Brazil
The following is a brief summary of legal rulings and decisions recently enacted by the Brazilian Government:

I. LEGISLATIVE AND ADMINISTRATIVE RULINGS

Import and Export of Steel Products

The Conselho Nacional do Comercio Exterior (National Council for Foreign Trade) issued Resolution No. 126/80 to determine that, until April 1, 1983, all imports of steel and non-ferrous metal products that are still to be listed by the Carteira do Comercio Exterior (Foreign Trade Department—CACEX) of Banco do Brasil S.A. will require prior CACEX approval. The Coordinated Supply System of Conselho de Não-Ferrosos e de Siderurgia (Non-Ferrous Metals and Steelworks Council—CONSIDER) is to be the basic instrument to channel domestic consumption of such products and their import and export. Companies interested in obtaining approval of annual import programs should express this interest upon forwarding their forecasts to the Coordinated Supply System for examination by CONSIDER and CACEX. The Resolution revoked inter alia, Resolutions Nos. 110/77, 118/78 and 122/79 which previously listed the products subject to such restrictions (DOU-I of August 11, 1980).

Special Commission of the Ministry of Justice

The President of the Republic signed Decree No. 85.022 of August 11, 1980 to constitute a Special Commission within the Ministry of Justice. This Commission is to publish updated compilations of current legislation and any improvement or consolidation thereof. The Commission will be composed of five members, the President of the Commission being the Minister of Justice and the Vice-President the Extraordinary Minister for Debureaucratization. In the first stage of its work, the Commission will select those areas of the law that spark the greatest interest and will publish updated compilations of the laws, decree-laws, decrees and other rulings applicable to each such area. In a later phase, the Commission will study and propose the adoption of legislative techniques of information procedures to consolidate existing legislation and keep it updated (DOU-I of August 12, 1980).

Foreigners’ Statute

After all the discussions on the new Foreigners’ Statute in the Congress, the President of the Republic finally sanctioned Law No.
6.815 of August 19, 1980 to define the legal situation of foreigners in Brazil and to create the National Immigration Council. The Law covers the following points: the admission, entry and impairment of foreigners in Brazil; the condition of persons who have been given asylum; deportation; expulsion; extradition; foreigners' rights and duties; naturalization; infractions, penalties and their procedure. The new law became effective on the date of its official publication and revokes all prior legislation on the subject (DOU-I of August 21, 1980). Under the provisions of the Law of introduction to the Civil Code, however, adherence to the new law outside Brazil only becomes compulsory three months thereafter, that is, on November 21, 1980.

Amazon Cooperation Treaty

The President of the Republic signed Decree No. 85.050 of August 18, 1980 to enact the Amazon Cooperation Treaty signed among the Governments of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Surinam and Venezuela. The Treaty assures the parties reciprocal freedom to engage in commercial navigation on the Amazonas River and other international rivers of the Amazon area, while observing the tax and police regulations established in the territory of each party. These regulations are, to the extent possible, to favor navigation and trade and be uniform among themselves (DOU-I of August 20, 1980).

Minimum Capital for Foreign Banks

In Resolution No. 632/80 the Central Bank of Brazil established the minimum initial capital that is to be required of foreign banks that begin business in Brazil. This capital is the equivalent of 420,000 times the highest reference value under Law No. 6.205/75 (at present, one reference value is Cr$ 2.480,20). This requirement will not apply to those banks that are already authorized to operate in Brazil and those that are established as a result of diplomatic treaties (DOU-I, August 29, 1980).

Foreign Financing

The Central Bank of Brazil issued Resolution No. 637/80 and Circular No. 568/80 to define the rules under which private banks authorized to operate in exchange may raise funds abroad to finance Brazilian exports. Foreign banks were also authorized to raise funds abroad, but strictly for the purpose of financing foreign imports of Brazilian products with cash payment to the Brazilian exporter. This
authorization will be granted to such foreign banks upon application to the Exchange Department of the Central Bank of Brazil and examination of reciprocal treatment, including the participation of the foreign bank in medium and long-term financing to Brazil (DOU-I, September 8, 1980).

The Exit of Merchandise from Brazil

Under Normative Ruling No. 95/80, the administrative units of the Secretariat of Federal Revenue are to permit Brazilian goods acquired on the domestic market to leave Brazil merely upon presentation of the respective Nota Fiscal (Invoice) where such merchandise: (a) does not appear to be destined for trade; (b) is not subject to specific control by other governmental bodies; and (c) export of the items is not governed by a quota or contingency policy. The exit of the merchandise to a destination outside Brazil will not entitle the seller to tax exemptions or incentives of any kind (DOU-I, September 18, 1980).

Imports with Exchange Cover

In Resolution No. 638/80 the Central Bank has set conditions for the issuance by CACEX of an import license in the case of capital goods, consumer durables, chemicals, and steel, when such goods are valued in excess of U.S. $100,000. The transaction must be effected through financing abroad under terms that call for repayment within 180 days to eight years, depending on the price of the product to be purchased (DOU-I, September 25, 1980).

Brazil's Nuclear Energy Program

The President of the Republic has signed Decree-Law No. 1.809 of October 7, 1980, establishing the Protection Scheme for the Brazilian Nuclear Program (SIPRON). The purpose of the system is to assure integrated planning, coordination of joint activities, and continued execution of measures aimed at meeting the safety needs of the Brazilian Nuclear Program and its personnel, as well as of the general public and the environment (DOU-I, October 8, 1980).

Industrial Property—Technology Transfer

The President of the National Institute of Industrial Property (INPI) has taken action enabling the provisions of the International Patent Cooperation Treaty-PCT, to be applied in Brazil as regards the processing of international patents. The rules and criteria to be ob-
served were published in Normative Acts Nos. 08/001 and 008/002 in special supplements to Industrial Property Review (RPI) No. 519 of September 30, 1980. The President of the INPI also signed Normative Act No. 09/001 of September 22, 1980, published in Industrial Property Review No. 521 of October 14, 1980 concerning new and simplified forms to be used, as from October 20, 1980, in supporting applications submitted to the INPI for the approval of licensing and technology transfer agreements.

Documents Prepared in a Foreign Language

The Corregedor-General of Justice of the State of São Paulo has issued Ruling No. 29/80, authorizing the notarization of signatures affixed to documents written in a foreign language but originating in Brazil, provided that the Latin alphabet is used (DJE October 23, 1980).

Recent Pronouncements by the Central Bank of Brazil

The Central Bank of Brazil issued Circular No. 574/80, reformulating Resolution No. 638/80 which had made it obligatory to finance the importation of a series of items via payment terms varying from 3 to 8 years. Guidelines were set for the division of the financing obtained abroad so that, at any moment during the life of the debt, the proportion between the total already repaid and the amount of the financing would not exceed the proportion between the time already elapsed and the total term of the transaction. Where imports are effected in currencies other than U.S. dollars, it will be necessary to convert those sums to dollars, observing the parities set by the Central Bank with the value in effect on the date the import license is issued. Remittances abroad to pay for imports, with allowance of up to two working days in advance for contracting and liquidating exchange, may only be made for imports with payment terms of up to 360 days, according to CACEX stipulations. When the terms of payment are greater than 360 days, payment for the imports will be made on the bases of the payment date that was registered with the Central Bank.

Resolution No. 641/80 amended Resolution 602/80 which set criteria to be incorporated into the program for financing production for export.

Resolution No. 642/80 replaced the list of products listed in Resolution 636/80 which are subject to export tax.

Resolution No. 643/80 reformulated the special line of rediscounts to commercial banks authorized to deal in exchange. Those
rediscounts are designed to offer financial support for credit transactions with Brazilian trading companies that were established as provided in Decree-Law No. 1.248/72.

Resolution No. 644/80 reduced to zero the amount of the income tax which is levied on remittances of interest, commissions and expenses resulting from the placement of credit instruments known as "commercial paper". Placements must be outside Brazil and authorized by the Central Bank. The above Resolutions were published in DOU-I of October 24, 1980.

**Decree on Leasing Transactions**

The President of the Republic has signed Decree-Law No. 1.811 of October 27, 1980 which provides that the National Monetary Council may, for each kind of transaction which it may come to define, reduce to zero or re-establish, in whole or in part, the rate of income tax to be withheld at the source on remittances abroad, where such remittances result from capital goods leasing agreements entered into with entities based outside Brazil (DOU-I, October 29, 1980).

**Human Rights Commission**

The President of the Brazilian Bar Association has announced, through Resolution No. 120/80, the creation of a Human Rights Commission within the Federal Council of that association. The Commission is to be composed of fifteen lawyers and presided over by the President of the Federal Council of the Brazilian Bar Association. In Resolution 121/80, the names of the lawyers who will serve on the commission were revealed (DOU-I, October 29, 1980).

**Cooperatives—Income Tax Exemption**

The Coordinator of the Tax System, in Normative Ruling No. 38/80, has ruled that the income tax exemption enjoyed by cooperatives (a form of business organization operating for the mutual benefit of members who own and manage the company and share any surplus of income over expenses, frequently in proportion to the business contribution of each to the joint enterprise) does not extend to earnings obtained through activities other than those set forth in the cooperative's charter. Normally, cooperatives are entitled to an income tax exemption because they deal, not in their own products and services with a view to making a profit, but in the products and services acquired from members. It is the members who incur the income tax liability.
The particular activities referred to in the recent Normative Ruling are open market operations and other financial and commercial transactions that are not closely allied with the cooperative's regular function, which is to centralize the activities, or the results of the activities, of its individual members.

According to the new Ruling the cooperatives' income tax liability will be determined on the basis of its accounting or by direct assessment (DOU-I, November 5, 1980).

**Tax Incentives for Steel Companies**

In Declaratory Act No. 14/80 the Secretary of the Federal Revenue has assured the industrial establishments belonging to steel companies and listed in specific documents of the Council on Non-Ferrous Metals and Steel (CONSIDER), that they are entitled to the IPI tax incentive provided in Article I of Decree-Law No. 1.547/77 (Tax Incentives for the Steel Industry) in connection with the shipments from such establishments of products manufactured with steel or its by-products that were produced by that same industrial establishment. (By-products include steel ingots, plates, bars, flat-rolled products, rolled shapes, castings and forgings). The incentive, which consists of a credit for 95% of the difference between the amount of the IPI levied on goods shipped and the IPI tax credit corresponding to receipts of raw materials, intermediary products and packing materials used in manufacturing or processing such goods, may also be applied to shipments of by-products from industrial establishments owned by the same company that produced the steel, as shown in the above mentioned CONSIDER document (DOU-I, October 31, 1980).

**Trading Company Financing Scheme**

The Central Bank of Brazil, in Circular No. 577/80, has issued complementary rules for implementing the exporter financing scheme dealt with in Resolution No. 643 of October 22, 1980. The plan provides rediscounting for commercial banks authorized to operate in exchange to support the granting of loans to specially registered Brazilian trading companies so that they may purchase or order products destined for export. Such goods must be among those listed in Ministry of Finance Portaria No. 130 of June 14, 1973 (DOU-I, October 31, 1980).

**Confiscation of Goods Brought from Abroad by Travelers**

The Secretary of the Federal Revenue, in Normative Ruling No. 112/80, has officially lifted the penalty (confiscation), which applied
to goods brought from abroad by travelers and not covered by an import license or similar document, where issue of such license was either prohibited or had been suspended (Article 23, item 1, Decree-Law No. 1.455/76). There are, however, certain conditions: (a) the total value of such merchandise may not exceed 800,000 U.S. dollars or its equivalent in another currency; (b) the goods must have been duly presented by the passenger to a Customs inspector; and (c) the merchandise, judged by its quantity and nature, must not appear to be destined for resale (DOU-I, November 3, 1980).

Bank Interest Rates

By Resolution No. 651/80, the Central Bank of Brazil established the maximum rates of interest to be charged by commercial and investment banks on their loans to third parties, based on the following criteria: (a) the rates to which the Resolution 560/79 reduction factor were applied will now go into effect for commercial banks; (b) for investments banks, the readjustment will be made on the basis of the monetary correction index which is applicable to the Readjustable National Treasury Bonds (ORTN), plus the fixed “spread” of 0.3% per month. The rates of interest for loans made by the Credit, Financing and Investment companies, except for transactions which are subject to specific regulations, are now liberated. In addition, the Central Bank issued Circular No. 579/80 in which supplementary rules necessary to the implementation of Resolution No. 651/80 were approved (DOU-I, November 13, 1980).

Minor Debts to the National Treasury

The Minister of Finance, in Portaria No. 375/80, has ordered that debts of less than Cr$12,000,00 to the National Treasury, incurred as from January 1, 1980, no longer be collected through court proceedings nor recorded as Current Receivables of the Union. This measure, however, cannot be taken to mean that monetary correction and late payment interest are no longer due, nor does it eliminate the possibility that a release from the National Treasury may be required. Furthermore, the statute of limitations on these debts is now suspended (DOU-I, November 19, 1980).

Tax Incentives

The Secretary of the Federal Revenue, in Normative Instruction No. 120/80, has established rules for implementing the tax benefit provided for in Decree-Law No. 491/69, Article 13 as amended by Decree Law No. 1428/75, Article 9. This provision authorized the
granting of reductions in import duties and in the tax on manufactured products, on the import of machinery, equipment, apparatus and on instruments intended for use in the installation, expansion and re-equipping of companies which have export programs and assume export commitments (DOU-L, November 20, 1980).

**Direct Popular Vote**

The Senate and the House of Representatives have issued Constitutional Amendment No. 15, which re-establishes the system of direct popular vote by secret ballot for the election of the Governors and Vice-Governors of the States. Both officials will be elected for four year terms. The principle that each State's three Senators will be elected by direct and secret vote for a term of eight years was also accepted (DOU-I, November 21, 1980).

**Additional Rights for Lawyers**

The President of the Republic has signed Law No. 6.884 of December 9, 1980 modifying certain provisions of Law No. 4.215/63 concerning the by-laws of the Brazilian Bar Association. Now, the articles of association and the by-laws of commercial or civil companies may only be registered and filed with government bodies after having been reviewed by an attorney. In addition, attorneys have been given the right to freely enter any assembly or meeting in which a client is participating or may participate, or before which their client is to appear, provided they have been granted special powers for such purpose (DOU-I, December 11, 1980).

**Coastal Navigation**

The President of the Republic has authorized the Superintendency of the Merchant Marine (SUNAMAM) to grant permission, until December 31, 1981, for foreign vessels to engage in coastal navigation in Brazilian waters (DOU-I, December 11, 1980).

**Release from Price Controls**

The Price Commission (CIP), in Resolution No. 149/80, has authorized its Executive Secretary to release companies, organizations, sectors, products and services from the requirement of complying with price control regulations, taking into consideration economic policy as defined by the federal government. Such releases may only be granted on the dates set for semi-annual price increases under the current system (DOU-I, December 11, 1980).
New Resolutions Issued by the Central Bank

Resolution No. 656 raises to 70% the minimum percentage to be invested by commercial banks, credit, financing and investment companies, investment banks, commercial leasing companies, and financial institutions which engage in commercial leasing in companies controlled by Brazilian private capital.

Resolution No. 666 provides that agreements for the commercial leasing of goods produced outside Brazil to firms in Brazil which plan to use the goods in the normal course of their business may be made between the foreign companies and the final user in Brazil for a minimum period of five years. Only capital goods without Brazilian "similar" (observing the guidelines governing imports) may be so leased. The income tax withheld on the remittance abroad of leasing fees has been reduced, through this Resolution, to 2.5% when the value of the lease agreement is less than 75% of the value of the leased goods, and to 5% in other cases.

Reduction in Tax on Manufactured Products

The Acting President of the Republic signed, on February 4, 1981, Decree No. 85.697 which reduced the rates of the Tax on Manufactured Products (IPI) on a large number of items. Beginning on February 15, 1981 many products, for example, musical instruments, milk-based nutritional beverages, paraffin and certain types of fabrics will not be taxed. Others, for example, leather goods, wines and liquors, vegetable oils and distilled products will now be taxed at 10% rather than at 20% (DOU-I, February 5, 1981).

Brazilian Tariff Schedule Modified

Decree-Law No. 1.857 of February 10, 1981 has been signed by the President of the Republic. The recent decree extends the periods of effectiveness of several decree-laws which raised import duty rates. It also authorizes the Customs Policy Commission (CPA) to reduce to zero, in such instances and under such terms as the COA may establish, the customs duty rates levied on equipment, machinery, vehicles, apparatus, instruments, parts, pieces and accessories intended for use in projects of recognized interest to the economy. The CPA was charged with publishing within 120 days, the new Tariff Schedule of Brazil (TAP) with all the amendments now in force, and to publish an updated edition every year hereafter (DOU-I, February 11, 1981).
Trademark Classifications

The President of the National Institute of Industrial Property (INPI), via Normative Act No. INPI-0051, established the new Classification of Trademarks for Products and Services in Brazil, which will take effect on May 1, 1981. The intention is to make the Brazilian classification system compatible with the international one. The new classification uses a four digit code so as to permit use with electronic data processing equipment and thereby facilitate the granting of registrations. Normative Act AN-INPI-0051 also provides that applications for registry of trademarks may only request registration of three generic products or services in each class. Any additional products or services should be covered by a separate registration application. The provision applies to applications now in progress; applicants will be notified to pay the charges for issuing the certificate of registration for the excess items or to desist from applying for same. New forms for requesting trademarks have also been approved for use starting on May 1, 1981 (Separate issue of the Industrial Property Review—RPI No. 539, of January 17, 1981).

Imports of Electronic Data Processing Technology

The Special Secretariat for Informatics (SEI) will now have a role in determining whether or not imports of “software” and other transfers of technology for the computer and peripherals industry may be affected. Normative Act No. 53/81, issued jointly by the President of the National Institute of Industrial Property and the Secretary for Informatics, orders that applications for registration of technological transfer agreements be submitted in two copies so that both agencies may review them (DOU-I, February 16, 1981).

II. Judicial and Administrative Decisions

Brazilian Nationality

The decision of the third Group of the Federal Court of Appeals on ex-officio remittance No. 53.900 established that the birth abroad of a child of Brazilian parents without such birth being duly registered at the proper department nevertheless gives the child the right to obtain Brazilian nationality if the child transfers residence to Brazil before becoming of age and opts for the Brazilian nationality within four years of reaching the age of 21.
Import Duty

According to the decision handed down by the Federal Court of Appeals on the Appeal filed in Writ of Security No. 81.893, The Foreign Trade Department of Banco do Brasil (CACEX) is the authority competent to calculate the foreign value of imported goods, such value to be observed by the customs authorities when levying any import duty.

Foreign Court Decisions

Since Article 45,811 of the Brazilian Code of Civil Procedure is a rule of public order, the judgment handed down by a foreign court must be in harmony with that Article in order to be effective in Brazil (Foreign Judgment No. 2.521-3 of the Federal Supreme Court).

Ratification of Foreign Arbitration Decision

The Federal Supreme Court, in ruling on a request for ratification of the decision of a foreign court (Foreign Decision No. 2.476) stated that where a contract between a foreign company and a Brazilian one provides for arbitration of disputes, it is incumbent upon the courts of the country where arbitration took place to pass judgment on the arbitration award. In court proceedings held to confirm the decision of the arbiters, it is indispensable that process be served on the Brazilian defendant, directly, so that it may answer the action. Under Brazilian law, service of process via the English form of affidavit is not admissible; the procedure provided for in Article 12, paragraph 2 of the Law of Introduction to the Brazilian Civil Code must be observed.

Pre-Operational Expenses

Extra compensation paid to company directors in the form of withdrawals, special bonuses paid to employees, and sums expended to pay penalties for infraction of tax laws are not to be considered as operational expenses, according to a ruling by the First Chamber of the First Taxpayers' Council in Decision No. 101-71-613.

Statute of Limitations on Disputed Tax Obligations

The statute of limitations does not continue to run against the National Treasury during the time that collection of a tax owed is suspended due to existence of a pending administrative claim or appeal filed by the taxpayer (2nd Bench of the Federal Supreme Court, in extraordinary appeal No. 92.623).
**Effect of Death of Quotaholder on Liability of Remaining Quotaholder**

Where a “sociedade por quotas de responsabilidade limitada” has only two quotaholders, the death of one does not mean that the remaining quotaholder's liability is then unlimited, nor does dissolution change the nature of the company (Federal Supreme Court, 2nd Bench, in extraordinary appeal No. 90.570).

**Income Tax on Remittances Abroad**

The Vice President of the Federal Court of Appeals handed down a decision denying continuance to an appeal of a decision in which the Court had declared that income tax must be withheld from the remittance of funds intended for use in payment of attorneys' fees and other expenses connected with the signing of a loan agreement abroad between a Brazilian company and two foreign banks (Appeal of writ of security No. 78.828).

**Income Tax—Liability of a Partner**

The personal liability of a partner who had been the Director-President of a “sociedade anonima” for tax obligations incurred during the time he was in office was confirmed in a ruling by the 1st Bench of the Federal Court of Appeals in Civil Appeal No. 40.187.

**“Sociedade por Quotas”—Liability**

Although, as a rule, the assets of the quotaholders may not be seized to liquidate the debts of a “sociedade por quotas de responsabilidade limitada,” this can be done if it is proven that regular procedures were not followed when the company was dissolved (1st Bench of the Federal Court of Appeals, in civil appeal No. 44.953).

**Use of the Proceeds of the Monetary Correction of Paid-Up Capital to Compensate for Losses**

In a writ of security filed against the Commercial Registry of São Paulo, the Judge of the First District Court of the State Treasury decided to require the Registry to accept for filing the Minutes of a General Meeting of a “sociedade anonima” at which the compensation of losses with the monetary correction of paid-up capital had been approved. The Commercial Registry had refused to file those minutes, citing its Decision 8/80 in which it had referred to the National Department of Commercial Registry’s guidelines interpreting Article 167 of Law No. 6.404. The Department had taken the
position that it was obligatory for a company to capitalize the reserve resulting from the monetary correction of paid-up capital and, therefore, by implication, that it is not permitted to use that reserve to compensate losses.

**Placement of a Lien on Private Assets of a Managing Quotaholder**

The withdrawal of a quotaholder from the company does not exempt him from the tax liability (referred to in Article 135, 111 of the National Tax Code) when it is verified that an infraction occurred during his term of office as managing quotaholder (2nd Section of the Federal Court of Appeals, Appeal No. 45.834).

**IPI Tax Credit**

The right to a credit for the Tax on Manufactured Products (IPI) already paid and assured to the purchaser of Brazilian equipment for integration into the purchaser’s fixed assets, is a government subsidy to domestic industry and does not, therefore, extend to the importation of foreign products (1st Bench of the Federal Supreme Court, ruling on extraordinary appeal No. 03.003).

**Income Tax—Taxpayers Absent from Brazil**

A taxpayer who leaves Brazil temporarily and remains abroad for an indefinite period will, after twelve months have passed, be taxed exclusively through withholding at the source (2nd Chamber of the 1st Taxpayers’ Council, in decision No. 120-17.660).

**Liability of Partner**

Although the partners in a limited liability company “limitada” cannot, as a rule, be sued for the company’s debts, execution action may be taken against a partner in exceptional cases where the company is no longer active but has not been dissolved and no company assets are found (Fifth Chamber of the Federal Court of Appeals, a decision on civil appeal No. 56.995).

**Contract Registration**

Resolution No. 194/70 of the Federal Council on Engineering and Architecture (CONFEA), which requires that “any contract, whether written or oral” which calls for engineering, architectural or agronomy work be registered with the Regional Council on Engineering and Architecture (CREA) and which threatens penalties for non-registration, was found by the Federal Court of Appeals to be illegitimate,
because it oversteps the law (No. 5.194 of December, 1966) which governs the matter. That law merely requires that professional engineers, architects or agronomists and companies in that field be registered with the regional council (4th Bench of the Federal Court of Appeals, ruling on Civil Appeal No. 53.725).

**Deduction of Royalties and Technical Assistance Fees—Income Tax**

The Taxpayers' Council has ruled that the deduction of expenses which are specifically or implicitly intended as remuneration for the use of trademarks and patents or for technical, scientific, administrative or similar assistance is subject to the requirements and limitations set forth in Articles 176, 177, and 178 of the 1975 Income Tax Regulations (RIR/75). The deductibility of such expenses is subject to the percentages fixed by Portaria MF No. 436/58, regardless of where the beneficiary of the earnings is domiciled (First Chamber of the First Taxpayers' Council, ruling on Decision No. 101-71.694).

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