illnesses, as well as health services provided by the federal government.
- **Housing fund:** This is a tax that is contributed to a fund operated by the federal government (*Instituto del Fondo Nacional de la Vivienda para los Trabajadores – INFONAVIT*) intended to provide workers with special

benefits for obtaining loans in order to build, purchase or repair their homes.

- **State payroll tax:** This tax is based on the amount received by the worker. It is a source of revenue for state governments. ■

---

*Fernando Cuesta <fcuesta@cuestacampos.com> is a partner in Cuesta Campos y Asociados, S.C. (www.cuestacampos.com) with offices in Mexico City and Guadalajara. The firm has expertise in commercial transactions, corporate law, environment, foreign investments, intellectual property, foreign trade, labor law, mergers and acquisitions, tax, real estate, strategic alliances and litigation. Mr. Cuesta is a member of the Editorial Advisory Board of the Inter-American Trade Report.*

---

---

## RECENT DEVELOPMENTS

---

### AGRICULTURE

#### **BRAZIL: Genetically Modified Soy in Court and More**

In a mid-August decision of more than 700 pages a judge of the federal regional court (*Tribunal Regional Federal – TRF*) overturned a 1998 lower court decision and authorized the planting and sale of Monsanto's genetically modified (GM) "Round-Up Ready" soy. A two-judge panel then suspended the decision, not addressing the merits of the issue, but on the grounds that the overturning of the lower court decision should not have been a decision by one judge sitting alone. Thus, the proceedings will continue, but the time for this year's planting is virtually immediately.

Brazil's production of soybeans has more than tripled over the past decade. Recognizing that, in recent years, GM soybeans have been planted clandestinely in Brazil, a Provisional Measure (*Medida Provisoria*), published March 23, 2003, provided a limited amnesty, authorizing the sale of the product, if clearly labeled as such, until Jan. 31, 2004, and subject to certain conditions, but continuing the prohibition on the planting of seeds for GM soy. It is believed that, while waiting for a definitive judgment and/or regulation, another Provisional Measure may be issued to allow planting of GM soy this year—a measure apparently related to obtaining the support of deputies from the state of Rio Grande do Sul for major legislation proposed by the executive and now before the Brazilian Congress.

While the case continues in court, various groups have raised objections to Monsanto's surcharges for such seed; Greenpeace has alleged that feed for chickens and other fowl, made by Bunge in Argentina and imported into Brazil, failed to be properly labeled,

as the feed allegedly contained 30% genetically modified soy; Brazilian governmental authorities have announced increased inspection of soy and soy products destined for export; and the European Union in July approved a measure that could ease sale of GM products, but provides for obligatory labeling of food products containing GM products—a case against the EU GM policy is proceeding before the WTO (see below). Increased Brazilian inspections are aimed particularly at satisfying Brazil's biggest customer for soy, China, by providing accurate certificates about the type of soy being sent; China does imports genetically modified soy from Argentina, where the GM product is widely planted.

(Round-Up Ready soy tolerates the herbicide Round-Up, also made by Monsanto. Round-Up is said to a) kill many types of weeds, then break down into other substances, b) replace application of a menu of other specific herbicides (made by other companies) and c) be compatible with "no-till" methods that reduce soil run-off, run-off that can deplete land and be deleterious to waterways and fish.)  
<http://www.natlaw.com/brazil/topical/ag/dtbrag/dtbrag1.htm>  
*La Nación*, Jul. 3 and Aug. 14, 2003, *Jornal do Brasil*, Sept 22, 2003  
[http://extranet.agricultura.gov.br/pls/pubacs\\_cons/lap\\_detalhe\\_noticia\\_cons?p\\_id\\_publicacao=4313](http://extranet.agricultura.gov.br/pls/pubacs_cons/lap_detalhe_noticia_cons?p_id_publicacao=4313)  
<http://conjur.uol.com.br/textos/14147/>  
<http://www.ctnbio.gov.br/temas/biosseg/seguro.htm>

#### **Argentina, Canada, U.S.: Oppose EU on Biotech Crops**

Because consultations did not resolve objections to the European moratorium, since 1999, on approving new genetically modified crops, Argentina, Canada and the U.S. requested formation of a

---

# RECENT DEVELOPMENTS

---

World Trade Organization (WTO) panel to resolve the dispute. U.S. stated in part as background, “Other countries who expressed support for the case by joining as third parties to the consultations included: Australia, Chile, Colombia, Mexico, New Zealand, and Peru. In addition, El Salvador, Honduras and Uruguay also supported the U.S. position at the announcement of the case and have indicated their intent to join as third parties. ...

“On July 22, 2003, the EU adopted two new regulations on biotech products. The Traceability and Labelling Regulation will require that biotech products be traced throughout the commercial chain, and that food containing biotech products comply with certain labelling requirements. The Genetically Modified Food and Feed Regulation will provide new approval procedures for biotech food and feed products upon its entry into force in about six months. Since neither one of these new regulations lifts the illegal moratorium on biotech products, they do not affect the U.S. WTO challenge.” <http://www.ustr.gov/releases/2003/08/03-54.htm>

## **BANKING & CREDIT**

### **Brazil: Reserve on Sight Deposits Reduced**

The Central Bank of Brazil in Circular 3199, dated Aug. 11, reduced the mandatory reserve required from commercial banks in an effort to reduce the costs of credits. The measure, which reduces from 60% to 45% the proportion of reserves that banks must maintain as guarantee of their sight deposits, is expected to produce more than US\$ 7 billion in the form of new credits. <http://www.natlaw.com/brazil/topical/bk/crbrbk/crbrbk74.htm>

### **CHILE: Foreign Exchange Transactions Simplified**

The Central Bank, via Circular N° 792, dated July 16, 2003, has modified the procedures set forth in the Compendium of International Exchange Regulations (*Compendio de Normas de Cambios Internacionales* – CNCI) in order to simplify foreign exchange transactions and reduce transaction costs for importers and exporters. The CNCI's Manual of Procedures and Information Forms now provides that exporters and importers do not need to include exit or entry customs declaration numbers when they inform the Central Bank directly, or through financial institutions of the Formal Exchange Market (*Mercado Cambiario Formal*), of their commercial transactions. The changes went into effect August 1.

*Diario Oficial*, July 29, 2003

<http://www.natlaw.com/chile/topical/cr/crchfi/crchfi1.htm>

<http://www.economiaynegocios.cl/noticias/noticias.asp?id=36973>

## **CONSUMER PROTECTION**

### **ARGENTINA: Clarified Definitions of “Abusive Contracts”**

The Argentine Subsecretary of Consumer Protection and Protection of Competition issued Disposition 3/2003, modifying Resolution N° 53/2003, which regulates Articles 37 and 38 of Law N° 24.240 of Consumer Protection. The changes clarify terminology, interpretation of provisions and the scope of certain regulations. The following text is added to Article 1° of Resolution N° 53 of

April 21, 2003: “... when other general and/or special norms establish conditions for contracting that are more favorable to the consumer, those norms shall apply.”

The Annex in this Disposition replaces the Annex in Resolution N° 53/2003, and provides that clauses having the following effects are considered abusive:

- a) Conferring upon a provider the exclusive right of interpretation of significance, scope and compliance with contractual clauses and respective services.
  - b) Allowing a provider unilaterally to modify a contract.
  - c) Authorizing a provider to rescind a contract without cause, in the absence of a breach by the consumer.
  - d) Conditioning the validity of a contract on a unilateral act of acceptance by the provider, while the will of the consumer is considered to have been irrevocably expressed at a prior time.
  - e) Imposing on a consumer any limitation on the exercise of rights of legal action or other recourse, or in any manner conditioning the exercise of his or her rights, especially by:
    - I. Providing that legal action may be filed in a different jurisdiction from the domicile of a consumer at the time of signing of a contract, except where it provides that the action be filed in the place of the actual domicile of the consumer at the time the action was filed;
    - II. Limiting methods of proof, or imposing the burden of proof on the consumer.
    - III. Limiting the power to oppose exceptions, denials or other recourse.
  - f) If a consumer is in arrears as to obligations addressed in the contract, allowing the provider to cancel the contract by compensation with other amounts that the consumer has tendered because of another contract or the provision of another product or service, except when such compensation is established by special legal norms, in which case the provider must so inform the consumer in the contract.
  - g) Excluding or limiting the responsibility of a provider for damages caused to a consumer by a product or service and/or as to any compensation or reimbursement that may be legally demanded.
  - h) Conditioning the exercise of the right of contractual dissolution by a consumer on the prior cancellation of amounts owed to the provider.
  - i) Authorizing a provider to substitute other products or services not included in the contract, without prior and express acceptance by the consumer, and/or imposing a term for communicating non-acceptance.
  - j) Imposing on a consumer an authorized representative to take the place of the consumer in exercising rights issuing from the contract, its accessories, or in other legal matters.
  - k) Infringing environmental protection norms or enabling their violation.
- Boletín Oficial*, July 22, 2003
- <http://www.natlaw.com/argentina/topical/cs/rsarcs/rsarcs8.htm>  
<http://www.natlaw.com/argentina/topical/cs/rsarcs/rsarcs3.htm>  
<http://www.natlaw.com/argentina/topical/cs/starcs/starcs1.htm>

---

# RECENT DEVELOPMENTS

---

## Mexico: Dairy Testing and Consumer Protections

NOM-155-SCIF-2003 establishes specific testing methods for milk and all milk by-products to demonstrate their quality prior to expiration. The standards also provide specifications for the physical and chemical makeup of dairy products, as well as requiring producers to provide certain levels of consumer information.

*Diario Oficial*, Sept. 12, 2003

<http://www.natlaw.com/tsmxdm/txmmd157.htm>

## CUSTOMS

### Mexico: Benefits for Guaymas Port and Border Area

In June, Mexico's President Fox announced that the Mexican government would invest 200 million pesos (\$18.5 million) in the Guaymas area, and a total of 922.5 million pesos (\$85.4 million) in the region and would create an improved rail corridor (*Corredor Fiscal Ferroviario Nogales-Guaymas*) between the Mexican port of Guaymas and the border city of Nogales (on the border of the Mexican state of Sonora, and the U.S. state of Arizona), thus making the Guaymas port making Guaymas a more attractive location for shipment of goods. The aim is to expand the economic viability of the City and Port of Guaymas, to diversify the economy of the Sonora region and transform Guaymas into a significant deep-water port.

New regulations contained within the First Resolution Modifying the Foreign Trade Rules for 2003 (*Primera Resolución de Modificaciones a las Reglas de Carácter General en Materia de Comercio Exterior para 2003*), Section 3.7.13, provide that goods entering Mexico by rail at Nogales destined for Guaymas will have to meet reduced customs formalities at the U.S.-Mexico border, provided they meet certain conditions. Such goods destined for Mexico would be inspected by Mexican customs in Guaymas; goods destined for shipment through Guaymas to other countries would not require inspection by Mexican customs. For this benefit to be fully implemented, however, upgraded railway cars, e.g., with tracking technology, are needed for the rail line. (Potentially, although not in this Resolution, reduced formalities could be instituted for goods in transit from Guaymas to Nogales.)

With the additional regulations and proposed investment (including in tourism), Guaymas could both increase cargo transportation to and through Arizona and offer an alternative to other Pacific coast ports. City leaders in Mesa, Arizona, are discussing increased access to the port of Guaymas, partly as part of an interest in luring a Boeing Assembly Plant to Mesa. Separately, in proposed budget legislation under consideration, the Appropriations Committee of the U.S. Senate approved \$2.5 million to develop a "cyberport" to provide the most advanced clearing process for commercial and passenger road traffic at Nogales; the National Law Center for Inter-American Free Trade participated in developing the "cyberport" plan's legal aspects.

*Diario Oficial*, June 6, 2003

<http://www.natlaw.com/rsmxcu/rsmxcu94.htm>

<http://www.natlaw.com/novedad/novedades-pdf/sep02.pdf>

<http://www.presidencia.gob.mx?Art=5464&Orden=Leer>

[http://infoecologica.com/08\\_1W\\_03\\_nota\\_4z.html](http://infoecologica.com/08_1W_03_nota_4z.html)

[http://www.fonatur.gob.mx/comun\\_prensa/formato\\_boletin\\_c.asp?cve\\_sec=63](http://www.fonatur.gob.mx/comun_prensa/formato_boletin_c.asp?cve_sec=63)

Arizona Daily Star, Aug. 10, 2003

### PERU: Law of Customs Crimes Aims at "Gray Areas"

The Law of Customs Crimes (Law N° 28008) is intended to resolve gray areas in Peru's customs crime legislation. The new law supersedes the previous Law of Customs Crimes (Law N° 26461), published on June 8, 1995. The superseded law contained no specific provisions relating to the offenses of smuggling, customs fraud, receiving smuggled goods, financing of offenses and trafficking in prohibited or restricted goods, thus permitting impunity for such offenses. The new Law expressly incorporates the specific offenses of financing and punishable attempt as well as administrative procedures for destruction or return of seized goods.

The changes in the new law include the following:

#### *Smuggling*

Article 1 expands the term "avoidance" (*eludir*) set out in the superseded Law to encompass the terms "removing, avoiding or evading" (*sustraer, eludir o burlar*) the control of customs, for goods entering or exiting the Peruvian territory. Also, the offense of smuggling incorporates the act of failing to declare goods valued at greater than two UIT (*Unidad Impositiva Tributaria*) for verification or physical examination at customs administration branches or at locations set up for that purpose. Hiding or removal of goods during the process of customs verification or physical examination, within customs branches or locations, constitutes failure to declare. As in the superseded law, smuggling is punishable by deprivation of liberty for five to eight years and by fine.

Article 2 incorporates new provisions defining smuggling and expands those set out in the superseded law as follows:

"Removing, consuming, using or disposing of goods from the primary zone delineated by the General Customs Law or by special laws, without such withdrawal being legally authorized by the customs administration; consuming, storing, using or disposing of goods cleared for transfer from one primary zone to another for physical examination, without prior payment of tariffs or duties; and introducing goods from a free trade zone or national geographical zone subject to special customs treatment, lesser taxation or a special taxation system separate from the rest of the national territory, without complying with legal requirements or prior payment of appropriate tariffs.

"Causing, through any means of transport, circulation within the national territory, loading, unloading or transferring of goods without their submission to customs control; and intending to introduce into the national territory goods through avoidance (*elusion*) or evasion of control (*burla del control*) by means of any document presented to the customs administration."

---

# RECENT DEVELOPMENTS

---

## *Customs fraud*

Article 4 expands the specified conduct to include failure to pay in full or in part antidumping or compensatory duties upon importation or fraudulently obtaining a customs stamp, altering descriptions, brands, codes, serial numbers or labels; modifying the origin or tariff category of goods in order to obtain fraudulently economic benefits set forth in the national legislation; and consuming, storing, using or disposing of goods in transit or reloading in contravention of customs regulations. The offense is punishable by deprivation of personal liberty for five to eight years and worth of fines.

## *Receiving smuggled goods*

Article 6 expands the offense of receiving smuggled goods to goods valued at greater than two UIT, rather than four UIT as set out in the superseded law. The penalty, which is less than that specified by the old law, is deprivation of personal liberty for three to six years, with a fine.

## *Financing (aiding/abetting)*

This offense was not addressed in the previous Law. The new law sanctions financing the commission of offenses specified in this norm through one's own or another account. The penalty is deprivation of personal liberty for eight to twelve years, and a fine.

## *Trafficking in prohibited or restricted goods*

The new Law incorporates the act of using any medium or artifice or the infraction of specific norms for the purpose of introducing into or extracting from the country prohibited or restricted goods valued at greater than two UIT. The penalty is deprivation of personal liberty for eight to twelve years and a fine.

## *Attempted infractions*

The crime of attempt is punishable by the minimum legal penalty that corresponds to the completed offense. The law exempts from punishment cases in which the actor voluntarily desists from executing the offense or by his actions prevents the result from occurring, except where those actions per se constitute other offenses.

*Diario Oficial*, Jun. 19, 2003

<http://www.natlaw.com/peru/topical/cu/stpecu/stpecu3.htm>

## **U.S.: WTO Decision Against U.S. Steel Safeguards Appealed**

The World Trade Organization (WTO), upholding claims by the European Union (EU), Japan, South Korea, Brazil, New Zealand, Norway, Switzerland, and China, ruled in July that current U.S. duties on steel imports violate the Agreement on Safeguards and GATT 1994. A 3-member panel, in a 968-page ruling, found that the duties of up to 30 percent put in place in March 2002 contravene WTO rules because the U.S. did not show how unforeseen developments, such as regional financial crises and a strong U.S. economy, had caused a sudden surge in cheap imports that harmed the steel industry. The panel also decided that the U.S. acted illegally by exempting free trade agreement partners Canada, Mexico, Israel, and Jordan from the higher tariff rates. On August 14, the Bush Administration appealed the ruling. Current duties will remain effective during the appeals process.

U.S. steel imports in June were 39.1% lower than the same month last year, down from 2.5 million metric tons to 1.6 million. Compared to the same period a year ago, the largest decreases for the first five months of 2003 were from Brazil, Russia, and Japan, and the largest increase was from Mexico. Also, for the same period imports from Venezuela fell by 65,000 metric tons; imports from Argentina and Colombia rose by 86,000 and 7000 metric tons, respectively. Imports from Central and South America, as a whole, declined by \$14 million. (Under the Dispute Settlement Understanding (DSU), appellate proceedings cannot exceed 60 days from the date a party provides formal notification of its decision to appeal, and the report of the Appellate Body must then be unconditionally accepted by the parties within 30 days of its adoption. If a party then fails to implement the adopted recommendations, the complaining party may take the appropriate steps to seek compensation or suspension of concessions. The European Union (EU) has said it is ready to impose retaliatory duties totaling \$2.2 billion on U.S. imports such as footwear and fruits and vegetables.)

<http://docsonline.wto.org/DDFDocuments/t/WT/DS/259-13.doc>  
[http://www.wto.org/english/news\\_e/news03\\_e/panel\\_report\\_11july03\\_e.htm](http://www.wto.org/english/news_e/news03_e/panel_report_11july03_e.htm)

<http://www.census.gov/foreign-trade/Press-Release/2003pr/06/steel/>  
See *Inter-American Trade Report*, March 2002

[http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm)

## **URUGUAY: Additional Tariffs Affect Argentine Products**

Uruguay, in July, extended a regime that authorized additional tariffs on specified products and expanded the list of products affected (including to snack foods, cosmetics, and electrical items). The new decree constituted an extension of Presidential Decree 137 of April 2002 which was originally set forth as a temporary measure to run until the end of 2002, later extended to June 2003 and now to run until the end of 2003. The increases run from six to twenty percent and affect goods from other Mercosur countries (Argentina, Brazil and Paraguay) as well as from elsewhere. The spring 2002 tariff increases were seen as a response to the precipitous fall in the value of the Argentine currency as a result of the crisis conditions there; however, Argentines argue that the original basis is no longer meaningful as the Uruguayan currency has itself devalued.

<http://www.natlaw.com/uruguay/topical/cu/dcugcu/dcugcu6.htm>

<http://www.natlaw.com/uruguay/topical/cu/dcugcu/dcugcu1.htm>

[www.presidencia.gub.uy/sic/noticias/archivo/2002/abril/2002040203.htm](http://www.presidencia.gub.uy/sic/noticias/archivo/2002/abril/2002040203.htm)

See *Inter-American Trade Report*, May 2002

*El Pais*, Aug. 13, 2003 and *La Nación*, Aug. 9, 2003

## **E-COMMERCE**

### **Mexico: Electronic Signatures in the Commercial Code**

A decree, published August 29, amends the Commercial Code to set provisions for electronic signatures. Legislation enacted in 2000 provided for electronic contracting, specific definitions of the various types of data messaging, and a legal framework for e-commerce litigation. The new amendment redefines some key terminology

---

---

# RECENT DEVELOPMENTS

---

---

used with data messaging in chapter one such as: originator (*emisor*), addressee (*desinatario*), and intermediary (*intermediario*). Chapter two of the amendment gives electronic signature the same legal weight as a written signature in a court of law. Finally, the decree sets up a series of requirements with penalties for non-compliance for Certification Service Providers. Together, these modifications aim to ensure reliability for electronic transactions and provide legal recourse for electronic signatures equivalent to that of written signature.

*Diario Oficial*, Aug. 29, 2003

<http://www.natlaw.com/dcmxec/dcmxec1.htm>

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

See *Inter-American Trade Report*, October 2002

## PANAMA: Online Gambling Regulation

Panama regulated online gambling operations this past February via Resolution 065 of the Games Control Board (*Junta de Control de Juegos*). Although under the Constitution gambling is a state monopoly, local jurisprudence has upheld the power of the State to grant concessions to operate said activities on its behalf to private companies. Online casinos would be exempt from Panama income taxes, since Panama taxes only local-source income and the Regulation allows online transactions only with users from outside of Panama. Online gambling operations must prove economic solvency and previous related experience, and upon granting of the license must pay a US\$10,000 fee and a yearly US\$20,000 license. Operators must comply with money-laundering regulations and notify the Financial Analysis Unit of any suspicious transactions above US\$10,000. An account must be maintained to guarantee payment to winners. Infringements are subject to a fine ranging from US\$1,000 to US\$50,000.

*Gaceta Oficial*, Feb. 3, 2003

<http://www.natlaw.com/panama/topical/ec/ecom.htm>

Alvaro Aguilar, *Fabrega Barsallo Molino & Mulino*,  
<http://www.fabamm.com/panama.htm>

## ENERGY

### BRAZIL: Tripling of Natural Gas Reserves and Other Plans

Petróleo Brasileiro S/A (PETROBRAS) has new tests that indicate that the reserves of natural gas found in the Bay of Santos, about 130 kilometers from São Paulo, in April amount to some 419 billion cubic meters, which represents a tripling of Brazilian reserves up to now in the range of 200 billion cubic meters. The find was initially estimated at 70 billion cubic meters, which in itself would have constituted a significant discovery; in addition, it is believed that additional gas may be found in the nearby area. A Petrobras official stated that further evaluation and the starting of production could each take two to four years so that this natural gas may reach the market in four to eight years. There would also be a need is to develop the customers. A Brazilian arrangement to import natural gas from Bolivia is currently being re-negotiated; the Santos reserves may well strengthen

the Brazilian position in these negotiations. Meanwhile, technical staff of the securities commission (*Comissão de Valores Mobiliário* – CVM) are reportedly looking into whether the new information was disclosed in a manner that was conducive to a level playing field for investors.

In other activity, PETROBRAS is expected to be one of the bidders within the coming weeks on “services” contracts (*Contratos de Serviços Múltiplos*) with Mexico’s government-run oil company, Petróleos Mexicanos (PEMEX) to develop a gas field in northern Mexico. Also in the energy field, Brazil’s National Bank for Economic and Social Development (*Banco Nacional de Desenvolvimento Econômico e Social* – BNDES) announced a massive program to re-capitalize electricity distribution companies (*Programa de Apoio à Capitalização de Empresas Distribuidoras de Energia Elétrica*) with more than three billion *reais* (about one billion U.S. dollars).

[http://www2.petrobras.com.br/publicacao/imagens/1599\\_descoberta\\_ultimos\\_12\\_meses.pdf](http://www2.petrobras.com.br/publicacao/imagens/1599_descoberta_ultimos_12_meses.pdf)

[www.estado.estadao.com.br/editorias/2003/09/04/eco060.html](http://www.estado.estadao.com.br/editorias/2003/09/04/eco060.html)

[www.estadao.com.br/economia/noticias/2003/set/04/152.htm](http://www.estadao.com.br/economia/noticias/2003/set/04/152.htm)

[www.estadao.com.br/economia/noticias/2003/set/04/68.htm](http://www.estadao.com.br/economia/noticias/2003/set/04/68.htm)

[www.estadao.com.br/economia/noticias/2003/set/16/88.htm](http://www.estadao.com.br/economia/noticias/2003/set/16/88.htm)

[http://www.gasenergia.com.br/portal/port/exibe.jsp?id=1344&mes=09&ano=2003&id\\_sessao=4](http://www.gasenergia.com.br/portal/port/exibe.jsp?id=1344&mes=09&ano=2003&id_sessao=4)

<http://www.bndes.gov.br/noticias/not676.asp>

<http://www.bndes.gov.br/noticias/not675.asp>

*Jornal do Brasil*, Sept. 17, 2003

<http://natlaw.com/mexico/topical/energy/presspemex.htm>

<http://www.natlaw.com/stmxgp/stmxgp3.htm>

## ENVIRONMENT

### Mexico: Standards for Toilet Tank Valves

NOM-010-CNA-2000 establishes specifications on testing and standards for intake and discharge valves installed on toilet tanks. The stated aims of these rules are to ensure proper toilet tank function and ensure efficient water usage in tank operation. The changes go into effect 180 days after publication.

*Diario Oficial*, Sept. 2, 2003

<http://www.natlaw.com/tsmxen/tsmxen89.htm>

## LABOR

### BRAZIL: Standardization of Labor Appeals

Brazil’s Superior Tribunal of Labor (*Tribunal Superior do Trabalho* – TST) has issued new formal standards for petitions for appellate review, with the goal of improving processing time. The standardization measures set forth the specific documents which must be included with the petition and the information the appellant must provide in order to show the legal basis for the appeal.

*Diário da Justiça*, Jul. 3, 2003

<http://www.natlaw.com/brazil/topical/lb/inbrlb/inbrlb1.htm>

---

---

# RECENT DEVELOPMENTS

---

---

## **Brazil: Increased Inspections Aim at Workplace Illness and Deaths**

The Brazilian National Social Security Institute (*Instituto Nacional do Seguro Social* – INSS) has announced increased inspections directed at workplace risks in large businesses. Citations for violations could result in the collection of substantial fines, perhaps as much as two billion *reais*—over US\$575 million (at exchange rate for September 2003). The stated aim is to pressure these firms to invest in workplace health and safety.

<http://www.natlaw.com/brazil/topical/md/smbrrmd/smbrrmd2.htm>

## **TAXES**

### **ARGENTINA: Tax Changes Foreseen in 2004**

Speaking about Argentina's understanding on a letter of intent (LOI) for a new agreement with the IMF, the Minister of the Economy stated that the tax on checks was expected to begin to be reduced in mid-2004 and that, if tax receipts proved lower than anticipated, taxes on beverages and luxuries would be likely to be increased. The LOI indicates that a comprehensive tax reform to be submitted to the Argentine congress in 2004 will include eliminating most exemptions from the value-added tax and a phased elimination of the export tax beginning in 2005. The understanding with the IMF was reached after phone calls were made by Pres. Lagos of Chile and Pres. Fox of Mexico in support of flexibility in dealing with Argentina. The agreement, which has now been approved by the IMF Executive Board, is for a three-year US\$12.55 billion Stand-By Credit Arrangement. *La Nación*, Sept. 16, 2003, page 2  
<http://www.imf.org/external/np/sec/pr/2003/pr03154.htm>  
<http://www.imf.org/External/NP/LOI/2003/arg/03/091003.pdf>

## **TRANSPORTATION**

See report on Mexico: Guaymas Port above under CUSTOMS.

## **TREATIES**

### **BRAZIL: WTO Follow-Up**

Speaking at a gathering of exhibitors at a food fair and supermarket exhibitors, Brazil's Pres. Lula called what occurred at the Cancún meeting of the World Trade Organization extraordinary and new and expressed satisfaction at the unity of the group of over 20 developing nations in defending their position vis-à-vis the developed countries, concerning trade in agricultural products. He spoke of planned visits in November to Africa and in December to Libya, Syria, Egypt, the Arab Emirates and Saudi Arabia. He noted that an African wanting to do business in Brazil would, at present, most likely have to travel via Paris and that it was up to Brazil to take the initiative to open ways for commerce. He will visit Argentina in mid-October and indicated he will be interested, among other issues, in means to finance a list of 24 projects to improve transportation infrastructure in the region.  
[http://www.radiobras.gov.br/integras/03/integra\\_150903\\_01.htm](http://www.radiobras.gov.br/integras/03/integra_150903_01.htm)

### **REGIONAL: Regional and Bilateral Activity**

Peru, with an economy of US\$54 billion, signed on in August to become an associate member of Mercosur; (Bolivia and Chile are already associate members; the full members being Argentina, Brazil, Paraguay and Uruguay). Two-way trade between the bloc and Peru amounted to more than US\$1.37 billion in 2002. The Peru-Mercosur relationship (*Acuerdo De Alcance Parcial De Complementación Económica Mercosur – Perú*) will include a gradual reduction of tariffs over a 10-year schedule, starting with industrial goods and thereafter agricultural ones. Peruvian tariffs average 14%, while Mercosur average 12%. Meeting in Uruguay in early August, leaders of Mercosur and the Andean Community (*Comunidad Andina* - CAN) indicated an intention to energize negotiations for a free trade agreement between the two blocs (a subject discussed since 1995) by means of regular working meetings and a goal of signing an agreement by the end of 2003. In September, Brazil's Pres. Lula visited Colombia to invite Colombia to become an associate member of Mercosur as Peru has just done. (On Colombia's part, the hope is that Brazil will support the Colombian position in the International Coffee Organization (ICO) for the establishment of a minimum price for coffee in international markets, a measure opposed by coffee-consuming members of the ICO.)

In August also, the U.S. Trade Representative (USTR) notified the U.S. Congress of an intent to initiate free trade talks with the Dominican Republic, a formal step that is a necessary preliminary for it to begin such talks. While Colombia already enjoys preferential access to U.S. markets through the Andean Preferences Act, Colombian officials expressed the hope, after an August visit by the USTR, that a formal notice on negotiating a Colombia-US Free Trade Agreement (FTA) may be possible before the end of 2003 instead of waiting for negotiation of a more inclusive Free Trade Area of the Americas.

In September, the final formal steps were taken to implement the Chile-US free trade agreement, which will go into effect Jan. 1, 2004. Chile expects to need some US\$300 million in additional tax or other revenue to compensate for the US\$430 it will forego in customs revenue due to its new FTAs with the U.S., the European Union and Korea.

In August, Panama and Taiwan signed a free trade pact; once ratified by the parties, 6,200 categories, or 71 percent, of Taiwanese products exported to Panama will become duty free, while the same tariff-free measure will apply to 4,160 categories, or 48.49 percent, of Panamanian goods exported to Taiwan. By 2014 more than 90% of trade between the two will be duty-free.

<http://natlaw.com/treaties/reunionmercosur.htm>

<http://natlaw.com/treaties/ayudareunionmercosur.htm>

<http://natlaw.com/treaties/acmercosur.htm>

<http://www.ustr.gov/releases/2003/08/03-51.htm>

*Folha de São Paulo*, Sept. 16, 2003

<http://www.natlaw.com/treaties/chileustlc.htm>

<http://www.natlaw.com/treaties/chileusfta.htm>

[http://th.gio.gov.tw/show.cfm?news\\_id=18744](http://th.gio.gov.tw/show.cfm?news_id=18744)

# Editorial Advisory Board

## Argentina

Dr. Raúl Aníbal Etcheverry  
Estudio Millé,  
*Dr. Antonio Millé*  
Nicholson y Cano,  
*Federico Caparrós Bosch*  
Estudio Beccar Varela, *Alberto Lasberas-Shine*

## Bolivia

CR & F Rojas Abogados, *Fernando Rojas*

## Brazil

Lilla, Huck, Malheiros, Otranto, Ribeiro,  
Camargo e Messina Advogados,  
*Ligia Maura Costa*  
Antonio P. Lacerda de Barros  
Felsberg & Associados  
*Thomas Felsberg*  
Levy & Salomão Advogados,  
*Eduardo Salomão Neto*  
Noronha Advogados,  
*Ruben Fonseca e Silva*  
Suchodolski Advogados Associados,  
*Beno Suchodolski*

## Chile

Aldunate y Cia. Abogados,  
*Alfonso Reymond Larraín*  
Cruzat, Ortuzar y Mackenna,  
*Antonio Ortuzar*  
Estudio Caravallo, *Emilio Saburie*  
Estudio Jurídico Ricardo Sandoval,  
*Ricardo Sandoval*

## Colombia

Gómez Pinzón & Asociados  
*Alejandro Linares Cantillo*  
Lewin & Wills Abogados Ltda,  
*Emilio Wills Cervantes*  
LexPraxis Abogados,  
*Luis Ricardo Paredes*

## Costa Rica

Bufete Echeverría, *Alejandra Echeverría A.*  
Bufete Quiros & Asociados

## Dominican Republic

De Marchena Kaluche & Asociados Headrik,  
Rizik, Alvarez & Fernandez,  
*William Headrik*  
Oficina Marranzini  
Ramírez Sainz & Asociados,  
*Fernando Ramírez Sainz*  
Russin Vecchi & Heredia Bonetti,  
*Luis Heredia Bonetti*

## Ecuador

Izurietta Mora Bowen,  
*Dr. Raul Izurietta Mora Bowen*  
Pérez, Bustamante y Ponce,  
*Jose M. Pérez*  
Serrano Puig & Asociados,  
*Dr. Armando Serrano Puig*

## El Salvador

Romero Pineda & Asociados,  
*Lic. José Roberto Romero*

## Guatemala

Bufete Castillo Love,  
*Francisco José Castillo Love*  
Díaz-Durán & Asociados,  
*Juan Pablo Carrasco de Groot*

## Honduras

Bufete Mejía & Asociados,  
*Lic. Ricardo Aníbal Mejía*  
Fundación para la Inversión y el Desarrollo  
de Exportaciones  
Werner Law Firm,  
*Jonathan Mark Werner*  
J.R. Paz & Asociados  
*José Ramón Paz*

## Mexico

Santos-Elizondo-Cantú-Rivera-Gonzalez-  
De la Garza, S.C.  
*Lic. Napoleón Cantú Cerna*  
Cuesta Campos y Asociados, S. C.  
*Lic. Fernando J. Cuesta*

## Nicaragua

Munguía, Vidaurre, Chávez,  
*Dr. Juan Alvaro Munguía*

## Panama

Arias, Fábrega & Fábrega, *Roy Durling*  
Morgan & Morgan, *Eduardo E. Morgan*  
Pardini & Asociados, *Juan Francisco Pardini*  
Shirley & Asociados, *Luis A. Shirley*

## Paraguay

Berkemeyer, Attorneys and Counselors,  
Estudio Mersan, Abogados, *Diego Zavala*  
Fiorio & Alvarado, *Marcelo Alvarado*

## Peru

Barreda Moller Abogados, *José Barreda*  
Estudio Aurelio García Sayan,  
*Dr. Alberto Varillas*  
Peña, Lozano, Faura & Asociados,  
*Mariano Peña Benavides*

## Uruguay

Estudio Bergstein, *Dr. Jonás Bergstein*  
Herbert, Ramírez, Xavier de Mello & Abal,  
*Dr. Ronald Herbert*

## United States

Baker & Associates, *George Baker*  
Bingham, Dana & Gould, LLP  
Gibson, Dunn & Crutcher, LLP  
Katten Muchin Zavis Rosenman,  
*Michael Roll*  
Manatt, Phelps & Phelps  
Snell & Wilmer, LLP

## Venezuela

Baumeister & Brewer,  
*Alberto Baumeister Toledo*  
Bentata Abogados, *Karel Bentata*  
Gimon Troconis Romero Abogados,  
*Alfredo Romero-Mendoza*  
Rodner, Martínez & Asociados,  
*Jaime Martínez Estévez*  
Torres, Plaz & Araujo, *Miguel Osío*

Name	_____
Firm	_____
Address	_____
City	_____ State _____ Zip _____ Country _____
Phone	_____ FAX _____ E-Mail _____
Payment - Check or Credit Card Amount	\$ _____
Credit Card:	Visa _____ Master Card _____ American Express _____ Exp. Date _____
Account #	_____ Print Name _____
Signature (required)	_____

Subscriptions: \$650 per year

Non-profit \$550

Includes this journal + access to the *InterAm*<sup>SM</sup>  
Database. Subtract \$55 for e-journal.

SUBSCRIBE BY MAIL, PHONE, FAX OR E-MAIL:

**NATIONAL LAW CENTER FOR  
INTER-AMERICAN FREE TRADE**  
440 North Bonita Avenue  
Tucson, AZ 85745-2747

Call (800)529-3463 within the US,  
(520) 622-1200 outside the US

FAX: (520) 622-0957

E-MAIL: [natlaw@natlaw.com](mailto:natlaw@natlaw.com)