Colombia
The following is a review of new developments in Colombian laws and legal activities.

Two events in Colombia during the month of November captured international attention. The first of these events was the "Battle of the Courthouse." After intense fighting and the deaths of over one hundred people, the army regained control of the courthouse that the M-19 had seized. This event dealt a severe blow to the efforts of President Betancur's government to end the struggles which have opposed it for many years. The second event was the eruption of the Nevado del Ruez volcano. This catastrophe resulted in the destruction of the town Armero and the loss of over 22,000 lives. Although the tragedy mobilized Colombians into a solidarity effort to aid the survivors, it also necessitated emergency economic measures to fund the reconstruction of the devastated area.

Several other events that were less noticed by the international press may have considerably more favorable effects on Colombia's economic situation. In December, Colombia signed a "jumbo" credit for approximately one billion dollars. This money will be devoted to developing the expanding coal and petroleum sectors, and bolstering the ailing banking sector. (The banking sectors situation is alarming and the government has already nationalized the Banco de Colombia and its other financial institutions.) The recent spectacular rise in the price of coffee should also stimulate overall economic activity in Colombia.

I. Emergency Credits for Devastated Zone

In response to the Armero tragedy, the government adopted Decree 3406, declaring a 60 day state of economic emergency. Decree 3405 established a reconstruction fund "Resurgir," authorized to contract international credits with the approval of the Finance Ministry but without undertaking the legal steps which ordinarily apply to the public sector. Decree 3614 of December 10 authorized the government to sign foreign credits up to $300 million in order to finance various reconstruction works in the devastated zone. Although subject to the Finance Ministry's approval, the credits thus
contracted would be governed by the rules applied to private sector entities that contract foreign credits.

II. Guarantee Fund Begins Activities

During the final days of the parliamentary session, Congress adopted Law 117 creating the Financial Institutions Guarantee Fund. The Fund's various purposes include creating a system of deposit insurance, helping in the recovery of receivables held by financial institutions, and providing credits to or direct investment in financial institutions to ensure that they possess an adequate capital base for their activities. The Fund is also authorized to assume temporary control of any financial institution experiencing difficulties.

By the adoption of Resolution 104 of December 27, the Monetary Board authorized the creation of a special line of credit for the Fund which is presently worth about COL $26 billion. This long-term financing will be charged the same rate of interest applicable to the financing for the government's internal debt. All the resources of the Fund's credit line will be devoted to improving the difficult situation of Banco de Colombia, Corporacion Granfinanciera, Pronta and Comercial Grancolombiana. These institutions were nationalized pursuant to Executive Resolutions 2, 3 and 4 adopted by the government on January 10, 1986. In its first resolution of 1986, the Monetary Board authorized the Guaranty Fund to issue two series of bonds for subscription by financial institutions. Class "A" bonds will have a maturity of fifteen months and bear an interest of twelve percent. The financial institutions may be subscribed in these bonds up to an amount equal to a half point of the legal reserve applicable to the institutions' sight and term liabilities other than certificates of deposit. Class "B" bonds with a maturity of fifteen months and an interest rate of twenty-four percent may be subscribed to in an amount equal to a half point of the legal reserve applicable to the institutions' term liabilities arising from the issuance of certificates of deposit. The Monetary Board also ordered an increase of half a point in the legal reserve applicable to financial institutions arising from the issuance of certificates of deposit.

III. Foreign Investments in the Financial Sector

In the past two years, the Colombian authorities have softened
their position regarding foreign investment in financial institutions. In 1983, the National Planning Department (DNP) declared that neither Andean Pact Decision 24 nor Law 55 of 1975 on the "Colombianization" of banks prevented new foreign investment in the financial sector provided that the ownership and control of each institution remained in Colombian hands. At the end of 1984, the DNP invoked the safeguard clause (article 3) of Decision 24 and permitted the Bank of International Credit and Commerce to take over the Banco Mercantil. Decree 3159 of 1984 authorized the DNP to allow new foreign investment in an existing financial institution in order to prevent the collapse of the institution provided such investment did not exceed forty-nine percent of all investments in the institution.

In a series of resolutions adopted at the end of October, the Monetary Board further modified the rules governing foreign investment in financial institutions. Resolution 70 of October 23 allows foreign investors to purchase bonds convertible into shares issued by banks. The purchases do require the authorization of the Exchange Office of the Central Bank and of the DNP.

Resolution 71 provides that calculations for the refinancing limits for financial institutions' operations under Resolution 84 will not take into account the participation of foreign investors. Resolution 76 of November 14 extended the provisions of Resolution 70 to all institutions in the financial sector.

Resolution 84 establishes the rules governing the issuance of shares and bonds through a system of guaranteed underwriting approved by the National Securities Commission. The Resolution also creates different conditions for capitalization plans under the Central Bank's rediscount facility.

IV. Resolution 33: Changes and Extensions

The Monetary Board's Resolution 33 authorized a system of gradualized refinancing of foreign debt by the Colombian private sector. The resolution had an initial deadline of December 31, 1984, for the establishment of registered refinancing plans. Although companies benefited from this mechanism, others were still negotiating with their foreign creditors. So the Board has extended the deadline. Resolution 100, adopted on December 20, 1985, extended the deadline to March 31, 1986 on condition that before April 30, 1985, foreign creditors inform the Central Bank of their
intention to refinance their loans within the framework of Resolution 33.

The same Resolution 100 authorizes the sale of exchange certificates (títulos canejables en certificados de cambio) until April 30, 1986, to Colombian commercial banks participating in refinancing plans as intermediaries between foreign creditors and local debtors.

Resolution 66 of October 9 authorizes the Central Bank to sell exchange certificates within the context of Resolution 33 for the amortization of foreign debts resulting from direct lines of credit for financing Colombian exports. Section 9 of Resolution 77 of November 13 modifies the Resolution 33 system for import financing undertaken under the special import-export system known as “Plan Vallejo.” According to this Resolution, repayments of such import financing, must be made in conformity with the rules governing amortization of credits used to finance imports.

V. CHANGES TO THE TAX AND ROYALTY SYSTEM FOR PETROLEUM SECTOR

Section 9 of Law 7 of 1986 abolished the remittance for exemption on income and capital gains sent abroad by foreign enterprises working in the mining and petroleum sectors created by Section 46(e) of Law 9 of 1983. As a consequence, remittance abroad of profits by a foreign investor’s branch operation will be subject to a twenty percent tax. In the case of limited liability companies, the tax will be twelve percent. Remittances of royalties for transfers of technology or of payments for technical services will be subject to a tax of twelve percent. Remittance taxes are calculated on the amount remitted after the payment of any applicable income or capital gains tax.

Decree 2734 of September 23, 1985 provides that royalties due to the national, departmental, and municipal governments by companies which received exploitation concessions for hydro carbons must be paid to ECOPETROL. ECOPETROL will in turn be responsible for payment of the amount due to each government (according to the prices for petroleum products fixed by the Ministry of Mines and Energy). Before the adoption of Decree 2734, companies that received concessions were directly responsible for the payment of royalties to the various governments in Colombia unless the companies had concession or association agreements with
ECOPETROL. In such cases ECOPETROL undertook to pay royalties for the account of the company.

VI. TRADE POLICY

During the past three months, the government introduced the following changes in its trade policy:

Reduction in the Level of CERTS

The Tax Reimbursement Certificates (CERTS) received by exporters in order to reduce their tax burden are the object of a dispute between Colombia and the United States. The United States considers the certificates an export subsidy forbidden by Article XVI of GATT. The IMF experts who monitor Colombia's economic policy have recommended the gradual elimination of the CERT program.

Consequently, the government has announced its intention to reduce the overall level of CERTS. In the case of exports to the United States and Puerto Rico, more drastic measures have already been taken. Decree 3155 of 29 October 1985 reduced the level of CERTS for the export of flowers and bulbs to zero percent and to six percent or 9.6% respectively for clothing and textile products.

Redefinition of Goods of National Origin

Decree 222 of 1983 relating to government contracts contained a national preference rule for goods and services provided to the national government and, in certain cases, to departmental and municipal governments. Decree 1355 of 1984 which defined goods of national origin has been amended by Decree 2847 of October 1, 1985. Goods of national origin are now only those whose FOB value of imported raw materials and intermediate goods do not exceed fifty percent of the factory value of the finished product. This amendment will exclude from the category of goods of national origin, those goods produced in Colombia with a national parts content below fifty percent of the factory value of the finished product.

The Andean Court of Justice was created by a treaty signed in Cartagena, Colombia on May 29, 1979 by the member countries of the Andean Pact (Bolivia, Colombia, Ecuador, Peru, and Vene-
This court is responsible for enforcement of the Cartagena Agreement of 1969 which created the Andean Pact, as well as its complementary and derivative norms, and controls the legality of the acts and decisions of the organs of the Agreement (principally the Commission, the Junta, and the Andean Development Corporation). The Court, located in Quito, rendered its first decision last October.

In this decision, the Court annulled Resolution 237 which accorded special treatment to exports of aluminum tubes from Ecuador to Colombia. The Resolution was adopted under Article 58 of the Cartagena Agreement. However, article 58 requires as criterion for a favorable treatment of an export, the existence of an established trade of the product in question. The Court decided that the criterion was not met in this case because Ecuador did not export aluminum tubes to Colombia, but rather aluminum profiles.

The “Federación Nacional de Cafeteros de Colombia” is an organization which includes all coffee producers. Pursuant to a contract with the government, the Federación manages the “Fondo Nacional del Café” whose assets come from coffee exports product. Through that fund, the Federación controls the “Grupo Cafetero” which includes Banco Cafetero and several other important financial institutions.

The Federación also plays a very important role in the whole process of coffee exports. Only exporters duly accepted by the Federación may legally export coffee. Their export activities are subject to strict control by the F.N.C. An exporter whose acceptance by the F.N.C. was withdrawn, instituted proceedings against the Federación before the administrative tribunal, arguing that the F.N.C. is a public entity whose responsibility should be determined by the administrative courts and not by judicial tribunals.

The Council of State, in a decision rendered on September 12, 1985, decided that notwithstanding the important role which the Federación plays in the coffee industry it is a simple private law entity and does not belong to the public sector. Proceedings instituted against the Federación are not within the competence of the administrative courts and should be pursued through the judicial tribunals.

**ICEL Must Pay Heavy Fines**

A Columbian arbitration tribunal, in a decision rendered in
October, ordered ICEL (the Colombian Electrification Institute) to pay approximately eight million dollars in fines to Mitsubishi Corporation, Distrial S.A. of Colombia and Condisa S.A. of Argentina. The fines related to delays in the construction of the third phase of the Termopaipa electrical project. According to the arbitrators, the delays in construction work were essentially due to defaults by ICEL in the payment of foreign credits given the constructors. The defaults were due to insufficient budgetary allocations made by ICEL rendered necessary additional financing of ten million dollars from Chase Manhattan and Lancaster Steel, a steel supplier. The work should have been completed on September 14, 1981 but was completed on June 6, 1982. ICEL has instituted proceedings to have the decision of the arbitrators annulled by the Council of State.

JAMES LEAVY
Cavelier Abogados
Bogota, Colombia