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Uruguay

2005 INVESTMENT CLIMATE STATEMENT -- URUGUAY

Openness to Foreign Investment

The Government of Uruguay recognizes the important role foreign investment plays in economic development and strives to maintain a favorable investment climate. Aside from a few sectors in which foreign investment is not permitted, there is neither de jure nor de facto discrimination toward investment by source or origin, and national and foreign investors are treated equally.

Economic officials of the incoming leftist Encuentro Progresista-Frente Amplio administration, which will take office on March 1, 2005, have stressed the importance of local and foreign investment for social and economic development. The orthodox incoming economic team has set an ambitious goal of doubling Uruguay's investment/GDP ratio over a five-year term by attracting direct foreign investment, developing the local capital market, and conscientiously implementing existing legislation. So far, the incoming administration has resisted pressures from unions and lobbyists and sent positive signals to investors.

In 1998, the Uruguayan Government (GOU) approved a law (no.16906) that declares that promotion and protection of national and foreign investment is in the nation's interest. The law states that (1) foreign and national investments are treated alike, (2) investments are allowed without prior authorization or registration, (3) the government does not prevent the establishment of investments in the country, and (4) investors may freely transfer abroad their capital and profits from the investment. There are no restrictions on technology transfer. The new administration plans to expand the use of a single-window mechanism, instated in mid-2003, to channel all investment requests. One hundred percent foreign ownership is permitted, except where restricted for national security purposes.

In general, the GOU does not require that firms receive specific authorization to set up operations, import and export, effect deposits and banking transactions in any currency, or obtain credit. Screening mechanisms do not apply to foreign or national investments, and special government authorization is not needed for access to capital markets or to foreign exchange. In privatization and concession programs, foreign investors are treated as nationals and are allowed to participate in any stage of the process.

Uruguay has a history of maintaining state monopolies in a number of areas in which direct foreign equity participation is prohibited by law. While privatization is widely opposed by the population, some progress has been achieved dismantling government-run monopolies and increasing private sector participation in the economy.

Several state-owned entities have contracted with foreign-owned companies to provide specific services for a given period of time under Build-Operate-Transfer (BOT) regimes. While basic telephone services remain a monopoly, cellular services are provided by government-owned ANCEL, Spanish Telefonica, and Mexican America Movil. Local wireless loop systems, the installation and maintenance of public telephones, data transmission, and some value-added services are also open to the private sector. Although the Telecommunication and Postal Services regulatory agency, URSEC, aims to preserve a level playing field for private and public firms, it sometimes lacks the strength to enforce regulations on government-owned ANTEL.

Other sectors demonstrate varying levels of privatization. For instance, although private power generation is now allowed, the state-owned power company, UTE, still holds a monopoly on wheeling rights. Also, despite various commitments to the IMF, the state-owned oil company, ANCAP, remains the only importer and refiner of petroleum products. In a December 2003 referendum, over 62% of voters repealed a law to allow ANCAP to associate with foreign partners and demonopolize refined oil imports. Ports are widely privatized, with private companies providing most services since 1992. Fifty-one percent of the state-owned airline PLUNA was sold to the private sector in 1996, and the GOU plans to sell the rest. The insurance and mortgage sectors were demonopolized in 1996, but workers compensation insurance remains a government monopoly. While there was some private sector provision of water and sewage services in resort areas, an October 2004 constitutional amendment, approved by 64% of voters, declared water a national resource to be controlled exclusively by the State.

Although U.S. firms have not encountered major obstacles in Uruguay's investment climate, some have been frustrated by the length of time it takes to complete bureaucratic procedures and tenders, and by numerous changes in tax codes and regulations since 2001.

Conversion and Transfer Policies

Uruguay maintains a long tradition of not restricting the purchase of foreign currency or the remittance of profits abroad, even during the 2002 banking and financial crisis. Foreign exchange can be freely obtained at market rates.

Expropriation and Compensation

In the event of expropriation, the Uruguayan Constitution provides for the prompt payment of fair compensation. While there have not been any expropriations in the recent past, the constitutional amendment on water services could lead to expropriation of private firms in that sector.

There are no laws that require local ownership, except in specific areas reserved for the State.

Dispute Settlement

The investor may choose between arbitration and the judicial system to settle disputes. Uruguay is a member of the International Center for the Settlement of Investment Disputes since September 2000. Uruguay's legal system is based on a civil law system derived from the Napoleonic Code, and the government does not interfere in the court system. Corruption is not a major problem and the Judiciary is independent, albeit sometimes slow.

Bankruptcy

In the case of bankruptcies, creditors with preferred shares collect first, followed by the firm's employees and the government. Since local firms usually wait too long to initiate bankruptcy proceedings, few firms that enter into bankruptcy manage to pay their debts, with the majority closing after some years.

Performance Requirements/Incentives

Current investment law treats local and foreign investors equally and does not provide preferential tax deferrals, grants, or special access to credit for foreign investors. Consequently, foreign investors are not required to meet any specific performance requirements. Furthermore, foreign investors are not inhibited by discriminatory or excessively onerous visa, residence, or work permit requirements. The government does not require that nationals own shares or that the share of foreign equity be reduced over time. Moreover, technology can be freely transferred and the government does not impose conditions on invest permits.

For some activities, the government has established asset, value-added and internal tax benefits, as well as social security payment and tariff reductions. In addition, it provides preferential treatment for capital good imports and tax deferrals for exports. Quotas are not applied to exports or imports. Investments in sectors such as forestry, hotels, and agro-industries receive additional incentives. The incoming administration may tie incentives more closely to job creation, technology transfer, and decentralization.

A government decree establishes that government tenders will favor local products or services, provided they are of equal quality and not more than 10% more expensive than foreign goods or services. U.S. and other foreign firms are able to participate in government-financed or subsidized research and development programs on a national treatment basis.

Right to Private Ownership and Establishment

Private ownership does not restrict a firm or business from engaging in any form of remunerative activity, except in two areas -- national security interest, and legal government monopolies (see Openness to Foreign Investment).

Protection of Property Rights

Secured interests in property and contracts are recognized

and enforced. Mortgages exist, and there is a recognized and reliable system of recording such securities. Uruguay's legal system protects the acquisition and disposition of all property, including land, buildings, and mortgages. Nevertheless, execution of guarantees is usually a slow process.

In mid-2003, several political factions attempted to pass a bill that would have alleviated the payment burden of Uruguayan dollar debtors adversely affected by the peso's devaluation. The law would have forced banks to re-negotiate the terms of their loans. However, the GOU opposed the initiative and succeeded in negotiating an "administrative solution" with all parties. This extended loan maturities and allowed some debtors, especially in the agricultural and mortgage sectors, to make smaller payments on a negotiated basis. The government pledged to favor credible debtors over those who have been delinquent for a long time. The incoming administration will likely continue this policy. The law also eliminated the value-added tax on mortgage interest.

-- Protection of Intellectual Property Rights: Uruguay is a member of the World Intellectual Property Organization (WIPO), and a party to the Bern and Universal Copyright Conventions, and the Paris Convention for the Protection of Industrial Property. In 2003, coordinating closely with U.S. and international IPR organizations, Uruguay passed new TRIPS-compliant copyright legislation. In 1998 and 1999, Uruguay also passed trademark and patent legislation.

-- Copyrights: The 2003 copyright law represented a significant improvement over the 1937 law and led the United States Trade Representative (USTR) to upgrade Uruguay from the "Priority Watch List" to the "Watch List." However, IPR enforcement remains ineffective and the GOU fails to provide adequate TRIPS consistent protection for confidential test data. Uruguay signed the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) in 1997 but, as of January 2005, has not ratified them. In its 2003 and 2004 reports, USTR urged the GOU to improve border controls, ratify the WIPO Internet treaties and address deficiencies in enforcement against piracy and counterfeiting. Various IPR chambers, which founded an umbrella organization in 2004, have implemented aggressive anti-piracy campaigns, resulting in several successful prosecutions.

-- Patents: Patents are protected by Law No.17164 of September 2, 1999. Invention patents have a twenty-year term of protection from the date of filing. Patents for utility models and industrial designs have a ten-year term of protection from the filing date and may be extended for and additional five. The law provides a lax definition of compulsory licensing and vaguely defines compensation as "adequate remuneration" to be paid to the patent-holder. Some U.S. industry groups believe that the law's compulsory licensing requirements are not TRIPS consistent.

-- Trademarks: The GOU approved a trademark law on September 25, 1998 upgrading trademark legislation to TRIPS standards. Under this law, a registered trademark lasts ten years and can be renewed as many times as desired. It provides prison penalties of six months to three years for violators, and requires proof of a legal

commercial connection to register a foreign trademark. Enforcement of trademark rights is adequate and has improved in recent years as a result of an intense anti-smuggling campaign.

Transparency of the Regulatory System

Transparent and streamlined procedures regulate foreign investment. However, long delays and repeated appeals can significantly delay the process to award international and public tenders.

Efficient Capital Markets and Portfolio Investment

Foreign investors enjoy easy access to credit on market terms. Although the private sector can access a variety of credit instruments, access to long-term credit in the local banking sector became difficult after the 2002 financial crisis. (Please see Chapter 8 for a detailed description of the banking sector.)

Uruguay's capital market is underdeveloped and concentrated in public paper. There is no effective regulatory system to encourage and facilitate portfolio investment. Although there are two stock exchanges, trading is very limited (only 17 firms are registered at one of the exchanges). Despite an increase in commercial paper in 1996 and 1997, the market soon stalled. Currently only a few firms issue obligations, and commercial paper transactions are minimal. There are only two investment funds that mostly service domestic clients and invest their funds in Uruguayan public paper. Risk rating firms first came to Uruguay in 1998.

Private firms do not use "cross shareholding" or "stable shareholder" arrangements to restrict foreign investment. Nor do they restrict participation in or control of domestic enterprises.

Political Violence

There have not been any significant incidents involving politically motivated damage to property or installations. Uruguay is a stable democracy in which respect for the rule of law is the norm and most of the population is committed to non-violence.

Corruption

Uruguay has strong laws to prevent bribery and other corrupt practices. In 2004, Uruguay ranked 28th in Transparency International's Corruption Perception Index, second only to Chile in Latin America. A law against corruption in the public sector was approved in 1998, and acceptance of a bribe is a felony under Uruguay's penal code. Money laundering is penalized with sentences of up to ten years (which also apply to Uruguayans living abroad). Despite Uruguay's favorable rating and effective legislation, public surveys indicate a widespread perception of public sector corruption. Several former Uruguayan officials and one judge were prosecuted in recent years. Overall, U.S. firms have not identified corruption as an obstacle to investment.

Bilateral Investment Agreements

In late 2004, Uruguay and the United States signed a Bilateral Investment Treaty (BIT) and an Open Skies Agreement which are pending ratification as of January 2005. The incoming Minister of Economy publicly announced his intention to seek rapid ratification of the BIT.

Uruguay also has BITs with Australia, Belgium, Canada, Chile, China, Czech Republic, Finland, France, Germany, Great Britain, Hungary, Israel, Italy, Luxembourg, Malaysia, Mexico, The Netherlands, Panama, Poland, Romania, Spain, Switzerland, and Venezuela. BITs with Armenia, Portugal and Sweden are pending ratification. In addition, Uruguay signed Double Taxation Agreements with Germany, Korea and Hungary.

OPIC and Other Investment Insurance Programs

The GOU signed an investment insurance agreement with the Overseas Private Investment Corporation (OPIC) in December 1982. The agreement allows OPIC to insure U.S. investments against risks resulting from expropriation, inconvertibility, war or other conflicts affecting public order. OPIC programs are currently used in Uruguay.

In 2002, after four years of recession and in the face of devaluations in neighboring economies, Uruguay eliminated its decade-long exchange rate bands and allowed the peso to float freely. There is no black market for currency exchange and the U.S. Embassy uses the official rate when purchasing local currency.

Labor

The Uruguayan labor force of some 1.2 million is well educated and adept in the application of modern industrial techniques. The government has instituted technical training programs to help meet industry's skilled labor requirements. At 97%, Uruguay's literacy rate is the highest in Latin America and on par with that of the United States.

Social security payments are high and increase employers' basic wage costs by almost 50%. A law approved in May 1998 provides incentives for companies that hire young people, including a reduction of between 12-18% in employer social security and healthcare contributions. In May 2001, the GOU passed a bill permitting further reductions in social security payments by employers in several sectors. The social security system currently allows for retirement at age 60 for both men and women. Workers who become disabled on the job receive a monthly payment from the government equal to 70% of their salaries plus free medicine and medical care.

The labor market improved in 2004 with the average unemployment rate dropping from 17.1% in 2003 to 13.4%, and real average wages starting to stabilize. Activity and employment rates were 58% and 51%, respectively, in November 2004, with approximately 165,000 people unemployed. The government provides six months of unemployment benefits and is evaluating whether to extend the term to nine months.

Uruguay has ratified a large number of ILO conventions that protect worker rights, and generally adheres to their

provisions. The Uruguayan constitution guarantees workers the right to organize and strike, and union members are protected by law against dismissal for union activities. Labor unions are independent from government and political party control. Sympathy strikes are legal. The level of unionization in the private sector has steadily decreased since the return of democracy in 1985 due to: 1) a loss of jobs in the industrial sector; 2) an increase in jobs in the informal sector and in smaller companies where it is more difficult to form unions; and 3) a lack of Ministry of Labor initiative in regulating labor negotiations. There is no collective bargaining activity, and there have been few union achievements since 1985. Current labor concerns include those related to salaries, the reinstatement of collective bargaining mechanisms, housing, job creation, and opposition to the government's economic policies. A February 2003 public opinion poll indicated that 52% of the population distrusts the leaders of the labor umbrella organization, PIT/CNT.

Unions are optimistic about relations with the new administration, and received a promise from the designated Industry Minister, a centrist businessman, and the designated Labor Minister to convoke salary councils. However, wage increases seem unlikely given other public spending commitments. Union leaders stated they do not expect immediate changes.

Free Trade Zones (FTZ) / Free Ports

Free trade zones permit all types of commercial, industrial, and service activities. These activities are considered to take place outside of the national territory. When goods from a free trade zone are introduced into the rest of the country, they are treated as "imports."

Law No.15921 of December 17, 1987 regulates the operation of FTZs within the country. The law allows storage and warehousing, manufacturing, and financial and data processing, and related activities to take place within FTZs. Nine FTZs are located throughout the country (one public, one mixed ownership, and seven private). MERCOSUR regulations treat products manufactured in all member state FTZs as extra-territorial. Products manufactured by Uruguayan or foreign firms in Uruguayan FTZs are not eligible for MERCOSUR certificates of origin. Furthermore, these products do not benefit from MERCOSUR customs union advantages and must pay the MERCOSUR common external tariff when entering member countries.

Goods, services, products and raw materials of foreign and Uruguayan origin may be brought into the zones, held, processed, and re-exported without payment of Uruguayan customs duties or import taxes. Goods of Uruguayan origin entering into FTZs are treated as Uruguayan exports for tax and other legal purposes. Goods that enter Uruguayan customs territory from FTZs are subject to customs duties and import taxes. Industrial or commercial government monopolies are not honored within FTZs.

Local and foreign-owned industries alike enjoy several advantages in an FTZ. They are exempt from all domestic taxes, with exemptions granted exclusively to free trade zone tenants with approved contracts from the General Trade Authority. Customs duty exemptions are applicable

to the entry and exit of goods. The only additional cost to employers is the contribution to social security for Uruguayan employees. The employer does not pay social security taxes for non-Uruguayan employees if those employees waive coverage under the Uruguayan social security system. However, Uruguayans must comprise 75% of a company's labor force to qualify for FTZ tenancy.

Foreign Direct Investment Statistics

Foreign Direct Investment (FDI) in Uruguay has been low because of the country's small market, the lack of major privatizations, and the small number of firms that base their MERCOSUR-wide operations locally. Uruguay's FDI/GDP ratio of 1% is well below the Latin American/Caribbean average of about 3%, and that of its Southern Cone neighbors Argentina and Brazil, with 2.6%, and Chile with 5.6%.

According to Uruguay's Central Bank, FDI stock declined from \$2.4 billion in 2001 to \$1.4 billion in 2002, mostly due to decreased asset values following the sharp 2002 economic contraction and devaluation. Economic recovery led the stock of FDI to increase to \$1.8 billion in 2003, and major investments in 2004 should contribute to further increases.

A 1999 study by the GOU (which has not been updated) concluded that the United States was the largest single investor in Uruguay (33% of overall FDI), followed by Argentina and Spain. According to the U.S. Department of Commerce, the 2003 stock of U.S. direct investment in Uruguay amounted to \$600 million.

Although figures on investment by sector are unavailable, most foreign investment in recent years has gone into forestry-related activities, service industries, construction (i.e. hotels, office buildings and infrastructure), and mining.

Host country contact information for investment-related inquiries:

<http://www.uruguayxxi.gub.uy>

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