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BRAZIL

LETTER OF MAY 1995

PORT MODERNIZATION

On February 25, 1993, Law No. 8630 containing the Brazilian port deregulation system was approved, providing for privatization of services and bringing greater flexibility to hiring practices. According to Law 8630/93, Brazilian ports were afforded five years to phase in this new system, which is expected to cut docking costs in Brazil, as well as the time spent in cargo loading and unloading, both considered a major obstacle to Brazilian exports.

In furtherance of this, President Fernando Henrique Cardoso signed Decree No. 1467 on April 27, 1995, creating the Port Modernization Task Force (GEMPO).

GEMPO will be primarily engaged in:

- (a) preparing, implementing and monitoring the Brazilian Port Modernization Program;
- (b) deregulating port services rendered by the Administration, by means of concessions and leases to the private sector;
- (c) devising the rules that will govern the relationship between port employees and port users; and
- (d) proposing and implementing rules of conduct for the Brazilian Port Modernization Program implementation (DOU-I, April 28, 1995).

IOF — TAX ON CREDIT, EXCHANGE AND INSURANCE TRANSACTIONS

On April 27, 1995, President Cardoso, jointly with Minister of Finance Pedro Malan, signed Decree No. 1469, increasing the IOF rate on credit transactions (loans) from 6% to 18% per annum.

Such increase is intended to curb the contracting of short-term loans with financial institutions. These credit facilities have pushed up the sale of goods and services, leading to price hikes that eventually threatened the stability of the economy and government attempts to keep inflation at low levels (DOU-I, April 28, 1995).

INTERNET

On April 20, 1995, the Secretary of Communications Services of the Ministry of Communications issued Ordinance No. 13, submitting for public comment the general conditions for Internet access through the public telecommunications network.

The deadline for submission of suggestions or comments on Ordinance 13/95 to the Ministry of Communications was May 5, 1995 (DOU-I, April 25, 1995).

INTERNATIONAL ADOPTION

Since enactment of the Federal Constitution on October 5, 1988, adopted children are equated with legitimate children in all personal, affiliation and equity aspects regarding rights of succession.

On July 13, 1990, Congress sanctioned Law No. 8069 (the Children and Adolescents Statute), repealing all provisions that were not in keeping with the new constitutional order, in particular the former Minors Code.

With respect to international adoption and adoption by aliens, law 8069/90 determines that full adoptive rights will only be granted to aliens after the adoptee has spent a court-determined trial period with the prospective adoptive parents ("Alien Parents"). This trial period is usually short, varying from one through three months, when the adoptee stays with the Alien Parents under the supervision of social workers. After this, the Alien Parents must submit the following documentation to the court:

- (i) passports;
- (ii) statement from the local authorities in the Alien Parents' domicile, showing that the parents qualify for adoption; and

- (iii) a psychological report, prepared by a qualified social worker in the country where the Alien Parents are domiciled.

Law 8069/90 further determines that, in certain cases, the adoption by aliens should be referred to the State Court Commission on International Adoption (the "Commission"), which would then be required to issue a qualification report to complete the case files. This report, however, has caused delays in the adoption process.

In order to cut red tape and streamline adoption by aliens, the Chief Justice of the Commission for the State of São Paulo issued Communiqué No. 197 on April 25, 1995, clarifying that, exclusively for the State of São Paulo, (i) aliens domiciled in Brazil, or (ii) aliens married to Brazilian nationals are no longer required to refer to adoption proceeding for review of the Commission (DJE, April 25, 1995).

CENTRAL BANK OF BRAZIL REGULATIONS

The following regulations of note were issued by the Central Bank of Brazil:

- (a) Resolution No. 2152 of April 27, 1995, authorizing Development Banks to offer credit facilities to (i) individuals resident and domiciled in Brazil, provided that the ensuing funds are committed to projects previously approved by the bank, to realization of corporate capital, or to acquisition of a majority interest in a company whose activities are considered relevant for the state and regional economy; (ii) private-sector companies headquartered in Brazil; and (iii) government-owned companies or other entities directly or indirectly controlled by the Administration.

Before issuance of Resolution 2152/95, such credit facilities would only be available to private-sector companies if they were headquartered in Brazil, and their majority voting stock was held directly or indirectly by individuals resident and domiciled in Brazil (DOU-I, April 28, 1995).

- (b) Resolution No. 2154 of April 27, 1995, prohibiting financial institutions from (i) granting credit facilities secured by checks, and (ii) engaging in

- electronic and physical custody of checks (DOU-I, April 28, 1995);
- (c) Resolution No. 2156 of April 27, 1995, prohibiting financial institutions from acting as purchaser, co-obligor or intermediary in the purchase of promissory notes issued by corporations for public offering purposes (DOU-I, April 28 1995);
 - (d) Circular No. 2563 of April 27, 1995, increasing the compulsory collection/required reserve levels to be met by financial institutions on *aval* guarantees, sureties and other guarantees in financing and loan transactions.

The measures referred to in (b), (c) and (d) above are part of concerted anti inflationary efforts to curtail market liquidity and economic activity levels (DOU-I, April 28, 1995);

- (e) Circular No. 2559 of April 20, 1995 set the average minimum amortization period for renewal or extension of foreign credit transactions (Floating Rate Notes, Fixed Rate Notes, Floating Rate Certificates of Deposit, Fixed Rate Certificates of Deposit, and publicly- or privately-placed bonds and commercial paper) at 180 days from the original due dates. Under previous regulations (Circular 2547/95), the agent of the transaction could not be changed. This prohibition was lifted in Circular 2559/95 (DOU-I, April 24, 1995); and
- (f) Circular No. 2561 of April 20, 1995, reducing from 100% to 20% the ceiling on advance payment of imports (DOU-I, April 24, 1995).

DISCRIMINATION IN EMPLOYMENT

Under article 10, II (b) of the Interim Provisions of the 1988 Constitution, pregnant employees cannot be dismissed from the date pregnancy is confirmed until five months after delivery.

Due to this constitutional provision, employers began imposing pregnancy tests as a condition for hiring women. This practice, however, proved unfair to female employees in Brazil.

In order to put an end to this restriction, the President of the Republic sanctioned Law No. 9029 of April 13, 1995, prohib-

iting discriminatory and restrictive action in employment on the basis of sex, origin, race, color, marital or family status, and age.

Under Law 9029/95, the following discriminatory actions will be subject to prosecution, punishable with one- to two-year imprisonment and a fine:

- (a) the demand for any test examination, statement or the like with respect to the pregnancy and sterility status of an employee; and
- (b) the adoption by the employer of measures intended to:
 - (i) induce or recommend the employee's genetic sterilization; and
 - (ii) promote birth control, except for family planning activities (DOU-I, April 17, 1995).

TEMPORARY VISAS FOR ALIENS

On April 13, 1995, President Cardoso signed Decree No. 1455, altering article 93 of Decree 86715/81 on the legal status of foreigners in Brazil.

Under the new article 93, the temporary visas granted to foreigners on business trips will be valid for a period determined by the Ministry of Foreign Affairs, up to five years. Foreigners will be entitled to enter Brazil at any time while the temporary visa is effective for a stay not exceeding 90 days, up to 180 days per year (DOU-I, April 17, 1995).

CABLE TV

On January 6, 1995, President Cardoso issued Law No. 8977, regulating cable television services in Brazil (please refer to item 3 of our February 1995 Legal Letter).

On April 13, 1995, due to the provisions of Law 8977/95, the Minister of Communications issued Ordinance No. 119, submitting for public comment the Ruling on Cable Television Services in Brazil.

Interested parties had until May 18, 1995 to address comments and suggestions on Ordinance 119/85 to the Ministry of Communications (DOU-I, April 18, 1995).

BRAZILIAN INVESTMENTS ABROAD

On September 22, 1994, the Central Bank of Brazil issued Resolution No. 2111 and Circular No. 2485, respectively authorizing the organization and formation of Investment Funds Abroad (IFA), and the participation of investment pools in the acquisition of IFA units.

Under these regulations, IFA will be managed by one of the following financial institutions: multiservice banks, commercial banks, investment banks, broker-dealers or securities dealerships (please refer to item 2 of our October 1994 Legal Letter).

On May 4, 1995, the Central Bank of Brazil issued Circular No. 2569, adding some provisions regarding IFA management. Pursuant to Circular 2569/95, the IFA managing institution may, subject to prior approval at a meeting of IFA members:

- (a) hire specialized consulting services for the analysis and selection of assets that will form the IFA portfolio; and
- (b) delegate its management powers to a previously identified party; in this case, the managing institution will remain jointly liable for the IFA itself as well as for all acts performed by the nominee (DOU-I, May 5, 1995).

BRAZILIAN DENATIONALIZATION PROGRAM

On May 3, 1995, President Cardoso signed Decree No. 1481, including the following electric companies in the Brazilian Denationalization Program:

- (a) Centrais Eléctricas Brasileiras S.A. (ELECTROBRÁS);
- (b) Centrais Eléctricas S.A. (FURNAS);
- (c) Centrais Eléctricas do Norte do Brasil (ELECTRONORTE);
- (d) Centrais Eléctricas do Sul do Brasil S.A. (ELECTROSUL); and
- (e) Companhia Hidroeléctrica do Sao Paulo Francisco (CHESF) (DOU-I, May 4, 1995).

MANAUS FREE TRADE ZONE

On April 28, 1995, President Cardoso signed Decree No. 1475, establishing at US \$2,035,000,000.00 the 1995 overall limit for the import of goods under incentive (i.e., at lower import rates) through the Manaus Free Trade Zone.

The Ministries of Finance and Industry, Trade and Tourism will issue joint regulations setting out the criteria for allocation of the abovementioned import ceiling (DOU-I, May 2, 1995).

ORGANIZED CRIME

On May 3, 1995, President Cardoso sanctioned law No. 9034, establishing new operating methods for prevention and elimination of organized crime in Brazil.

Under Decree 9034/95, bank, tax, financial and electoral data regarding persons under police investigation on organized crime charges is no longer necessarily privileged information.

Furthermore, the penalty imposed on such crimes will be reduced by one- to two-thirds when one of the involved parties releases information regarding the crime and the other perpetrators.

No one charged with being involved in organized crime will be eligible for temporary release from prison, nor will they be entitled to appeal while at liberty (DOU-I, May 4, 1995).

Pinheiro Neto

Advogados

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LETTER OF JUNE 1995

COUNTERVAILING DUTIES

On May 11, 1995, President Fernando Henrique Cardoso signed Decree No. 1488, setting forth the rules for the application of countervailing duties previously approved and adopted by the General Agreement on Tariffs and Trade — the GATT.

Under Decree 1488/95, countervailing duties will be imposed whenever proper investigation shows that the import of a certain merchandise jeopardizes the Brazilian product or industry. These duties will be adopted by the joint decision of the Ministries of the Economy and Industry, Commerce and Tourism, after consultation with the Foreign Trade Office (SECEX).

Administrative proceedings can be initiated at the request of (i) SECEX itself, (ii) any governmental entity, or (iii) any company or association that represents the companies manufacturing the threatened item.

The Committee on Countervailing Duties of the Office of International Trade (OIT) will be informed by the Ministry of Foreign Affairs if any administrative proceedings are in fact instated. SECEX can have a preliminary consultation with any foreign government exporting the item under investigation.

During these administrative proceedings, SECEX will have the power to impose provisional duties on the foreign exporter. The payment of provisional duties can be suspended at any time and the money deposited as collateral returned if the administrative proceedings find that the definitive imposition of countervailing duties is not appropriate.

Definitive measures can entail payment of duties and quantitative restrictions for the period of time necessary to prevent or offset damages to the domestic industry or economy. These measures will always observe the rules and conditions previously approved by GATT and OIT (DOU-I, May 12, 1995).

ASSIGNMENT OF GOODS TO ALIENS

On May 18, 1995, President Cardoso sanctioned Law No. 9047, altering the wording of article 10 of the Introductory Law to the Civil Code. This article deals with assignment of goods belonging to aliens located in Brazil due to succession. Under the new wording, these goods will be assigned to the spouse or offspring or their representatives pursuant to Brazilian or foreign law, whichever is considered more beneficial (DOU-I, May 19, 1995).

PERSONAL IDENTIFICATION

On May 18, 1995, President Cardoso sanctioned Law No. 9049, mandating that any citizen can request the competent authorities to insert in his/her personal identification the number and validity (when applicable) of the following documents:

- (i) Brazilian Drivers' License;
- (ii) Voter Identification card;
- (iii) Income Taxpayer Identification card;
- (iv) Job Identification or Professional Work cards; and/or
- (v) Military Certificate.

At the citizen's option, blood-type data and organ donor identification can also be included in such document (DOU-I, May 19, 1995).

INCENTIVES FOR CULTURAL ACTIVITIES

Law No. 8313 of December 23, 1991 created the Brazilian Cultural Support Program (PRONAC). According to this law, PRONAC will be implemented through the following mechanisms: (i) the Brazilian Cultural Fund (FNC); (ii) the Cultural and Artistic Investment Fund (FICART); and (iii) direct sponsorships or donations offered through or for the account of cultural projects approved by the Ministry of Culture. Such donations

can be deducted from gross income as business expenses, and also deducted from income tax payable.

On May 17, 1995, President Cardoso issued Decree No. 1494, regulating Law 8313/93 and determining the conditions for financing and implementation of PRONAC. Under Decree 1494/95, the following activities will be subject to PRONAC: theater, dance, circus, opera, mime, cinematographic production, video production, photography, discography, literature, music, plastic arts, graphics, engravings, posters, philately, folklore, handcrafts, educational and cultural radio and television (non-commercial) programs, Black and indigenous culture.

The main FNC objectives are:

- (i) to foster regional cultural manifestations;
- (ii) to encourage the cultural expression of the various factions of Brazilian society that are responsible for its cultural diversity;
- (iii) to develop for culture the preparation and betterment of human resources;
- (iv) to promote the preservation of the Brazilian cultural assets, with emphasis on identification, documentation, promotion, protection, restoration, and restitution of such cultural assets;
- (v) to encourage proliferation of exemplary community projects, thereby contributing to ease the access to cultural assets for low- and medium-income segments of the population;
- (vi) to stimulate cultural and artistic activities on an innovative or experimental basis; and
- (vii) to promote cultural diffusion overseas under the sponsorship of the Ministry of Foreign Affairs.

The FNC will support legal entities cultural by nature (private or public) or individuals that submit their projects for approval. The FNC will adopt one of the following operating forms: (i) à fonds perdus by means of scholarships, travel reimbursement and expense allowances: and (ii) loans.

The main FICART objectives are:

- (i) the financing of the commercial production of musical instruments, records, tapes, videos, films and other forms of phonovideographic productions; theatrical, dance, music, choral and circus shows; works related to the sciences, literature and the arts as well as more commercial works;
- (ii) construction, restoration, reform, or equipping of spaces dedicated to cultural activities, owned by profit-making entities; and
- (iii) other activities considered of commercial interest by the Ministry of Culture.

The FICART funds will be exclusively earmarked through:

- (i) hiring of legal entities of a cultural nature, headquartered in Brazil, whose main object is the execution of cultural projects;
- (ii) participation in cultural projects performed by legal entities of a cultural nature, headquartered in Brazil; and
- (iii) acquisition of copyrights for commercial exploitation of literary, audiovisual and phonovideographic works, theater, plastic and visual arts (DOU-I, May 18, 1995).

With respect to direct sponsorships or donations for cultural activities, on May 17, 1995 President Cardoso also signed Decree No. 1493, altering the wording of Decree No. 1359 of December 30, 1994, which deals with limits on tax deductions for sponsorships or donations for cultural activities. Under the new provisions of decree 1493/94 (i) individuals can deduct from the income tax payable up to 10% of the demand value, and (ii) companies taxed on their taxable profits, up to 5% of the yearly income tax (DOU-I, May 18, 1995).

IDENTITY CARDS FOR ALIENS

On December 27, 1994, President Itamar Franco issued Provisional Measure No. 786, altering the provisions for renewal

and validity of identity cards for foreigners (please see item 8 of January 1995 Legal Letter). Under Provisional Measure 786/94, these identity cards must be renewed every nine years (instead of four years as previously determined by Decree-law No. 2236 of January 23, 1985). Provisional Measure 786/94 was discussed and then approved by Congress as Law No. 8988 of February 24, 1995.

On May 12, 1995, the Ministry of Justice issued Ordinance No. 526, determining the model to be used for identity cards for foreigners with temporary and/or permanent visas, foreign refugees, asylum-seekers and those that regularly commute between Brazil and any other neighboring country (DOU-I, May 15, 1995).

EXPORT PROCESSING ZONES

Export Processing Zones (ZPE) are free-trade areas isolated from the rest of the country by trade and exchange barriers, created by the federal government in 1988 with the objective of attracting, through tax and exchange incentives, foreign manufacturers to certain areas of Brazil in need of investments.

The Brazilian Export Processing Zones Council (CZPE), which is the administrative entity in charge of establishing the general guidelines regulating ZPE matters, issued on May 16, 1995 Resolution No. 18, determining that the parties interested in organizing a company in a ZPE must submit to CZPE a project with the following information:

- (i) identification of the applicant and of the Brazilian representative;
- (ii) board of shareholders/quotaholders of the company;
- (iii) corporate object and structure of the company;
- (iv) organization and structure in Brazil;
- (v) proposed investment;
- (vi) estimated costs for setting-up; and
- (vii) production targets.

CZPE also authorizes companies that fulfill the require-

ments set forth in Decree-law No. 2452 of July 29, 1988, such as:

- (i) maintenance of corporate capital at required levels, as determined by CZPE in the authorization;
- (ii) a corporate object limited to manufacturing and export activities; and
- (iii) submission to Central Bank, and federal determinations regarding export activities and management of such companies in Brazil.

The authorization to operate is valid for a twelve-year period, renewable for equal periods, and may be revoked at any time if the authorized company does not comply with any of the provisions set forth in Decree 2452/88 (DOU-I, May 30, 1995).

INTERNET

On May 31, 1995, the Ministry of Communications issued Ordinance No. 147 creating the Internet Managing Committee, with the main objectives of (i) monitoring the implementation and rendering of Internet services in Brazil; (ii) recommending standards, technical and operating procedures and the ethics code for all INTERNET services; (iii) recommending the implementation and interconnection strategy for networks, analyses, and selection of technological options; (iv) operating procedures for management of networks; and (v) collection, organization and distribution of information on INTERNET services.

The members of the Internet Managing Committee will be jointly appointed by the Ministries of Communications and Science and Technology for a period of two years, and will be formed of one representative of:

- (i) the Ministry of Science and Technology;
- (ii) the Ministry of Communications;
- (iii) the Telebrás System;
- (iv) the Brazilian Scientific and Technological Development Council (CNPq);
- (v) the Brazilian Research Network;

- (vi) the academic community;
- (vii) the service purveyors;
- (viii) the business community; and
- (ix) the Internet users.

Based on the comments received by the general public (please refer to item 3 of our May 1995 Legal Letter), on May 13, 1995 the Ministry of Communications issued Ordinance No. 148, approving Norm 004/95 containing the general conditions for Internet access through the public telecommunications network (DOU-I, June 1, 1995).

IMPORT LICENSES

Imports in Brazil are governed by the Foreign Trade Department (DECEX) Ordinance No. 8 of May 13, 1991, which mandates that interested parties wishing to become importers need to apply to and obtain express authorization from DECEX.

Generally, import of goods requires preliminary authorization from DECEX, which issues an import license mentioning the terms and conditions, the parties involved in the transaction, and the goods to be imported.

Article 7 of Ordinance 8/91 provided that, after the import license was issued, the importer had 90 days to actually ship the goods abroad. On May 16, 1995, however, the Foreign Trade Office issued Ordinance No. 3, reducing such term to 60 days.

This 60-day term, however, is not applicable to the import of capital goods (such as machinery, equipment, apparatus and instruments), manufactured to order, whose term of validity is compatible with the term required for manufacture of the product (DOU-I, May 19, 1995).

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LETTER OF JULY 1995

ECONOMIC PROTECTION: PERFORMANCE GUIDELINES

On June 11, 1994, President Itamar Franco issued Law No. 8884 (the Antitrust Law), mandating antitrust regulations intended to restrain and prevent infringement of the economic policy (please refer to our Legal Letter of June 1994).

According to the Antitrust Law, sale refusals, price arrangements between competitors, market divisions, combined bids, underselling, dumping, exclusive publicity requirements, imposition of retail prices on distributors, retailers and representatives, production or consumer good retention, excessive price increases and abusive profits constitute infringement of economic policy.

Antitrust Law attributes to CADE — the Administrative Council for Economic Defense, which is an autonomous government entity linked to the Ministry of Justice — the authority to rule on proceedings regarding irregularities in the economic sector.

As a supplement to the antitrust regulations, on June 7, 1995, CADE enacted Resolution No. 1, setting forth its guidelines for approval of corporate transactions such as amalgamations, mergers, purchase and sale of companies or any other form of corporate grouping subject to CADE's approval.

Resolution 1/95 establishes the formalities and procedures for CADE approval of corporate transactions that might limit or otherwise restrict open competition, or result in the control of relevant markets for certain products and services specified in the Antitrust Law. Resolution 1/95 determines the application format, the necessary documentation, and the information companies should furnish to the CADE.

Article 18 of Resolution 1/95 determines that if an application is denied, CADE will review it again only once on the condition that it evidence compliance with the provisions of article 54, paragraphs 1 and 2, which require that such transactions would result in (i) increased productivity, and/or (ii) improved quality, and/or (iii) technological development. The transaction should

also evidence that the resulting benefits will be ratably allocated between the interested parties and the consumers or end-users, and additionally that the transaction will not drive competition for a product or service away from a substantial portion of the relevant market.

CADE approval should also consider whether a transaction is in the public interest or otherwise required for the benefit of the Brazilian economy, provided no damages are caused to end-consumers or users (DOU-I, June 9, 1995).

MINERAL EXTRACTION

On June 1, 1995, President Fernando Henrique Cardoso sanctioned Law No. 9055, setting forth the rules for extraction, manufacture, utilization, marketing and transport of asbestos/amianthus.

Law 9055/95 establishes prohibitions as to the use of certain minerals, basically chrysolite/asbestos/amianthus, provenly shown to be hazardous to human health. Law 9055/95 aims to protect all workers that handle asbestos/amianthus.

As a protection measure, asbestos/amianthus companies must annually send to the Unified Health System and to the workers' unions a list of their employees, indicating the sector, duty, position, birth date, as well as the medical evaluation at the time of hiring and any periodical evaluations, accompanied by the respective health prognosis.

All work sites where workers are exposed to chrysolite/asbestos/amianthus will be subject to the tolerance limits set out under pertinent legislation and, in the absence thereof, these limits will be established based on the exposure control criteria recommended by scientifically accredited national or international entities.

Further exposure control criteria will be established for workers in the agreements signed between workers' unions and employers. The established limits must be reviewed on an annual basis, in an attempt to reduce mineral exposure to the lowest reasonably feasible level.

According to Law 9055/95, public or private institutes, foun-

dations and universities, and the Individual Health System agencies will promote scientific and technological research targeted at non-hazardous utilization of chrysolite/asbestos/amianthus and natural and artificial fibers. This research will be granted a special credit facility from the government bodies in charge of fostering scientific and technological research (DOU-I, June 2, 1995).

IMPORT DUTY REDUCTION

On June 13, 1995, President Cardoso enacted Provisional Measure No. 1024, fostering the import of capital goods for the automobile industry (including agricultural machinery).

Provisional Measure 1024/95 reduced to 2% the import duty on the following goods:

- (a) new machinery and equipment, including test tools, molds, industrial and quality control instruments and equipment and their accessories; and
- (b) raw materials, parts, components, sets, and subsets.

According to Provisional Measure 1024/95, the reduced import duty will prevail until December 31, 1999 (DOU-I, June 14, 1995).

BRAZILIAN NATIONALITY

On June 13, 1995, the Ministry of Justice signed Ordinance No. 703, establishing the new format for applications for (i) naturalization; (ii) extraordinary naturalization (for aliens living in Brazil for more than fifteen years); (iii) provisional and definitive certificate of naturalization (for alien minors who wish to change their nationality due to residency in Brazil) (DOU-I, June 14, 1995).

INCENTIVES FOR CULTURAL ACTIVITIES

Law No. 8313 of December 23, 1991 and Decree No. 1494 of May 17, 1995 created the Brazilian Cultural Support Program

(PRONAC), and determined the conditions for financing and implementation of PRONAC, respectively (please refer to our Legal Letter of June 1994).

On June 13, 1995, the Executive Secretariat of the Ministry of Culture and the Secretary of Federal Revenue issued Normative Ruling No. 1, spelling out the rules and procedures for the control and evaluation of the tax benefits and incentives set forth in Law 8313/91 and Decree 1494/95.

The scope of Normative Ruling 1/95 is to clarify and rule on the conditions that will permit both individual and corporate taxpayers to deduct donations, sponsorships and investments made through or for cultural projects from their taxable income, thus fostering private investments in cultural activities (DOU-I, June 14, 1995).

EXCHANGE TRANSACTIONS — NEWSPAPER AND MAGAZINE SUBSCRIPTIONS

On June 13, 1995, the Central Bank of Brazil issued Letter Circulars Nos. 2555 and 2556, altering the procedures for acquisition of foreign currency for payment by individuals or legal entities domiciled in Brazil of newspapers, magazines or other subscriptions.

Under the new provisions, moneys for accusation of newspapers, magazines or the like can only be remitted through the commercial exchange market, with the identification of the purchaser of such magazines, newspapers or the like, upon presentation to the bank effecting the payment abroad of the pro-forma invoice or equivalent document, such as prospectuses which indicate the value of the publication and the name of the beneficiary abroad (DOU-I, June 16, 1995).

ECONOMIC STABILIZATION PROGRAM

In June 1993, President Cardoso, then Minister of the Economy, announced a new economic stabilization program focused mainly on the public deficit (the "Plan").

The Plan was divided into two different phases. The first phase provided for a US\$ 6 billion slash in public expenditures

that had already been included in the federal budget, and acceleration of the privatization program.

The second phase consisted of certain tax adjustments, the introduction of a standard of value indexed to inflation rates, and finally the creation of a new currency called the *real*.

The *real* was adopted by Provisional Measure No. 542 of June 30, 1994, which regulated the conditions applicable to the new currency.

Under Brazilian law, provisional measures have the force and effect of laws, but have to be either (i) discussed and approved by Congress, or (ii) republished within thirty days; otherwise, they will become ineffective.

Provisional Measure 542/94 was republished several times, and finally approved by Congress in June 1995 and sanctioned by President Cardoso on June 29, 1995 as Law No. 9069 (DOU-I, June 30, 1995).

ELIMINATION OF MONETARY CORRECTION

Due to the high inflation indices prevailing in Brazil over the past years, agreements and obligations were frequently updated based on monetary correction indices, thereby safeguarding the contracting parties against the effects of inflation.

After the successful implementation of the economic stabilization program, inflation indices dropped drastically, but still remained at a 2.5% average monthly rate. This vestigial monthly inflation is partially caused by the ongoing use of several monetary correction indices.

On June 30, 1995, President Cardoso issued Provisional Measure No. 1053, mandating supplementary measures for the economic stabilization program. According to Provisional Measure 1053/95, contracts or other obligations in Brazil must be denominated in *reais*, and cannot be expressed in or linked to foreign currencies or any monetary correction indices.

This rule does not apply to agreements, contracts or other obligations contracted with foreign parties or which involve foreign goods or services. Monetary correction indices can be utilized in agreements with a minimum one-year period, provid-

ed that the monetary correction indices adopted in such agreements, contracts or obligations reflect the variation in production costs or inputs (DOU-I, July 1, 1995).

CENTRAL BANK OF BRAZIL REGULATIONS

The Central Bank of Brazil issued the following noteworthy regulations:

- (a) Circular No. 2583 of June 21, 1995, which establishes compulsory publication of information on the risks involved in transactions on the derivatives market (DOU-I, June 23, 1995);
- (b) Resolution No. 2170 of June 30, 1995, which permits Brazilian financial institutions to obtain funds overseas to finance the construction and acquisition by legal entities or individuals in Brazil of new real estate. Funds onlent in Brazil are required to have a minimum amortization period of 720 days (DOU-I, July 1, 1995); and
- (c) Resolution No. 2173 of June 30, 1995, which authorizes Brazilian financial institutions to use funds deposited in savings accounts to provide accountholder financing for acquisition or construction of residential buildings (DOU-I, July 1, 1995).

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LETTER OF AUGUST 1995

MANAUS FREE-TRADE ZONE

On May 15, 1995, President Fernando Henrique Cardoso sanctioned Decree No. 1489, fixing an overall cap on the import of goods under incentive (U.S. \$2,180,000,000.00 for the period from May 1, 1995 to April 30, 1996). Decree 1489/95 repealed Decree No. 1475 of April 28, 1995, which established the overall limit for the import of goods under incentive at U.S. \$2,035,000.00. (please refer to our May 1995 Legal Letter).

On July 18, 1995, President Cardoso sanctioned Decree No. 1556, creating the Permanent Interministerial Committee (Committee) with the following attributions:

- (a) to improve and meet the Manaus Free-trade Zone's political, technological and commercial policies;
- (b) to adjust import limit distributions, considering the investment and export increase, observing basic production procedures already established;
- (c) to change the limits established in Decree 1489/95;and
- (d) to specifically exclude sectors or products other than those mentioned in Decree 1489/95 from these import limits.

The Committee is composed of the following State Ministers:

- (a) Industry, Trade, and Tourism, who will preside over the Committee;
- (b) Planning and Budget;
- (c) Finance; and
- (d) Science and Technology.

The Committee's decisions will be formally implemented by interministerial ordinances.

Based on the above, on July 19, 1995, the Committee issued Interministerial Ordinance No. 1, excluding the following goods

from the overall limit for imports under incentive:

- (a) capital goods; and
- (b) informatics goods (DOU-I, July 19, 1995).

IMPORT OF AUTOMOBILES/BOATS

On July 7, 1995, the Vice President of the Republic, Marco Antonio de Oliveira Maciel, temporarily in the office of President of the Republic, sanctioned Law No. 9075, revoking article 4 of Law No. 2410 of January 29, 1955, which prohibited any import or entry of luxury vehicles and boats for leisure purposes whose price was over U.S. \$3,500.00 (DOU-I, July 10, 1995).

TOURIST VISAS FOR ALIENS

On July 10, 1995, President Cardoso signed Law No. 9076, altering the provisions of Law No. 6815 of August 19, 1980 (dealing with foreign visas).

Under the new provisions of Law 9076/95, tourist visas granted to foreigners coming to Brazil will be valid for a period determined by the Ministry of Foreign Affairs, up to five years. Foreigners will be entitled to enter Brazil at any time while their tourist visa is effective for a stay not exceeding 90 days, and spend up to 180 days per year in Brazil (DOU-I, July 11, 1995).

IMPORTER/EXPORTER REGISTER

On July 12, 1995, the Ministry of Industry, Commerce and Tourism issued Ordinance No. 280, determining the creation of the Importer/Exporter Register to be maintained and updated by the Foreign Trade Office (SECEX).

The main scope of this register is to select and accredit the legal entities and individuals that deal in foreign trade, to better the Brazilian public image with international trade counterparts, as well as to increase Brazilian international trade.

Only legal entities or individuals registered with SECEX will be able to deal in foreign trade. In order to be eligible for registration, the interested legal entities or individuals must

meet the following requirements:

- (a) have the minimum corporate capital set forth by SECEX (when applicable);
- (b) owe nothing to the public coffers;
- (c) be considered creditworthy and reliable; and
- (d) not be subject to administrative proceedings for customs, exchange, foreign trade or abuse of economic power infractions.

The SECEX register may also be suspended for a maximum of two years if, after proper investigations, it is proved that the company:

- (a) is under administrative proceedings for infractions of customs, exchange, foreign trade or abuse of economic power regulations;
- (b) performs acts considered a discredit to foreign trade, thereby tarnishing Brazil's image abroad;
- (c) maintains product stocks for speculative purposes;
- (d) acts as a monopoly to the detriment of Brazil's economic interests;
- (e) presents or uses false documentation for import/export activities; and
- (f) does not pay federal, state and municipal taxes.

The SECEX registration can also be cancelled if the legal entity or individual:

- (a) is punished under administrative or judicial proceedings due to infringement of customs, exchange, foreign trade or abuse of economic power regulations;
- (b) has had its SECEX registration suspended more than once; and
- (c) is punished under administrative or judicial proceedings related to taxes on foreign trade operations (DOU-I, July 13, 1995).

SUFRAMA REGISTER

The Manaus Free-trade Zone is an area where import/export can be made with special tax exemptions. It was established in 1967 for the purpose of creating an industrial, commercial and agricultural center in the Amazon region to foster that region's development.

Imports into the Manaus Free-trade Zone are exempted from import duty (II) and the Tax on Manufactured Products (IPI), while exports from the Manaus Free-trade Zone to the rest of Brazil or to other countries are exempted from IPI and subject to a reduction in II, provided, however that the local industry complies with the rules and conditions determined by the Manaus Free-trade Zone Development Office (SUFRAMA), such as minimum nationalization rates of the products and actual manufacture of part of the products within the Manaus Free-trade Zone.

SUFRAMA also controls the entry of imported products into the Manaus Free-trade Zone, and determines the conditions for exemption from taxes. In order to improve such control, SUFRAMA issued on June 1, 1995, Ordinance No. 192, creating the SUFRAMA register and setting forth the conditions for its implementation.

The SUFRAMA register shall contain all data of legal entities or individuals that import goods eligible for the tax incentive mentioned above. According to Ordinance 192/95, registration of the legal entities and individuals will be valid for one year and must be evidenced by proper documentation (a certificate).

Furthermore, Ordinance 192/95 determines the documents that all legal entities and individuals interested in obtaining the tax incentive must present for inclusion in SUFRAMA's register (DOU-I, June 9, 1995).

PUBLIC SERVICE CONCESSION

On February 13, 1995, President Cardoso sanctioned Law No. 8987, setting forth the public-service system provided for

under the Constitution. The participation of private capital in the performance of services — that in the past were exclusively performed by public companies — which proved to be insufficient, was expressly permitted.

On July 7, 1995, President Cardoso sanctioned Law No. 9074, subjecting to the Concession Law the following public utility services and works under the authority of the federal government:

- (a) federal highways, whether or not preceded by public works;
- (b) federal works or services regarding dams, retaining walls, locks, barrages and irrigation, whether or not preceded by public works; and
- (c) customs facilities and other bonded warehouses for public use, outside port or airport areas, whether or not preceded by public works.

Apart from the public works and services for which an authorization act is waived under the federal and state constitutions, as well as under the organic laws of the Federal District and municipalities, and except for basic sanitation and urban cleaning services, Law 9074/95 also determined that the federal government, the states, the Federal District and the municipalities cannot assign public services by way of concession or licenses unless such services are authorized and regulated by law, with due regard for the general rules set forth in the Concession Law (DOU-I, July 8, 1995).

COMMON FOREIGN TARIFF

On March 26, 1991 the Presidents of Brazil, Argentina, Paraguay and Uruguay signed the Asunción Treaty, creating the Common Market of the Southern Cone (MERCOSUL), and thereby changing the foreign trade rules prevailing in Brazil.

Trade with countries outside MERCOSUL is subject to the Common Foreign Tariff (TEC). As the MERCOSUL member nations found it difficult to set uniform foreign tariffs capable of meeting their individual interests, they were allowed to maintain certain MERCOSUL Common Nomenclature (MCN) items

as an exception to TEC. These items include protected goods, and computer science and telecommunications products, among others. The products that are an exception to TEC are included on the *lista de convergência* (convergence list). Accordingly, TEC must be reviewed jointly with this convergence list.

On July 7, 1995, President Cardoso sanctioned Decree No. 1550, amending certain TEC codes and making new products subject to TEC rates.

REAPPRAISAL OF ASSETS

On June 19, 1995, the Brazilian Securities Commission (CVM) issued Resolution No. 183, approving the statement made by the Brazilian Institute of Accountants (IBRACON) (Statement) regarding the reappraisal criteria to be followed by listed corporations.

The scope of this Statement is to adapt the Brazilian reappraisal standards to those spelled out in the International Accounting Standards Committee (IASC).

Basically, the Statement sets forth the reappraisal methodology for:

- (a) voluntary reappraisal of assets;
- (b) reappraisal of assets of controlled and sister corporations;
- (c) reappraisal for the capital subscription of other companies by assignment of goods; and
- (d) reappraisal for mergers, incorporation and spin-offs (DOU-I, June 22, 1995).

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