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Foreign Investment in Uruguay: A Law and Development Perspective

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FOREIGN INVESTMENT IN URUGUAY: A LAW AND DEVELOPMENT PERSPECTIVE

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*Developing countries are not merely called upon to solve their own economic problems. They can make a significant contribution because they have a concept of life and of human values which will, I am sure, enable them to help decisively in resolving basic incompatibilities between technological and spiritual values.***

I. INTRODUCTION

Uruguay, a country "slightly smaller than Oklahoma," has an economy that is currently in transition.[1] Uruguay's external debt, as of June 1988, reached a high of almost $5.4 billion.[2] That places Uruguay in the position of having one of the highest external debts per capita in Latin America. During the early 1980s, Uruguay's gross domestic product shrank by sixteen percent but the economy has shown some recent signs of recovery.[3] The current democratic government, in a response to these signs, has taken steps "to make structural reforms to break the general pattern of stagnation that has marked the economy for the last thirty years."[4]

The government has utilized several different strategies in its efforts to combat the country's developmental and debt problems. One strategy employed, an export-based program, aims to achieve the "economic growth necessary . . . to meet . . . [the country's] debt service obligations and to improve the [country's] standard of living."[5] A second strategy, that of attracting foreign investment, also is being touted as a solution to the debt crisis. An influx of

** Statement by Raul Prebish (Director of CEPAL Review, United Nations Economic Commission for Latin America, Santiago, Chile) at the United Nations Conference on Trade and Development, Third Plenary Meeting, 1964.

1. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES — URUGUAY 1 (June 1988)[hereinafter BACKGROUND NOTES].

2. *Id.* at 6. The Uruguayan government is currently working with its creditors and with the International Monetary Fund in an attempt to manage this burdensome debt.

3. *Id.* There was a 6.3% growth in the gross domestic product (GDP) in 1986 and an estimated four percent GDP growth in 1987. *Id.*

4. *Id.*

5. *Id.* The strategy involves allowing exchange rates to fluctuate, agressively expanding and diversifying exports, and entering into trade agreements with neighboring countries.

foreign capital, no matter how desirable, naturally will have an impact on the economy of the receiving nation.

It is both surprising and alarming in light of the government's heightened interest in attracting foreign investment that neither Uruguayan legal nor economic scholars have felt compelled to investigate the consequence that foreign investment has had in Uruguay to date.[6] It is astonishing that one of the most significant examples of foreign investment in the country, the development of the seaside resort of Punta del Este,[7] has received little, if any, attention by academicians.

It was not until the enactment of the Foreign Investment Act of 1974[8] that the subject of foreign investment even attracted the attention of Uruguayan scholars. Despite the initial allure, however, the extent of the analysis has been extremely limited.[9] Scholars may defend this lack of interest by arguing that foreign investment has had little effect on the nation's economy and therefore merits little attention. Even if one were to accept such a statement,

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6. Few scholarly works have addressed the issue and those that have attacked the problem have done so from a taxation perspective. This tendency reflects a general philosophy of Uruguayan law schools. The Montevideo Law School teaches Contracts, Family Law, and Criminal Law subjects that undoubtedly involve most of the problems faced by the country's inhabitants. But other crucial topics are not addressed in the present curricula. Courses such as International Trade and the GATT Regime, Latin American Integration, Foreign Debt, and Foreign Investment are glaring in their omission from law school course offerings. In short, the implication is that lawyers should be more concerned about these subjects.

7. The resort of Punta del Este lies at the limits of the Plate River. La Paloma, Atlantida & Piriapolis are other growing resort areas. A. MORRIS, SOUTH AMERICA 157 (1987).

8. Statute No. 14.179, D.O. (Uru. Dec. 30, 1974). This is the basic statute regulating foreign investment in Uruguay. Under this law, authorities have the option to deny the investor the protective guarantees of the law if the investment is viewed as lacking positive input for national interests or fails to contribute sufficiently to the country's economic goals. *See* DUN'S MARKETING SERVICES, 1988/89 EXPORTER'S ENCYCLOPAEDIA (83d ed. 1988) (a general overview of the Foreign Investment Act of 1974 and its impact on the exporter).

9. *See generally* D. ASTORI, R. ZERBINO, J. RODRIGUEZ LOPEZ & A. TISNES, INVERSION EXTRANJERA Y DESARROLLO ECONOMICO (1975); Melgar, *Caracteristicas y Perspectivas de la Inversion Extranjera en America Latina. El Caso Uruguayo*, 21 PUBLICACION DEL CENTRO LATINOAMERICANO DE ECONOMIA HUMANA 15 (1982). A weekly publication, BUSQUEDA, has covered the topic with some noteworthy articles. The matter is tangentially addressed in most works dealing with the general economic situation of the country. However, those treatises give the area no special attention. Even the National Development Plan of 1973-1977, refers only marginally to the subject. *See* OFICINA DE PLANEAMIENTO Y PRESUPUESTO, PLAN NACIONAL DE DESARROLLO 1973-1977 30 (2d ed. 1977)[hereinafter OFICINA DE PLANEAMIENTO Y PRESUPUESTO]. *See also* Trevino, *Mexico: The Present Status of Legislation and Governmental Policies on Direct Foreign Investments*, 18 INT'L LAW. 297, 300 (1984) (a different approach is adopted by the Mexican National Development Plan 1983-1988, which separates the policies governing foreign investment from those directed at private capital).

many questions must be answered before one can close the door on a study of foreign investment in Uruguay. Two questions that must be asked are whether Uruguay needs foreign investment at all, and whether the government should even encourage foreign investment? But before either of these questions can be answered, a threshold question must be addressed. What impact has foreign investment had on the Uruguayan economy to date?[10]

The lack of scholarly study in this area could prove disastrous for future foreign investment in Uruguay. As a country that has suffered the combined ill-effects of unemployment, low real wages, and low standards of living,[11] it cannot afford to disregard foreign investment as a possible solution to a sluggish economy. The absence of any clear theoretical framework by which to evaluate the impact of foreign investment, at least in part, highlights the futility of discussing the pros and cons of attracting transnational corporations into the country.[12] In contrast, authors of non-Uruguayan citizenship have written extensively on the topic of foreign investment in Uruguay. It is apparent that foreign investment, as a topic for analysis, is studied more widely in North America than in the South.[13] Perhaps this is because the countries that loan the

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10. The researcher who tackles the study of the effects of foreign investment in the country will be faced with several obstacles. One problem is the disorganized state of empirical data collected within the last decade. The researcher will be lucky if he can locate complete data. *See* Melgar, *supra* note 9, at 28. This lack of organized empirical data could be the fault of either the academicians, who have never bothered to gather the information, or of the national authorities, who have never made the data available in the first place. A second difficulty is the broadness of the topic. One could write a lengthy dissertation on any of a number of components of foreign investment (i.e., ownership industries, technology transfer, or cultural impact).

The interrelation between law, politics and economics creates additional problems. A multidisciplinary approach is in order to ensure a complete and comprehensive analysis. *See* J. BARTON & B. FISHER, INTERNATIONAL TRADE AND INVESTMENT 25-29 (1986).

11. U.N. ECON. COMMISSION FOR LATIN AM. AND THE CARIBBEAN, I ECONOMIC SURVEY OF LATIN AMERICA AND THE CARIBBEAN 1984 617, U.N. Doc. LC/G1398, U.N. Sales No. E.86.II.G.2 (1986).

12. *See* Vagts, *The Multinational Enterprise: A New Challenge for Transnational Law*, 83 HARV. L. REV. 739, 757-58 (1970).

> A definite indication of the difficulties host governments face in dealing with the [multinational enterprise] is their failure to articulate their concerns about it. Instead provocative slogans about foreign . . ."control," "domination" or "challenge" substitute for analysis. Even when studies are done to illuminate the issues . . . there is a tendency to revert to sweeping generality at the political level.

Id. This dilemma is seen especially in legislation which tends to be vague and unable to effectively assist in "orderly development . . . and apt to produce compromises . . . ." *Id.* at 758.

13. *See* R. DELORME, LATIN AMERICA, 1979-1983: A SOCIAL SCIENCE BIBLIOGRAPHY (1984).

money are more intellectually curious about the impact of foreign investment than are the countries that receive it.

It is necessary to begin an analysis of foreign investment in Uruguay with a look at the country's economy and its foreign investment history. This will enable us to build a general framework for the entire study. The first question must be then what Uruguay's needs are in terms of foreign investment. In answering that question one must focus on the role that foreign investment may play in the country, in light of those identified needs. The analysis, of course, may lead to vastly different conclusions. Foreign investment may be beneficial to achieve national goals, or it may not. Uruguay may need foreign investment only in certain areas, or foreign investment may be beneficial only under severe constraints.[14] Once the basic needs of the country are determined, a more crucial question must be posed. How should Uruguay's legislation respond to those needs in terms of foreign investment? Uruguay's needs should define the role that foreign investment will play, and in turn that role should provide the guidelines for the regulation of the investment.[15]

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14. There are a number of alternative conclusions, but for purposes of this article it is not necessary to list each one. For a more comprehensive examination of those alternatives see LaPalombara & Blank, *Multinational Corporations and Developing Countries*, 34 J. INT'L AFF. 119 (1980); C. OMAN, NEW FORMS OF INTERNATIONAL INVESTMENT (1984); INVESTING IN DEVELOPMENT: NEW ROLES FOR PRIVATE CAPITAL (T. Moran ed. 1986).

15. During the 1960s and early 1970s, the United States was the setting of a "law and development" movement. *See* Trubek & Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062, 1065 (1979)(for a history of the movement). The "law and development" movement is only one of several methods used to analyze foreign investment regulations. The "descriptive-national" approach focuses on the difficulties of interpreting the various norms. The two general studies done in Uruguay to date are in this category. *See* N. RODRIGUEZ OLIVERA, LA LEY DE INVERSIONES EXTRANJERAS (1974); J. ZERBINO CAVAJANI, TRANSNATIONAL CORPORATIONS; URUGUAY'S EXPERIENCE (1981)(presented at the World Association of Lawyers, Tenth Meeting on the Law of the World, São Paulo, Brazil). *See, e.g.*, Aranovich & Hewko, *Argentine Laws on Foreign Investments and the Transfer of Technology*, 21 INT'L LAW. 379 (1987)(discussion of principal provisions of Argentine legislation regulating foreign investment).

The "descriptive-comparative" method compares the regulation in question with provisions enacted in other systems. *See* J. Bruchou, Foreign Investment in Argentina: A Comparative Analysis with the Andean Code (1985) (unpublished manuscript). The main thrust of the movement was a study of the relationship between law and development in developing countries. The intellectual components of the movement are "the [search] for law reform, the emergence of an interest in law and society, and its various components . . . [and] the notion of social engineering through law . . . ." *See* Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457, 461-67 (1977). The author includes a bibliographical appendix of works on law and development. *Id.* at 484-89.

This paper will address Uruguay's general economic framework and then examine whether foreign investment is capable of conforming to the country's domestic needs. The focus will then shift to the role that foreign investment should play and what constraints, if any, ought to be placed upon foreign investment. A review of current foreign investment regulation and policy implications follows. Finally, and most importantly, this paper will attempt to answer the question of how the law should respond to developmental goals in terms of foreign investment in Uruguay.[16]

II. THE ECONOMIC FRAMEWORK OF FOREIGN INVESTMENT IN URUGUAY

A. *Summary of Uruguay's recent economic and foreign investment history*

Up until the 1970s, Uruguay was a democratic island in the midst of Latin America.[17] Uruguay, situated between Argentina and Brazil, has "consistently maintained [a delicate balance in its foreign policy towards the two] from the first days of [its] creation

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See also M. FLORY, DROIT INTERNATIONAL DU DEVELOPPEMENT 12, 31 (1st ed. 1977) (an interesting view on the instrumentalist role of law with respect to development); Turner, *Canadian Regulation of Foreign Direct Investment*, in REGULATING THE MULTINATIONAL ENTERPRISE 5 (B. Fisher & J. Turner eds. 1983) (a related approach that analyzes the regulation in light of its policy and the political problems that it faces). For all practical purposes, the movement has come to an end. An examination of the movement suggests that law and lawyers are instrumental in the search for a path toward development. Law not only regulates the relations among people, but also may assist in achieving certain desired objectives or "developmental goals." The role of law must not to be overestimated. Law by itself, is incapable of bringing about development; it is just one tool among many. To the extent that the focus is on the needs of the country and the role that foreign investment may accomplish the satisfaction of those needs, the present study adopts a law and development perspective. Indeed, the main question, how the regulation should respond to the country's requirements concerning foreign investment, is a typical law and development question.

16. Because the objective of this article is merely to provide a framework for the analysis of foreign investment regulation, this is not a comprehensive treatment of the topic. Therefore, the impact of The Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and several related legal issues have been omitted. It should be emphasized that this is not an economic work. Rather, the purpose of this article is to introduce a fresh twist to the study of foreign investment. *See generally* Fontheim & Gadbaw, *Trade-Related Investment Requirements* in REGULATING THE MULTINATIONAL ENTERPRISE 75 (B. Fisher & J. Turner eds. 1983) for a discussion of trade-related requirements placed on foreign direct investments by national governments and how they sometimes violate GATT provisions).

17. E. KAUFMAN, URUGUAY IN TRANSITION: FROM CIVILIAN TO MILITARY RULE 1 (1979). Uruguay was known as the "Switzerland of South America" due to its collective executive system. *Id.*

. . . ."[18] Being a small country, Uruguay's development is dependent upon the world market.

The three main phases of economic development in Uruguay up to 1985 can best be described in terms of the fiscal philosophy of those in power at the time. The initial phase, spanning the years 1850 to 1930, was one of "outward development," an era of active exporting and importing. Uruguay's early economic development was heavily influenced by Western European ideas of capital, and English investment in the country was substantially concentrated in the financial and public sectors.[19] Development of the primary sector, especially livestock production, was a major focus. After World War I, both England and the United States invested in the livestock sector. Foreign investment was at an all time high.[20] As exports increased and production grew, so did industrial product imports.

The stock market crash of 1929 marked the introduction of the second economic period. Battered about by poor world financial conditions, Uruguayan economists proposed and implemented a program for the country that was a complete reversal of previous developmental tactics. "Inward development" and "self-reliant growth" became the predominant themes of the economic programs. United States investment in Uruguay increased in comparison to England, primarily in the manufacturing and financial sectors.[21] A decline in exports resulted in an inevitable reduction of imports. Uruguay adopted a strategy of import substitution, and during the 1930s and 1940s it appeared to be effective.[22] However, in the mid-50s, due primarily to the fall of international meat and wool prices, economic stagnation set in.[23] This stagnation remained

18. *Id.* at 15.

19. Melgar, *supra* note 9, at 27. English investors created the Banco Maua, Banco de Londres and Banco Italiano and purchased the entire rail system in 1876.

20. *Id.* at 28.

21. *Id.*

22. M. FINCH, A POLITICAL ECONOMY OF URUGUAY SINCE 1870 220 (1981). The gross national product increased and the average standard of living was high. During this time, Uruguay had the highest per capita income of all the Latin-American countries. *Id.*

23. *Id.* at 223. Between 1945-50 the annual rate of growth of the total GDP was 5.4%. The GDP per capita for the same period was 4.0%. Between 1965-70 the GDP was 2.2% and the GDP per capita was a mere 0.9%. *Id.* The livestock and agricultural sector represented 20.4% of the total GDP for the years 1935-45. For those same years, manufacturing represented 17.5%, construction represented 3.4% and services represented 58.7%. For the years 1965-69 the percentages were 12.0, 25.6, 3.0 and 59.4 respectively. I. WONSEWER & J. YOUNG CASARAVILLA, URUGUAY EN LA ECONOMIA MUNDIA 47 (1981). Inflation increased and the unemployment rate escalated from 3.5% in 1957 to 10.0% in 1965. *Id.* at 51. Finally, while

a distinguishing feature of Uruguay's economy for the next twenty years.[24]

In June 1973 the military took power by way of a coup d'etat.[25] Eliminating all opposition, the military government introduced a neo-liberal economic planning model.[26] Although this period was characterized by constant change, some basic underlying policies were evident.[27] A clear preference for export production, in terms of gearing the domestic market to the requirements imposed by the international market upon the Uruguayan streams of international trade, was evident. Price restructuring, favoring exports over internal consumption, was also employed. Private entrepreneurs and export production became the agents of economic growth. An attempt was made to liberalize the economy in order to increase its openness toward foreign capital. Foreign capital was envisioned as an important key to future economic development in Uruguay.

After employing this approach for two years, the government was rewarded with some improvements in the economy. The gross domestic product (GDP) grew, exports multiplied, and there was a general increase in investment.[28] Despite this initial positive result, however, unemployment rose, income distribution differences grew even more pronounced, the balance of payments deteriorated, the country's foreign debt increased, and the livestock and agricultural sector began to stagnate once again.[29] Although the Foreign Investment Act allowed for huge inflows of foreign capital, the capital that did enter Uruguay was mostly in the form of financial loans rather than direct investment.[30]

Uruguay's exports accounted for 0.44% of the world market in 1950, by 1973 they represented only 0.06%. Diaz, *La Historia Reciente (2)*, 388 BUSQUEDA 23 (June 25, 1987).

24. M. FINCH, *supra* note 22, at 220. As a result of the stagnation, income distribution was adversely affected, especially in the rural labor sector. However, foreign investment reached $172 million in 1961. Melgar, *supra* note 9, at 28.

25. E. KAUFMAN, *supra* note 17, at 1. This "autogolpe" or self-coup was a relatively slow process compared with most military takeovers in Latin America. One-by-one the country's institutions came under military domination. *See* McDonald, *Confrontation and Transition in Uruguay*, 84 CURRENT HIST. 57 (1985).

26. L. FAROPPA, POLITICAS PARA UNA ECONOMIA DESQUILIBRADA: URUGUAY 1958-1981 37, 56, 68 (1982). Some terminological and other considerations related to the type of economic policy adopted by the militaries, may be seen in Diaz, *El pasado reciente (3)*, 389 BUSQUEDA 2 (July 2, 1987).

27. L. FAROPPA, *supra* note 26, at 39-53.

28. M. FINCH, *supra* note 22, at 221.

29. L. FAROPPA, *supra* note 26, at 62-66.

30. *Id.* at 96-98. The only exception to this was investment in the seaside resort of

In 1978 the struggle against inflation became top priority. Growth and increased inflows of capital were no longer the focus of economic strategies. The general "economic malaise of the country prompted the military rulers to change their economic policies by the late 1970s . . . [in an effort] to reverse the generally negative economic trends."[31] The GDP increased, export and investment expansion decreased, and private consumption declined as a result of exchange rate regulation.[32] The devaluation of the Uruguayan peso subjected import substitution industries to greater competition and export subsidies were cut. Interest rates escalated wildly, retarding productive activities on the one hand, and aggravating domestic debt on the other. These factors, coupled with the world crisis, caused a contraction in exports and consequently in employment.[33] The military was forced to restore civilian rule and to conduct, in 1984, the first national elections since 1971.[34]

B. *The current situation*

President Sanguinetti took office on March 1, 1985.[35] The military dictatorship had so severely damaged the economy that the country was virtually bankrupt.[36] Sanguinetti's administration im-

Punta del Este. According to information provided by the United Nations, gross inflows of foreign direct investment to Uruguay in 1978 accounted for $129 million. By 1980 this figure had reached $290 million. As a result, Uruguay became the fourth largest recipient of foreign direct investment, behind only Mexico, Brazil and Argentina. *See* U.N. CENTER ON TRANSNAT'L CORP., TRENDS AND ISSUES IN FOREIGN DIRECT INVESTMENT AND RELATED ISSUES, at 93, U.N. Doc. ST/CTC/59, U.N. Sales No. E.78.II.A.15 (1985)[hereinafter UNCTC, TRENDS AND ISSUES].

31. McDonald, *supra* note 25, at 58-59. The military renegotiated Uruguay's foreign debt from a position of weakness.

32. *Id.* at 85-88.

33. The entrepreneurial sector debt trebled during the years 1978-82. CENTRO DE INVESTIGACIONES ECONÓMICAS (CINVE), LA CRISIS URUGUAYA Y EL PROBLEMA NACIONAL 46 (1984). The foreign debt increased to US $4.6 billion by the end of 1984. OFICINA DE PLANEAMIENTO Y PRESUPUESTO, BALANCE DE LA SITUACION ECONOMICA EN LOS DOS ANOS DE REGIMEN DEMOCRATICO 1 (1987). The GNP fell 16% and unemployment reached it highest rate in the country's history between 1982 and 1985. Diaz, *Ajuste externo y recuperacion real*, 391 BUSQUEDA 2 (July 16, 1987).

34. McDonald, *supra* note 25, at 57. Poor economic conditions alone did not cause the military to decide to relinquish their control. The military government had promised, from the start, that civilian rule would be restored once conditions had stabilized. There was also great dissension within the country that spurred the government to shift towards democratic rule. *Id.* at 59.

35. BACKGROUND NOTES, *supra* note 1, at 4. In 1984 President Sanguinetti, leader of the Colorado Party, was elected for a five year term.

36. Chavkin, *Uruguay Under Civilian Rule: The Rough Road Back to Democracy*, 242 NATION 199-200 (1986).

mediately took steps to halt the economic decline and shortly thereafter initiated a phase of economic expansion.[37] A decrease in oil prices, a decrease in international interest rates, great demand from Brazil for Uruguay's primary exports, the fall of the US dollar in Europe and Japan, enhancement of the international prices for the main Uruguayan products, and an increase in tourism all played a part in the government's strategy.[38] A strong policy of export promotion and greater participation in the world market have helped to stabilize Uruguay's economy. Currently, economists predict a slowdown in the country's economic growth, mainly due to the deterioration in external factors.

C. *The economic problems: some issues*

With a territory of approximately 187,000 square kilometers and a population of a little less than 3 million people, Uruguay is a small country.[39] There is always a danger of overproduction in a country where both demand and consumption are low.[40] Consequently, it is often difficult for Uruguayan companies to reach a point where economies of scale might play a role. As Uruguayan manufacturers cannot rely exclusively on domestic consumption, they must seek other markets for their products.[41] Domestic producers, and therefore the entire economy, become dependent on volatile world prices.

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37. The GDP, following a decline of 17% between the years 1982-84, increased by 6.3% in 1986. By 1986, exports had grown by 23% and unemployment had decreased to 10.3%. OFICINA DE PLANEAMIENTO Y PRESUPUESTO, *supra* note 9, at 4. The level of real wages increased by four percent in 1986. Address by Ricardo Pascale, Academia Nacional de Economia (May 19, 1987). A critical review of these figures may be found in G. ARCE & D. OLESKER, LAS TRANSNACIONALES Y EL CAPITALISMO URUGUAYO 93-104 (1987)).

38. 414 BUSQUEDA 16 (Dec. 23, 1987). Sanguinetti's party is seeking to attract new loans and foreign investment. An "infusion of new capital, they believe, will rehabilitate and streamline industries involved in the output of basic export commodities such as livestock products, wool, textiles and leatherware - for which there has been a shrinking and increasingly competitive world market since the mid-1950s." Chavkin, *supra* note 36, at 200.

39. A. MORRIS, *supra* note 7, at 151. *See* I. WONSEWER & J. YOUNG CASARAVILLA, *supra* note 23, at 9-13 (discussion about the problems of a small nation).

40. The country's resource base is also very limited. Uruguay lacks such resources as coal, petroleum and gas. A. MORRIS, *supra* note 7, at 151. However, they do have supplies of iron ore, gold, manganese, copper, lead and zinc. WORLD OF INFORMATION, LATIN AMERICA & CARIBBEAN REVIEW 1985, 143 (1985).

41. Veliz, *Latin America's Opening to the Pacific* in LATIN AMERICA AND WORLD ECONOMY: A CHANGING INTERNATIONAL ORDER 121 (J. Grunwald ed. 1978). "Agricultural exporters, such as . . . Uruguay are naturally interested in discovering extra-Latin American markets for their products . . . ." *Id.* at 124.

Uruguay's entry into the world capitalist system began in the late 19th century. Uruguay's role in the world market, at that time, was basically as a supplier of raw materials and food products. This trend has continued and the nation's economy fluctuates with world demand of Uruguay's primary exports.[42] Dependence upon world demand has tended to shape the Uruguayan economy and its economic policies. The 1974 oil crisis and the fall of meat prices, for example, prevented Uruguay from aggressively pursuing an expansion of their more competitive products.[43]

Uruguay's economy is also vulnerable to economic policy decisions made by its closest neighbors, Argentina and Brazil. When Brazil closed its market in 1987, for example, Uruguay felt the sting in its export sector.[44] This hyper-sensitivity to external conditions results not only in lower prices for Uruguay's traditional export products, but also greater difficulty in penetrating foreign markets, especially the European Community and the Middle East.[45]

The level of capital formation in the economy is inadequate. During Sanguinetti's first year in office, gross investment accounted for less than eight percent of the GDP. In contrast, the consumption of capital was ten percent of the GDP. There was an increase of gross investment during the following year, but it has remained below ten percent.[46] Interest rates for the years 1978-1982 were very high and thus discouraged productive investment. It was much more profitable to invest the capital in the financial sector. This preference for the financial sector, in combination with the exchange rate policy alterations in November 1982, resulted in heavy capital flight and an increase in the foreign debt.[47]

With the establishment of the democratic government, the

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42. L. MACADAR, URUGUAY 1974-1980: UN NUEVO ENSAYO DE REAJUSTE ECONOMICO 44-45 (1982).

43. CINVE, LA INDUSTRIA FRENTE A LA COMPETENCIA EXTRANJERA 31-32 (1987). *See* text accompanying *supra* notes 38-44 (discussion of the historical fluctuations in Uruguayan prices due to world demand).

44. CINVE, *supra* note 43, at 31.

45. *See* Vasallo, *Uruguay: Deterioro del Sector Agropecuario*, 303 PANORAMA ECONOMICO LATINOAMERICANO 9-10 (1986).

46. Diaz, *Los derechos de propiedad en crisis*, 400 BUSQUEDA 2 (Sept. 17, 1987).

47. *See* CINVE, *supra* note 33, at 235. Private investors did not feel secure in the sociopolitical environment and this also contributed to the capital flight. In many cases capital is invested solely in foreign banks who in turn open accounts aboard. *See generally* de Melo & Tybout, *The Effects of Financial Liberalization on Savings and Investment in Uruguay*, 34 ECON. DEV. & CULTURAL CHANGE 561 (1986).

right to strike was restored. Critics have argued that strikes have had the effect of discouraging both domestic and foreign investment.[48] The decrease in investment level has also been attributed to certain recently enacted statutes that provide a debt moratorium and suspend the performance of other credit rights.[49]

Uruguay has "a vast agricultural resource in the soil of the Pampas, but this wealth has yet to be properly tapped . . . ."[50] Uruguay's livestock and agricultural sector has been stagnant now for more than forty years.[51] This condition has been characterized as a "dynamic stagnation." The sector is seen as stagnating because growth in the sector is clearly insufficient, yet dynamic because some changes in the form of production have taken place.[52]

One of the factors that has affected and still affects the livestock and agricultural sector is its dependence upon the world market. But it is believed generally that the stagnation is due to a technological deficiency rather than a purely economic stagnation. Growth of this sector through increased use of Uruguay's natural resources is impossible. All of Uruguay's arable land is, and has been since the beginning of the century, under production. Therefore, increased productivity can only take place through the introduction of new technology.[53] Uruguay experiences significant migration from rural to urban areas and therefore stagnation in this sector leads to instability of the rural infrastructure.[54]

At the end of 1986, Uruguay's gross foreign debt amounted to US$ 5.2 billion or US$ 1,700 per capita.[55] Despite Uruguay's punctuality in meeting its debt service obligations, the issue of whether the foreign debt should be paid at all is heatedly debated in Uru-

48. *See* BUSQUEDA, *supra* note 38, at 20.

49. Diaz, *supra* note 46, at 2.

50. A. MORRIS, *supra* note 7, at 151. Agriculture in Uruguay is largely devoted to livestock production rather than to crops. *Id.* Approximately 10-12% of the total country is cultivated arable land and 70-75% pasture land. WORLD OF INFORMATION, *supra* note 40, at 143.

51. Alonso & Perez Arrarte, *Adopcion de Tecnologia en la Ganaderia Vacuna Uruguaya*, in EL PROBLEMA TECNOLOGICO DEL URUGUAY ACTUAL 285 (CINVE & CIESU eds. 1981).

52. Barbato de Silva, *El Proceso de Generacion, Difusion y Adopcion de Tecnologia en la Ganaderia Vacuna Uruguaya*, in EL PROBLEMA TECNOLOGICO DEL URUGUAY ACTUAL 242 (CINVE & CIESU eds. 1981).

53. CINVE, *supra* note 33, at 115, 123.

54. *See* Vina, *Indicadores Sociales del Uruguay*, 25 PUBLICACION DEL CENTRO LATINOAMERICANO DE ECONOMIA HUMANA 53, 58 (1983).

55. *See* Diaz, *La deuda externa*, 397 BUSQUEDA 2 (Aug. 27, 1987).

guay.[56] Although foreign debt is not considered the main "problem" of the country, debt-servicing is a significant burden.

The country has been afflicted with a public sector deficit for decades. Although the deficit has been reduced, it accounted for 4.9% of the GDP in 1986.[57] Public enterprises have generated substantial losses.[58] The few public enterprises in Uruguay are considered inefficient, a source of capital drain, and in dire need of change. Several options, including privatization, joint venture between private and public capital, and internal restructuring have been suggested.[59]

Tourism is also an important source of revenue, yet Uruguay lacks a major tourist infrastructure.[60] Uruguay's seaside resorts attract numerous visitors each year but generally only do a healthy business in the summer months.[61] Tourism is limited by the lack of facilities.[62] In addition, most of the tourists that do bask on Uruguayan beaches are Argentinian and Brazilian.[63] This in itself is no cause for concern, but there might be a tendency to link the success of Uruguay's tourism sector to the health of these two countries' economies.

The mining sector also deserves attention. Uruguay has no pe-

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56. *See* Chavkin, *supra* note 36, at 201. Protests by Uruguayans against the foreign debt have intensified. Many of the buildings in the center of Montevideo, the capital of Uruguay, are covered with posters declaring, "Save our Country, Do not pay the Foreign Debt." *Id.*

57. OFICINA DE PLANEAMIENTO Y PRESUPUESTO, *supra* note 9, at 4.

58. Interview with Ariel Davrieux, Director of the Secretariat of Planning and Budget, in Montevideo, Uruguay, 3 PUNTO Y APARTE 45 (Sept. 1987). The electricity company and the telephone company are examples of public enterprises.

59. *See, e.g.*, Batalla, *Reflexiones Sobre el Estado y la Modernizacion*, 2 PUNTO Y APARTE 87 (Aug. 1987).

60. A. MORRIS, *supra* note 7, at 157. Uruguay now earns over 10% of her foreign exchange from tourists.

61. As Uruguay is geographically located below the Equator, January and February are the summer months.

62. Development of a hotel infrastructure is under consideration. U.N. CENTER ON TRANSNAT'L CORP., TRANSNATIONAL CORPORATIONS IN INTERNATIONAL TOURISM at 2, 57 U.N. Doc. ST/CTC/18, U.N. Sales No. E.82.II.A.9 (1982) [hereinafter UNCTC TRANSNAT'L CORP. IN INT'L TOURISM). As to the development of a hotel infrastructure, under the Uruguayan debt-equity program, two investment projects involving the construction of a five star hotel in Montevideo were submitted for consideration by the Secretariat of Planning and Budget. *See* 428 BUSQUESDA 18 (Apr. 7, 1988).

63. A. MORRIS, *supra* note 7, at 157. There are plans to construct bridges between Argentina and Uruguay and to improve roads to Brazil in an effort to increase the flow of tourists from these neighbors. *Id.* It is estimated that over 1.1 million visitors come to Uruguay each year. The majority come from Argentina. WORLD OF INFORMATION, *supra* note 40, at 143.

troleum, but has abundant resourses in non-metallic minerals. In order for the country to fully exploit these resources, new technololgy must first be introduced.[64] Transnational corporations could theoretically make significant contributions to this sector through the transfer of skills, knowledge of products and production techniques.

III. URUGUAY'S CONDITION AND FOREIGN INVESTMENT

What impact will foreign investment have upon the problems and needs discussed in the previous section? Will foreign investment alleviate any of those problems? No easy solutions exist. Obviously, foreign investment will not bring instant wealth nor will it by itself substantially improve the country's economic condition. Foreign investment is just one way to influence the economic health of Uruguay. The desired economic development will not result exclusively by relying on only one tool, but by implementing a comprehensive program that includes many different strategies.

A. *Size of the market and foreign investment*

Uruguay must strive to minimize the drawbacks of the small marketplace by actively pursuing new export markets.[65] The local market has a natural ceiling and once reached, cannot absorb any increase in production. Therefore, if the economy is to grow, new outlets must be found for increased production. An export promotion policy would be one way to create outlets. President Sanguinetti's administration is currently employing this type of strategy. Serious efforts are being made to strengthen trade integration with both Argentina and Brazil.[66] In addition, the current

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64. *See* D. ASTORI, R. ZERBINO, J. RODRIGUEZ LOPEZ & A. TISNES, *supra* note 9, at 51.

65. *See* Diaz & Helleiner, *Developing Countries and Reform of the World Trading System* in THE NEW PROTECTIONIST THREAT TO WORLD WELFARE 505-25 (D. Salvatore ed. 1987).

> [Less Developed Country's (LDC)] export earnings are . . . the means to obtain, typically from industrialized countries, key development inputs that would be very expensive to produce at home. Expanding export earnings are also crucial for the smooth management of LDC external debt and for the attraction of fresh foreign loans and investments . . . [E]xports are also major determinants of their capacity to import and, consequently, to grow."

Id. at 509.

66. *See generally* French-Davis, *The Andean Pact: A Model of Economic Integration for Developing Countries* in LATIN AMERICA AND WORLD ECONOMY: A CHANGING INTERNATIONAL ORDER, 165 (J. Grunwald ed. 1978). Regional integration consists of a group of countries joining forces to expand their export markets and "to take full . . . advantage of the

administration is aggressively searching for new markets in which to compete.[67]

The impact of transnational corporations on developing countries' exports is not easy to ascertain. Some reports suggest that transnational corporations impact only slightly on developing economies, while others describe a substantial contribution.[68] However, it is apparent that co-production, one of the forms that exports may take, is growing. In 1981, co-production accounted for fifteen percent of United States imports of manufactures; twenty-two percent of those from developing countries.[69] The trend is also transideological, inasmuch as socialist countries are promoting export assembly operations within their borders.[70]

Transnational corporations generally establish themselves in the most industrialized countries of the target region. Argentina and Brazil are natural milieus for such investment. Prior to any investment, however, the transnational corporations examine the risk involved and the stability of the target country. Uruguay is considered one of the more stable nations in the region. It is more politically stable than Argentina and has greater economic soundness than Brazil.[71]

There are side effects to transnational corporation involvement in the export markets. Once transnational corporations get involved in production within the country, the assembly production sometimes evolves into an enclave of foreign interests. Often

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international division of labor." *Id.* at 165-66. This type of arrangement is clearly the "most realistic option for small countries, given their need to export and to overcome the practical difficulties of obtaining ready access to world markets." *Id.* at 166-67. Argentina is a member of the Latin American Integration Association (LAIA) which links seventeen South and Central American countries.

> Efforts to achieve a regional free trade area have been dropped in favor of a system of a bilateral tariff preference agreement between each pair of member countries. Tariff concessions are arranged in accordance with a hierarchy of more developed, less developed and least developed countries. Uruguay is considered one of the less developed countries.

DUN'S MARKETING SERVICES, *supra* note 8, at 1383.

67. *See* Ferrere, *The Uruguayan-Argentinean Trade Co-Operation Agreement*, 18 J. WORLD TRADE L. 320 (1984)(discussion of the trade regime established between Argentina and Uruguay).

68. *See* Bennett & Sharpe, *La Industria Automotriz Mexicana y la Politica Economica de la Promocion de Exportaciones. Algunos Problemas del Control Estatal de las Empresas Transnacionales*, in 2 INDUSTRIALIZACION E INTERNACIONALIZACION EN LA AMERICA LATINA 208 (F. Fajnzylber ed. 1981).

69. THE GLOBAL FACTORY 7 (J. Grunwald & K. Flamm eds. 1985).

70. *Id.* at 229.

71. The Miami Herald, Apr. 17, 1989, Business Monday, at 27.

the host country's other enterprises are alienated in the process. Although this has been the case in Mexico, it is not the general tendency.[72] As a rule, links between transnational corporations and the rest of the economy have been stronger than the critics acknowledge.[73] Co-production has also tended to create an industrial structure that is dependent on demands and markets entirely foreign and over which the host country has no control. But this is applicable to every type of export, and evidence shows that recessions in the United States had only small negative effects on assembly production abroad.[74] Despite the debate, assembly production is more likely to generate employment, create income, and improve the balance of payments of the host country.[75]

Exports, both to neighbors and other industrialized countries, are a way of resolving market size problems. Foreign investment may accomplish positive results. It must be emphasized that the principles discussed above apply only to the manufacturing sector. The manufacturing and services sectors in developing countries generally receive the greatest influx of foreign investment.[76] These sectors are highly labor intensive, at least in some of the production stages, and due to an abundance of labor in the country, Uruguay will achieve somewhat of a competitive advantage. Uruguay's major exports currently are agricultural goods, fertilizers, textiles, consumer goods and machinery.[77]

B. *Dependency upon foreign factors and foreign investment*

The plunge in international prices of Uruguay's traditional export products, and the closing of several markets due to protectionist measures created serious problems for the country. Transnational corporations obviously cannot solve the international price puzzle, but they may be able to make foreign markets more accessible to the Uruguayan manufacturer.

First, foreign subsidiaries have greater access to market information, distribution channels, and international marketing skills than do domestic firms in developing countries. Transnational cor-

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72. THE GLOBAL FACTORY, *supra* note 69, at 228, 232.
73. *Id.*
74. *Id.* at 233-34.
75. *Id.* at 226-28.
76. *See* UNCTC, TRENDS AND ISSUES, *supra* note 30, at 28.
77. DUN'S MARKETING SERVICES, *supra* note 8, at 1381.

porations generally form part of a multinational group or network of affiliates which, operating with varying degrees of interrelationship, have greater expertise and broader exposure to worldwide competitive markets. This advantage is directly proportional to the height of the marketing entry barrier of the product.[78]

Second, the United States, a country that receives large amounts of Latin American exports each year, has a tariff system in force that permits the duty free re-entry of components sent abroad for processing or assembly.[79] Transnational corporations are in the best position to take advantage of this system. By the same token, transnational corporations may begin demanding such concessions from other countries and may attempt to prevent the introduction of non-tariff barriers and increasingly high tariff rates.[80]

C. *Lack of investment and foreign investment*

Proponents of foreign investment argue that transnational corporations could provide Uruguay with much needed capital. However, actual capital contribution by transnational corporations may not be as large as one would imagine. Investment contribution could be small where a transnational corporation operates with extensive credit and relatively little capital. The infusion of capital in the form of direct investment corresponds to the stages in which

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78. De la Torre, *Foreign Investment and Export Dependency*, 23 ECON. DEV. & SOC. CHANGE, 133, 137, 140 (1974-75).

79. Tariff item #806.30 provides:

> Any article of metal . . . manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing . . . is returned to the United States for further processing . . . [shall have a duty] imposed upon the value of such processing outside the United States rather than the entire article.

The Tariff Act of 1930, 19 U.S.C. §1202 (1930).

In addition, tariff item #807.000 provides:

> Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form . . . and (c) have not been advanced in value or improved in condition abroad except by being assembled . . . [shall have a duty] upon the full value of the imported article, less the cost or value of such products of the United States.

Id.

80. Helleiner, *Manufactured Exports from Less-Developed Countries and Multinational Firms*, 83 ECON. J. 21, 32 (1973).

the plant is settled. Further expansion is defrayed with generated earnings and local resources.[81] The privileged position of transnational corporations enables them to gear themselves, to a great extent, toward locally borrowed savings.

Even where the direct capital contribution of a parent firm is not in the form of cash but in the form of capital goods or capitalized intangibles,[82] these payments in kind may be subject to arbitrary valuation.[83] It must be kept in mind that in terms of real capital flow[84] between Latin America and the United States, Latin America has always been in a negative position. Profits remitted in the past have exceeded fresh capital.[85] In light of the political instability in Latin America during the 1960s and 70s and the effect of that instability on foreign investment, it is unlikely that transnational corporations will actively pursue projects requiring significant amounts of capital. Instead, they might prefer forms of investment which require only minor infusions of capital.

Assuming that foreign investment might indicate an increase in the flow of important capital, this alone is not enough to suggest an alternative foreign investment policy. A plan that would routinize the manner of allocation and identification of sectors in need of funds is desperately needed. However, the welfare effect of additional capital is not independent of that capital's allocation. Negligently allocated capital could adversely affect the country's welfare.[86] A more efficient approach would be to identify specific sectors or problems that would benefit most from foreign investment and provide the greatest incentives for investment in those areas.

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81. Fajnzylber, *Las Empresas Transnacionales y el Sistema Industrial de Mexico*, in 1 INDUSTRIALIZACION E INTERNACIONALIZACION EN LA AMERICA LATINA 498 (F. Fajnzylber ed. 1980).

82. For example, company know-how or a company brand-name would be viewed as a capital intangible.

83. S. LALL, DEVELOPING COUNTRIES AND MULTINATIONAL CORPORATIONS, 28 (1967) (Commonwealth Economic Paper No. 5).

84. Capital flow can be viewed as new capital from the United States less remittance of profits to the United States.

85. Bitar, *La Inversion Extranjera en America Latina*, in EL PERU FRENTE AL CAPITAL EXTRANJERO; DEUDA E INVERSION 90 (E. Ferrero Costa ed. 1985).

86. Diaz-Alejandro, *Direct Foreign Investment in Latin America*, in THE INTERNATIONAL CORPORATION 325 (C. Kindleberger ed. 1970).

D. Livestock and agricultural sector stagnation and foreign investment

The livestock and agricultural sector are in dire need of technological change. A common basis for success in achieving rapid growth in livestock and agriculture productivity is the capacity to generate ecologically adapted and economically viable technology.[87]

Transfer of technology is one way to achieve efficiency in this sector. The process involves adapting imported technology to the specific environmental conditions and the various ecological regions of the country. It is crucial that developing nations either generate their own technology, or at least assist in its development. Implementation problems would be alleviated considerably if knowledge of social and economic conditions within the country were considered during all of the developmental phases.[88] In most countries where rapid rates of technical progress have been seen in the livestock and agricultural sector, "socialization" of the research has been deliberately employed as an instrument of modernization.[89] The most successful experiments in introducing technology into developing countries have always included a process by which institutional innovations, such as the provision of publicly supported agricultural education and research systems, were developed to facilitate technological changes.[90]

Foreign investment alone appears to have little to contribute in solving the livestock and agricultural sector stagnation problem. Although some technology will naturally accompany the introduction of foreign investment, it would only bring short-term relief. One way to achieve long-term gains would be to develop national research systems that would strive to adapt foreign technology to Uruguay's particular needs.

E. Foreign debt and foreign investment

One could argue that foreign investment is the solution to Uruguay's debt crisis. By encouraging foreign investment the coun-

87. *See generally* Y. Hayami & V. Ruttan, Agricultural Development, An International Perspective (2d ed. 1985).

88. *See* U.N. Center on Transnat'l Corp., Transnational Corporations in the Agricultural Machinery and Equipment Industry, at 103, U.N. Doc. ST/CTC/24, U.N. Sales No. E.83.II.A.4 (1983)(discussion on agricultural machinery).

89. *Id.*

90. Y. Hayami & V. Ruttan, *supra* note 87, at 87, 250.

try would experience an influx of hard currency that could be used to ease the debt burden. But it is unclear whether foreign investment would result in a problem-free infusion of fresh capital into the economy or merely add to the existing dilemma.

The debt-to-equity swap[91] has been hailed by some as the solution to the foreign debt crisis. The formula seems designed to please everyone.[92] In general terms, creditors unload doubtful loans, investors gain easy access to interesting assets, and the debtor countries rid themselves of part of their external debt.[93] From the debtor countries' perspective, debt-to-equity swaps can serve to reduce both outstanding debt and annual debt service burdens, encourage equity investment flows over and above those which the country would otherwise obtain, and function as a mechanism for the repatriation of flight capital. In addition, debt-to-equity swaps may be seen, in certain circumstances, as facilitating the move towards privatization of public enterprises.[94]

On December 30, 1987, the Uruguayan Executive Power enacted a debt-to-equity swap program.[95] Throughout Latin America, approximately US$ 5 billion has been swapped for equity since 1982, slightly more than one percent of the region's total debt.[96] A

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91. *Recent Development, International Debt: Debt-to-Equity Swaps*, 28 HARV. INT'L L.J. 507 (1987) (authored by Tina Hofmann)[hereinafter *Recent Development, International Debt*]. A foreign company proposes a debt-to-equity transaction to the government of the debtor country. Once the government approves the proposal, the company purchases foreign-currency-denominated debt for the country through an intermediary bank in the international debt market. The company may acquire these debt instruments at a substantial discount, perhaps 60-70% of face value. The company then presents the instrument to the central bank of the debtor country for redemption in local currency converted at the official exchange rate. The amount of domestic currency obtained will be greater than the amount the company paid for the original debt instrument; in some instances, as much as face value. The debtor country officially retires the debt and the company uses the local currency to make an equity investment in the country.

92. Bucheit, *Converting Sovereign Debt into Equity Investments*, INT'L FIN. L. REV., Sept. 1986, at 10. The debt-to-equity swap program has been labelled "universal happiness" by those who have employed it.

93. *Debt-for-Equity Avenue under Review*, LATIN AM. WEEKLY REP., at 6-7 (Aug. 1987) [hereinafter LATIN AM. WEEKLY REP.]).

94. Address by J. de la Chauviniere, Vice President of Bank of America, Pan American Society (Nov. 23, 1987). *But see Recent Development, International Debt*, *supra* note 91, at 512, 515. Some critics argue that the money would probably have been invested even in the absence of the debt-to-equity schemes. They point out that by allowing debt-to-equity swaps, governments needlessly prepay outstanding debt and allow the investor, rather than the country, to take advantage of the discounts. Moreover, issuance of domestic currency may trigger inflationary pressures.

95. Discussed *infra* text accompanying notes 128-132.

96. LATIN AM. WEEKLY REP., *supra* note 93, at 7. Chile has been most successful, con-

debt-equity swap can be an extremely useful tool, however, it must be used in conjunction with other economic policies aimed at Uruguay's debt problems.[97] The sheer volume of the debt and strong resistance by foreign banks to swap proposals that involve capital loss and exchange of fixed-income instruments for high risk securities suggests that debt-equity swaps will have only a marginal impact. The market for Latin American debt is not large. Any increase in demand for these debt instruments may reduce the discounts at which they sell, thereby diminishing the attractiveness of swaps to potential investors.[98]

F. Public enterprises' deficit and foreign investment

Arguments about the potential role of foreign investment in public enterprises are encompassed in a broader discussion: the privatization of state-owned enterprises. The subject is argued heatedly in Uruguay and it has received endless attention by academicians.[99] Before the country turns to transnational corporations as a solution to the public enterprise dilemma, the cause of public enterprise undercapitalization should be determined. Does the problem arise as a result of ownership of the enterprises? Or does it arise as a result of market conditions? It has been suggested that the economic performance of these enterprises depends much more on competition and regulatory policy than on ownership per se.[100] All of these factors fail to address the ideological issues at stake.

Joint ventures between public local enterprises and foreign corporations have been most widespread in Brazil and Mexico. These projects have concentrated mainly in the petrochemical,

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verting close to one tenth of its debt.

97. M. Otero, Foreign Debt Equity Swaps, Chilean Experience 48 (1987) (unpublished manuscript).

98. U.N. CENTER ON TRANSNAT'L CORP., FOREIGN DIRECT INVESTMENT IN LATIN AMERICA; RECENT TRENDS, PROSPECTS AND POLICY ISSUES, at 20-21, U.N. Doc. ST/CTC/SER.A/3, U.N. Sales No. E.86.II.A.14 (1986). How should one evaluate the success of a debt-equity formula? Some part of the external debt may be reduced, but the debtor country has to reimburse the investor and such payment may create inflation. The issue of attribution remains to be answered. It is argued that the Chilean debt-to-equity program is successful, in the sense that part of the debt was canceled and investments were attracted. The question remains to be answered whether the attraction of foreign investment is due to the debt-equity system or to the apogee of Chilean exports.

99. *See, e.g.*, R. VERNON & Y. AHARONI, STATE-OWNED ENTERPRISES IN THE WESTERN ECONOMIES (1981)(bibliography).

100. Yarrow, *Privatization in Theory and Practice*, 2 ECON. POL'Y 324, 325 (1986).

steel and telecommunications industries.[101] Transnational corporations may provide important technological know-how and engineering, technical training, continued technical inputs, and specialized management.[102] Argentina, on the other hand, shows limited public enterprise-transnational corporation association.[103] Therefore, any participation in a joint venture between a Uruguayan public enterprise and a transnational corporation should only be pursued in the highly capital-intensive industries.

IV. THE REGULATION OF FOREIGN INVESTMENT IN URUGUAY

A. *The current system: an overview*

Uruguay has a tradition of "respecting foreign capital and honouring its international commitments . . . ."[104] However, prior to the enactment in 1974 of the Foreign Investment Act, there was no general discipline regulating foreign investment in Uruguay.[105] The Foreign Investment Act was developed so that the country would finally have a comprehensive scheme for the regulation of foreign investment. The Act was designed to conform with existing economic policies and recognized that foreign investment was a necessary requirement for the development of the national economy.[106]

The Act's major renovation was to offer a guarantee that annual profits would be freely remitted and that capital could be repatriated with ease. Authorities can deny the investor the protection of the Act if the investment does not promote national interests or contribute sufficiently to economic development goals.[107] In addition, the use of medium and long-term internal

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101. *See generally* P. GHOSH, DEVELOPING LATIN AMERICA: A MODERNIZATION PERSPECTIVE (1984).

102. U.N. CENTER TRANSNAT'L CORP., ARRANGEMENTS BETWEEN JOINT VENTURE PARTNERS IN DEVELOPING COUNTRIES, at 9, U.N. Doc. ST/CTC/SER.B/2 (1987).

103. E. WHITE, JOINT VENTURES OF PUBLIC ENTERPRISES IN ARGENTINA WITH OTHER DEVELOPING COUNTRIES 51 (1984).

104. *Uruguay: A Tradition of Freedom*, EUROMONEY 2 (Supp. 1989). Richard Zerbino, Minister of Economy and Finance is happy to report that Uruguay has never confiscated any foreign capital. *Id.*

105. *See* N. RODRIGUEZ OLIVERA, LA LEY DE INVERSIONES EXTRANJERAS 26-29 (1974). There were only some statutes reserving certain sectors of the economy to national capital, and also regulations of the Central Bank regarding the remittance of profits.

106. Report of the Executive Power to the State Council, in Diario de Sesiones del Consejo de Estado, No. 19.253, Mar. 19, 1974, at 150.

107. DUN'S MARKETING SERVICES, *supra* note 8, at 1385. This investment law "guaran-

credit was banned.[108]

There are many other regulations that govern foreign investment in Uruguay. For example, public water services and drainage works, railroads, alcohol and petroleum refineries, electricity and telephone, mail, and port facilities are reserved by statute to the public sector.[109] Activities such as broadcasting and mining exploration are reserved exclusively to nationals.[110]

The Act also provides that "foreign investment will be subject to the national regime."[111] Any dispute arising under the Act will be settled in national courts and under Uruguayan law.[112] Several other norms complete the juridical regime of foreign investment in Uruguay.[113] Of special importance are the Free Zones Act (FZA)[114] and the Debt-to-Equity Swaps Decree (DESD),[115] both enacted in December of 1987.

B. *Some comments on the Foreign Investment Act*

It is unlikely, in view of the liberalization of the exchange

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tees the convertibility and remittance of profits and invested capital, within the terms fixed by the investment contract." *Id.*

108. Statute No. 14.179, *supra* note 8, at art. 11. It is important to note that the statute provided a "right" and not an obligation to comply with its terms. An investor was not compelled to subject himself to the regime but if he desired to take advantage of the guarantee of convertibility and remittance of profits, he or she had to comply with the Foreign Investment Act regulations. *See* J. ZERBINO CAVAJANI, TRANSNATIONAL CORPORATIONS: URUGUAY'S EXPERIENCE 11 (1981). The investor could, however, opt not to comply with the Foreign Investment Act procedures and the remittance of profits would lose the guarantee. Shortly after the Act went into effect, the exchange market was liberalized. The guarantee of the Act was, therefore, no longer necessary. The foreign investor may now either apply for the "guarantee" of the Act, or may invest without doing so. In either case the remittance of profits will be liberal. Due to this development, the Act has been rendered essentially meaningless.

109. *See* COMCORDE, DOING BUSINESS IN URUGUAY 30 (1980).

110. N. RODRIGUEZ OLIVERA, *supra* note 105, at 109-14.

111. Statute No. 14.179, *supra* note 8, at art. 15.

112. *Id.* at art. 35.

113. The Industrial and Investment Agreement between Uruguay and the Republic of Paraguay, signed in 1978, establishes broad provisions in terms of the promotion of foreign investment. Statute No. 14.535. The Investment Incentives Agreement with the United States, entered into in 1983 relates to the insurance mechanism of foreign investment under the Overseas Private Investment Company (OPIC) and the disputes settlement. Statute No. 15.427. The Industrial Promotion Act, Statute No. 14.178 (1974) provides several tax and credit benefits with regard to the activities that the Act defines as "of national interest." The benefits of the Industrial Promotion Act are cumulative to those provided by the Foreign Investment Act. *See also* N. RODRIGUEZ OLIVERA, *supra* note 105, at 101.

114. Statute No. 15.921, D.O. (Uru. Jan. 26, 1988).

115. Decree 797/987, D.O. (Uru. Apr. 13, 1988).

market, that a foreign investor will apply for the protection of the Foreign Investment Act.[116] The benefits of the Act are now virtually non-existent. An investor can attain equivalent benefits without complying with the Act's convoluted and complex procedural regulations. In addition, the Foreign Investment Act fails to incorporate the foreign investment benefits available under the Industrial Promotion Act. If benefits are offered to the foreign investor, it would be logical to include those incentives in the Foreign Investment Act as that is most likely the legislation that an investor will review prior to making any investment decisions.

Capital allocation is the weakest link of the foreign investment scenario. Trying to determine which investments should be pursued will depend on compatibility with national interests. Problems arise due to a lack of a clear definition of what the "national interest" is.[117]

One area of concern is the amount of discretion granted to the Executive Power in awarding authorization for foreign investment. The system could get the reputation of being arbitrary and unfair if this power is not used carefully. Another worry is that the foreign investment legislation be clear and concise. Foreign investors, prior to making any investment decision, tend to examine the target country's foreign investment legislation for clarity and predictability. If the law cannot be understood, it is likely that the investor will elect not to invest in that country. In addition, the fact that there are no sectoral priorities delineated in the Act is cause for alarm. Capital investment must be encouraged in certain desirable sectors and discouraged in sectors that are considered too sensitive to huge influxes of foreign capital. Without a guiding hand from the legislators, any influx of foreign capital could turn out to be a detriment to the country's development rather than a boon.

The foreign investment system is implemented in a disjointed and spotty fashion. The Foreign Investment Advisory Unit initially screens every project. Once the project has received preliminary approval, however, the Economy and Finance Ministry Department supervises the actual investment.[118] There is obviously a lack of centralization. The two departments view the problem, not as a

116. *Uruguay: A Tradition of Freedom*, *supra* note 104, at 2.

117. In fact, the determination will be made pursuant to the more specific criteria provided in the Industrial Promotion Act, *supra* note 113, at §4.

118. Statute No. 14,179, *supra* note 8.

whole, but as disembodied sections.[119]

C. *The Free Zones Act of 1987*[120]

On December 10, 1987, the Uruguayan Parliament enacted the Free Zones Act (FZA).[121] The stated objectives of the FZA were "promoting investments, expanding exports, increasing employment, and encouraging the international economic integration."[122] The underlying philosophy of the FZA is the creation of an "industrial estate."[123] The hopes are that this "will generate new sources of employment, attract investments, increase our exports and introduce new technologies."[124] The goals of the FZA are admirable; however, there are some concerns that should be reviewed.

First, although the Parliamentary discussions regarding the FZA frequently alluded to the fact that the zones would attract investment and expand exports, how the zones would achieve such potential was never clearly articulated. The Legislative Power stressed the domestic side; the benefits that the zones may offer in terms of low wages and tax exemptions. It did not, however, sufficiently consider the international side effects: the international reorganization of the division of labor through the patterns of foreign assembly.[125]

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119. *See* S. LALL, *supra* note 83, at 57.

120. For the preparation of this section, I benefited from conversations with Jose Amado.

121. Statute No. 15.921, *supra* note 114.

122. *Id.* at art.1. Free industrial zones "offer important tax and regulatory benefits not found in regular commercial activities —goods can: move in or out without duty; be combined with others to form products that are not taxed as finished goods; be displayed for sale, or simply stored for future use; be imported, used to make something else, then be exported without tax levies." Meissner, *Mexican Border and Free Zone Areas: Implications for Development* in U.S.-LATIN AMERICAN TRADE RELATIONS - ISSUES AND CONCERNS 258-59 (M. Czinkota ed. 1983). In 1980 there were approximately 350 free trade zones in the world. *Id.* The zones were created in order to promote ideas of developing industrial, commercial, and service activities.

123. Exposition of Motives by the Representatives Elias Porras and Ruben Frey, in Diario de Sesiones de la Camara de Representantes, No. 1.936, t.628, May 21, 1987, at 280 [hereinafter Diario de Sesiones].

124. Executive Power's Message accompanying the proposal of the statute submitted to the Parliament (published in Diario de Sesiones, *supra* note 123, at 291).

125. Industrialized countries are facing increasing competition and in order to keep whatever competitive edge they might have, they must search for ways to transfer part of their production process to countries where costs are lower. This transfer is accomplished by two different means: intra-firm trade (or vertical integration) and international subcontracting. This phenomenon of co-production is the leading cause of the growing expansion of export processing zones in the world.

Secondly, the improvements introduced by the FZA relative to previous free zone legislation[126] are not clear. While previous acts allowed for processing and industrialization activities, the FZA presupposes the building of a whole new infrastructure.[127] Thus, the FZA corresponds to the modern concept of free industrial zones. The old system did not yield substantial results. To what degree will the innovations of the current regime produce the expected benefits? Does the statute constitute a strong enough basis to achieve significant results? Free industrial zones are not a panacea. They are yet another useful tool in the battle for development.

D. *The Debt-to-Equity Swaps Decree*

On December 30, 1987, the Executive Power enacted the Debt-to-Equity Swaps Decree (DESD).[128] It was implemented shortly thereafter by a Central Bank Regulation of January 13, 1988.

Foreigners and nationals are eligible to apply to the debt-to-equity program established by the DESD. The convertible debt corresponds to the advances effectively made under the terms of the Multi-Year Restructuring Agreement (MYRA). It has been determined that this debt amounts to sixty percent of the total exter-

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The "expansion of free industrial zones in third world countries is somehow a by-product of this changing international specialization where comparative advantages in costs of production are being exploited, accentuated or created by these countries, and where transnational corporations are willing to participate and benefit from the new trends in international trade and manufacturing". J. Amado, Free Industrial Zones Revisited: A Legal and Developmental Approach 24 (1988)(unpublished manuscript). The Free Zones Act is designed to respond to this phenomenon. Consequently, the question becomes whether the Free Zones Act provides the optimal instrument in the changing context of international trade.

126. *See* Brause & Shaw, *Puertos Francos, Zonas Francas y Depositos Francos*, 6 REVISTA TRIBUTARIA 383, 506-527 (1979).

127. J. Amado, *supra* note 125, at 49. Perhaps the most important difference is the omission in the current regulation of the former restriction of authorizing the establishment of factories in the zones only when there were no domestic factories with sufficient export capacity. *Id.* A sub-zone is an area that is accessible to only one firm. That firm has the authority to designate which part of its facilities will be incorporated into the zone. Although control by the government is a disadvantage, it has a crucial advantage over the classical free industrial zone in that it does not imply any infrastructure costs. The Free Zone Act of 1987 does not distinguish between intra-firm trade and subcontracting. The Act completely disregards the fact that subcontracting offers the possibility of a stimulation of local entrepreneurs to participate in outward-oriented industries. On top of that, it contains no provisions that address the subject of previously implemented sub-zones. *Id.*

128. Decree 797/987, *supra* note 115.

nal debt of the public sector (the private debt cannot be converted).[129] Eligible investments must be aimed at acquiring new equipment, industrial plants or other facilities, as well as incorporating other assets necessary for an increase in goods and service production. Priority should be given to projects that are oriented towards exports and the tourism infrastructure.

In general terms, the system is adequate. It is clear and simple to understand.[130] However, the decree treats all projects equally; there is no evaluative process for the different kinds of investments. A system that provides either ranging levels of discounts[131] or a variable fee subject to the priority of the investment,[132] might be more appropriate. As a result, projects that are considered more favorable do not receive any special incentives. The FZA should have addressed this concern.

E. *General considerations*

Uruguay's foreign investment legislation is very scattered. It is composed of the Foreign Investment Act of 1974, a Free Zones Act, a Debt-to-Equity Swap Decree, several treaties and statutes granting tax and credit incentives; but none of them make reference to any other. There is also an important disparity between the intended effect of the regulation and reality.

It is possible to invest in Uruguay using the local credit and remitting profits freely, but the Foreign Investment Act bans the repatriation of capital until a certain date from the initial investment, limits the access to domestic credit, and entails bureaucratic costs. This creates a paradox since the goal of the current adminis-

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129. Olivera Garcia, *Deuda Externa: El Regimen de Capitalizacion*, GUIA FINANCIERA, Feb. 29, 1988, at 15.

130. Not only must a layperson be able to understand the system, but it is extremely important that the people who develop the system grasp how the foreign investor will perceive the system. *See* Bentley, *Debt Conversion in Latin America*, 21 COLUM. J. WORLD BUS. 37, 40 (1986). "The important thing is not that the remittance rights of conversion investors be extraordinarily favorable but that they be clear, reliable and fair in relation to the remittance rights of other classes of investors and creditors." *Id.* at 40.

131. In Mexico the rate of the discount depends on the intended use of the funds and can vary from zero percent, for participation in state enterprises that the government wishes to sell, to 25% for projects that do not generate foreign exchange and are not a government priority. *See Recent Development, International Debt*, *supra* note 92, at 510.

132. In the Philippine model, the Central Bank redeems the debt at its face value, but transactions related to priority investments are subject to a fee of five percent of the pesos received, and non-priority investments are subject to a 10% fee. *Id.* at 511.

tration is to attract new investors.[133] Then again, transfer of technology, employment requirements, and disclosure of information are not specifically regulated and policies with regard to them remain unclear. This highlights the debate of regulation versus deregulation. Regulation does not necessarily indicate restriction, but selectivity instead. The relative "openness" of Uruguay's legislation has not proven especially successful. Sophisticated, tailored legislation may provide the answer.

Before new legislation can be suggested, however, one must ask how any system would respond to Uruguay's needs and how foreign investment would satisfy those needs. Promotion of Uruguay's exports, easier access to the world market, and alleviation of the external debt may be only a few of the benefits that would be realized through foreign investment. The FZA and the DESD specifically refer to an export promotion policy. The Foreign Investment Act does not mention an export promotion policy at all. The absence is particularly detrimental because, as previously discussed, the Foreign Investment Act is generally the first document that a foreign investor will review.[134] The DESD grants priority to export projects;[135] yet fails to set out any specific incentive to encourage participation. In contrast, the FZA is, by definition, a formula for export promotion. Future foreign investment flows into the country will most likely be channelled through the free zones or through debt-equity conversions. Therefore, the most current regulation will have a greater impact on foreign investment than the more dated legislation.

The system, as a whole, fails to take full advantage of each piece of legislation. The individual laws fail to function as a unit but instead almost work against each other.[136] Therefore, the question of whether the legislation responds to Uruguay's need to attract export-oriented foreign investment can be answered by saying that the FZA is geared to that aim. For a country such as

133. *See* Latin Am. Regional Rep. South Cone, Aug. 6, 1987, at 7. *See generally* Corbo, de Melo & Tybout, *What Went Wrong with the Recent Reforms in the Southern Cone*, 34 ECON. DEV. & CULTURAL CHANGE 607 (1986).

134. As a practical matter a local Uruguayan lawyer, and not the foreign investor, will be evaluating options.

135. Decree 797/987, *supra* note 115, at art. 6.

136. The debt-equity mechanism could be used as a tool to exploit the free industrial zones. Since a debt-to-equity swap requires that the investor be reimbursed with domestic currency, the formula, in a worldwide perspective, tends to be applied mainly in the hotel and banking sectors.

Uruguay, free zones are the most adequate tool that the law may provide for achieving that purpose.

On the other hand, although the economic policy is oriented towards regional integration with Argentina and Brazil, Uruguay's foreign investment legislation does not include any specific provision specifically aimed at this goal. Argentina and Brazil have a transport cost advantage, plus have their own transnational corporations. Therefore, Uruguay's foreign investment legislation should concentrate on tapping those strategically located markets.

The legislation does not contain any provision that would act to mitigate any damaging actions by transnational corporations. For example, there are no norms designed to discourage the production of undesired products, to restrict importation of capital-intensive technologies, nor to prevent restrictive business practices by transnational corporations.[137] Uruguay's foreign investment legislation also fails to emphasize the country's need for investment in underdeveloped or undeveloped sectors.

V. Policy Implications

A. *Definition of a policy*

A clear and articulated foreign investment policy is a necessary precondition to the enactment of coherent legislation on the subject.[138] The framers of any foreign investment policy should take into consideration the following observations: 1) foreign investment should be viewed as only one instrument for achieving developmental goals. The policy should be framed within a comprehensive development strategy based upon export-promotion industrialization; 2) policymakers must make every effort to integrate the existing foreign investment legislation; 3) the policy must be based on the recognition of the country's needs, and how such needs might be satisfied in light of world trade and foreign investment trends; and 4) any policy should work towards integration with Argentina and Brazil.

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137. *See* IBRD/IMF Working Group on Access to Capital Markets, *The Impact of Economic Policies of Host Countries on the Flow and Net Benefits of Private Direct Investment in Developing Countries. Reprinted in* 1 Negotiating Foreign Investment 3.1D 1, 5-7 (R. Hellawell & D. Wallace eds. 1982).

138. *See* Danino, *Inversion Extranjera La Tentacion Pendular y Otras Opciones*, 8 Themis 33, 37 (1987).

It is important to keep in mind while designing any foreign investment policy, that the market for foreign investment is highly competitive. A wide range of incentives may need to be offered in order to attract investors.[139] Uruguay must balance the costs of granting inducements with the benefits derived in order to determine what, if any, incentives to offer.[140] No policy will be neutral, therefore all factors should be weighed carefully.[141]

Current Uruguayan law contains no explicit policy dealing with technological transfer. Adopting a policy in this area is the first step toward reconciling the local conditions with the technology actually brought to the country.[142] Several developing countries have followed this trend and have adopted policies concerning the inflow of foreign technology.[143]

It is important to point out that the outcome of the system depends not only on the benefits awarded by the FZA, but also on the creation of a favorable climate for investment. That favorable climate should include trade agreements granting preferential tariff treatment to products exported from the zones, tax conventions which guarantee that the tax benefits granted by the zones will be recognized in the country of the investor's origin, and the provision of physical and administrative infrastructure.[144]

B. *Reform of the current regime*

Reform of Uruguayan foreign investment legislation should begin with unification of the scattered regulations. The Foreign Investment Act, the FZA and the several tax and credit incentives

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139. Those incentives could include offering the most liberal status and excessive inducements with regard to tax concessions, exchange control, terms of credit, etc.

140. A. BASILE & D. GERMIDIS, INVESTING IN FREE EXPORT PROCESSING ZONES 22-23, 65 (1984). This could be achieved by monitoring the experiences of competing host countries. Clarification of an underlying policy may prevent Uruguayan legislators from making the same mistakes as foreign legislators. Every country has its own particular problems and therefore, the blanket adoption of foreign statutes will probably cause problems. However, Uruguay can learn from those mistakes.

141. For a description of the cost/benefit analysis, see Wells, *Social Cost/Benefit Analysis for Multinational Corporations*, 1975 HARV. BUS. REV. 40 (1975).

142. Helleiner, *El Papel de las Corporaciones Multinacionales en el Comercio de Tecnologia de los Paises Menos Desarrollados*, in 2 INDUSTRIALIZACION E INTERNACIONALIZACION EN LA AMERICA LATINA 170 (F. Fajnzylber ed. 1981).

143. U.N. CENTER ON TRANSNAT'L CORP., SALIENT FEATURES AND TRENDS IN FOREIGN DIRECT INVESTMENT, at 21, U.N. Doc. ST/CTC/14, U.N. Sales No. E.83.II.A.8 (1983).

144. A. BASILE & D. GERMIDIS, *supra* note 140, at 32-36.

should be combined into a single document.[145] The rationale for such unification is clear: foreign investors, faced with only one Act, would be less likely to miss opportunities offered by one piece of legislation and not the other.

A specific allocation of capital, based upon a pre-determined policy, should be pursued. This allocation could be achieved by offering differential tax treatment or the imposition of performance requirements.[146] The DESD could provide for the imposition of different discounts or a differential fee charge and therefore serve to achieve this goal.[147]

The regulation of vertical-integration investment and of international subcontracting, inside and outside the zones, should be diversified. Where an international subcontracting arrangement with an independent domestic firm is entered into, careful attention must be paid to ensure that the domestic firm does not become totally dependent on foreign intervention.[148] International subcontracting, therefore, may be beneficial for the balance of payments, on the dissemination of technological knowledge, and on the flow of foreign capital.[149] Specific legislation authorizing subzones should be discussed since the same benefits that are derived from a free zone can be achieved without the costs.

Investors from Argentina and Brazil should be given preference over foreign investors from other countries. The negative impact that transnational corporations might have on Uruguay would be reduced due to the smaller size of Argentine or Brazilian transnational corporations. Plus, encouraging neighboring countries to invest could promote regional integration, as well as provide other advantages.[150] It is possible, however, that free zones will harm the

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145. This could be done by decree and thereby avoid the natural delay of Parliamentary discussions. The Debt-to-Equity Swap Decree could also be encompassed in the same fashion. However, decrees can be modified easily and this characteristic would interfere with attempted unification.

146. *See* U.N. CENTER ON TRANSNAT'L CORP., TRANSNATIONAL CORPORATIONS IN WORLD DEVELOPMENT, THIRD SURVEY, at 9, U.N. Doc. ST/CTC/46, U.N. Sales No. E.83.II.A.14 (1983)[hereinafter UNCTC, TRANSNAT'L CORPS.].

147. *See* Munoz, *La Conversion de la Deuda Externa en Inversion*, 8 THEMIS 39, 43 (1987).

148. *See* THE GLOBAL FACTORY, *supra* note 69, at 250.

149. *See* Germidis, *International Subcontracting and Industrialization for the Third World Problems and Perspectives*, in INTERNATIONAL SUBCONTRACTING 10 (D. Germidis ed. 1980).

150. *See* Salacuse, *Egypt's New Law on Foreign Investment: The Framework for Economic Openness*, 9 INT'L LAW. 647, 651-52 (1975). In comparative law, a preferential regime

integration process. Argentine and Brazilian firms could feasibly transfer part of their production to Uruguayan free zones with the result that unemployment in their own country would increase.[151]

In specific areas where Uruguay lacks the required expertise for development, foreign-run training programs should be required. This is especially relevant in the tourism sector. Unless rapid growth in the industry is accompanied by "indigenization" of decisionmaking, transnational corporations will necessarily assume a dominant role.[152]

C. *Implementation*

Government involvement with foreign investment cannot stop with the formulation of policy and the enactment of relevant regulation. Any foreign investment plan that is to be successful requires coherent implementation.

The implementation process comprehends several tasks: promoting foreign investment, screening subsequent foreign investment proposals, negotiating the terms under which projects would be accepted, and supervising the investments. These functions are closely related, and therefore should be coordinated by a single body. It is especially important to centralize the negotiation and decisionmaking functions. The more centralized the screening body, the greater the bargaining power of the host government vis-a-vis the foreign investor; the greater the bargaining power, the more favorable the outcome of negotiations for the host.[153] Moreover, centralization allows for an overall evaluation of projects, avoids contradictory policies, saves time, and is less costly to the

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for only some foreign investors, is not new. This is the case of Egypt's foreign investment law No. 43 of 1974, which discriminates between Arab and foreign capital in the area of investments in housing. The intent of the law is to encourage Egyptian participation in approved projects; Supervielle, *Empresas Multinacionales en Latinoamerica*, 57 LA JUSTICIA URUGUAYA, 43 (1968)(discussion of the role of Latin American transnational corporations in regional integration).

151. *See* Casson, *Vertical Integration and Intra-Firm Trade*, in MULTINATIONALS AND WORLD TRADE 6-10 (M. Casson ed. 1986). Free zones may be beneficial even for the investor's country's economy to the extent that the zones allow domestic firms to keep their competitive advantages by transfering part of their production processes to the zones.

152. UNCTC, TRANSNAT'L CORPS., *supra* note 146, at 84.

153. *See* D. Encarnation & L. Wells, Competitive Strategies in Global Industries : A View From The Host Country 11 (1984) (paper presented for the Colloqium on Competition in Global Industries at Harvard Business School).

foreign investor.[154] Other points should also be considered at the negotiating stage. For example, recommendations from international institutions may be useful, and the role that technicians, including, among others, economists, tax lawyers, and experts in negotiation, should be worked into the system.

Promotion of Uruguay as an important location for foreign investment is necessary. Without this promotion, developmental goals will be impossible to achieve. The promotion campaign abroad could be undertaken either by offices overseas or by Uruguayan representatives worldwide. So far, Uruguay has failed in effectively promoting the advantages of investing in the country. The country's liberal foreign investment regulations are virtually unknown.[155] In addtion, the investment literature prepared by the government should be improved. Finally, an office with overall responsibility for gathering information about world market trends is needed. This office would be able to participate in foreign investment policy development and should thereby improve the success of a foreign investment plan.

VI. Conclusions: The Role of Foreign Investment In Uruguay's Development Strategy

This note argues that foreign investment can be instrumental in assisting Uruguay in achieving developmental goals. Although there is little likelihood that substantial foreign investment will result in the coming years, and although the legislation by itself cannot be expected to have great success in attracting foreign investment, Uruguay needs an articulated policy and adequate regulations. A small country such as Uruguay cannot afford ineffective foreign investment legislation. Every penny of foreign investment must be carefully utilized to achieve maximum results.

Foreign investment by itself will not bring development to Uruguay. It should be only one instrument in an overall developmental strategy. A developmental strategy is also a means and not

154. *Id.* at 73.

155. *See generally* U.N. Conf. for Trade & Dev., Export Processing Zones in Developing Countries: Implications for Trade and Industrial Policies, U.N. Doc. TD/B/C 2/211/Rev.1, U.N. Sales No. E.85.II.D.17 (1985)(omission of current Uruguayan free zones from report). *See also* N. Diamond & D. Diamond, 3 Tax-Free Trade Zones in the World (1988)(for the most authoritative and up-to-date guide on free zones. It does not include any reference to the Uruguayan Free Zones Act, and the information that is included about Uruguayan free zones is completely out of date.

an end to achieving governmental goals to better the welfare of the Uruguayan people. Development is, after all, about and for people.

This study has focused on the role of external forces in Uruguay's development, yet internal factors also play an important role in the developmental process. These internal factors relate to foreign investment policy and to the rest of the country's economic policy as well. It is important to attract foreign investment for allocation in certain areas, but it is essential that the capital be properly channeled. Both foreign investment and regional integration may improve Uruguay's situation. Uruguay still has much to do in the domestic sphere. To begin with, efforts should be made to improve the country's educational system, to improve public sector performance, and to build better infrastructure in rural areas. Although Uruguay needs to persuade others that it is worthy of their attention and investment, it also, and perhaps primarily, needs to persuade itself.