

## URUGUAY - INVESTMENT CLIMATE STATEMENT 2009

### **Openness to Foreign Investment**

The Government of Uruguay recognizes the important role foreign investment plays in economic development and works 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.

The Uruguayan Government's (GOU)'s Law 16906, adopted in 1998, declares promotion and protection of national and foreign investment to be 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 will not prevent the establishment of investment in the country, and (4) investors may freely transfer abroad their capital and profits from the investment.

The Frente Amplio administration, which took office in March 2005, has continued to stress the importance of local and foreign investment for social and economic development and has aimed to double Uruguay's investment/GDP ratio during its term by attracting direct foreign investment, developing the local capital market, and improving existing legislation on investment.

The GOU has pursued sound macro economic policies, and has reduced its vulnerability to external shocks by diversifying its markets and strengthening its financial sector and reserves. The GOU hopes these steps will help mitigate some of the impact of the current financial crisis.

Decree 414/07, adopted in November 2007, provides additional incentives to investors, streamlined procedures for firms requesting tax exemptions, and established a single-window mechanism to channel investment requests and guide investors (see Performance Requirements and Incentives).

Law 18092 (passed in 2007), which requires corporations that purchase land to use registered shares held by individuals – instead of bearer shares – caused some foreign investors to put planned investments on hold. The GOU later exempted some large foreign firms from this requirement. The government has also passed labor legislation, which, in the view of most business chambers, overly protects workers' rights and which some analysts believe has led to a number of widely publicized labor conflicts resulting in the occupation of workplaces.

In general, the GOU does not require that firms receive specific authorization to set up operations, import and export, make deposits and banking transactions in any particular 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 tenders for private participation in state-owned sectors, foreign investors are treated as nationals and allowed to participate in any stage of the process. Bidders on tenders should be prepared for a lengthy adjudication process.

Uruguay has a history of maintaining state monopolies in a number of areas where direct foreign equity participation is prohibited by law. While privatization is widely opposed by the population, some of the government-run monopolies have been dismantled over the past few decades, and private sector participation in the economy has increased significantly. 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, government-owned ANCEL, Spain's Telefonica, and Mexico's America Movil provide cellular services. International long distance calling, data transmission, and value-added services are also open to the private sector. The Telecommunication and Postal Services regulatory agency (URSEC) aims to preserve a level playing field for private and public firms, but it sometimes lacks the strength to enforce regulations on government-owned ANTEL.

Other sectors have varying levels of private sector participation. Although private power generation is allowed, the state-owned power company, UTE, still holds a monopoly on wheeling rights. The state-owned oil company, ANCAP, remains the only importer and refiner of petroleum products. The government has been planning to associate ANCAP with foreign partners, especially in the area of off-shore exploration. For the latter, ANCAP organized an international road-show, including an event in the U.S. for interested oil companies. In the ports, private companies provide most services. The national airline PLUNA is 75% owned by a consortium of U.S. investors. The insurance and mortgage sectors are de-monopolized, but workers compensation insurance remains a government monopoly. An October 2004 constitutional amendment, approved by 64% of voters, declared water a national resource to be controlled exclusively by the State. The state-owned rail company AFE may select a private operator for its cargo railway system in 2009.

The World Bank's 2009 "Doing Business" Index, which ranks 181 countries according to the ease of doing business in each one of them, placed Uruguay 109th globally and 8th within the Latin American region (17 countries). Uruguay gets high scores in the categories "getting a credit" and "closing a business," and lower marks in "paying taxes", "registering property," and "dealing with construction permits."

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.

Uruguay and the United States signed a Bilateral Investment Treaty (BIT) in November 2005, which entered into force on November 1, 2006 (available at [www.ustr.gov/Trade\\_Agreements/BIT/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/BIT/Section_Index.html))

and <http://uruguay.usembassy.gov>). Uruguay and the United States also signed an Open Skies Agreement in late 2004 (ratified in May 2006), a Trade and Investment Framework Agreement (TIFA) in January 2007, and a Science and Technology Cooperation Agreement in April 2008. Under the TIFA, in 2008, both countries signed agreements on business facilitation and environment.

### **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.

Article 7 of the U.S.-Uruguay BIT provides that both countries "shall permit all transfers relating to investments to be made freely and without delay into and out of its territory." The agreement also establishes that both countries will permit transfers "to be made in a freely usable currency at the market rate of exchange prevailing at the time of the transfer."

There are no restrictions on technology transfer.

### **Expropriation and Compensation**

In the event of expropriation, the Uruguayan Constitution provides for the prompt payment of "fair" compensation.

Article 6 of the U.S.-Uruguay BIT rules out direct and indirect expropriation or nationalization, except under certain very specific circumstances. The article also contains detailed provisions on how to compensate investors, should expropriation take place.

Following the constitutional amendment on water services, the GOU took over the operations of URAGUA, a Spanish water company that had operated locally from 2000 through 2005. The GOU and URAGUA subsequently reached a negotiated settlement.

### **Dispute Settlement**

The investor may choose between arbitration and the judicial system to settle disputes. Uruguay became a member of the International Center for the Settlement of Investment Disputes in 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.

### **Performance Requirements and Incentives**

Article 8 of the U.S.-Uruguay Bilateral Investment Treaty bans countries from imposing seven forms of performance requirements to new investments, or tying the granting of existing or new advantages to performance requirements.

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, and does not impose conditions on investment permits.

The GOU grants two kinds of benefits to investors: automatic and discretionary. Automatic tax incentives apply for personnel training, research and scientific and technological development, reinvestment of profits, and investments in industrial machinery and equipment.

There are also special regimes in place to promote manufacturing, domestic trade, services, the tourism industry, forestry and citrus plantations, the hydrocarbons exploitation process, the media industry, broadcasting and film exhibition and distribution, the maritime industry, and air and sea navigation companies. None of these regimes discriminate against foreign investors.

Discretionary benefits (in the sense investors must submit an investment plan to be approved by the government) include tax exemptions on imports of fixed assets, exemption of the corporate net wealth tax on chattel goods, reimbursement of VAT on local purchases of goods and services for construction and significant exemptions from corporate income tax.

Decree 414/07 regulates Law 16906 and provides significant tax incentives to a broader base of firms. The principal incentive consists in the deduction from income tax of a share of total investment (ranging between 60% and 100%) for a 25-year term. The size of the benefit to be granted is determined according to the size of the investment and a pre-defined list of criteria, including the project's: (1) generation of jobs; (2) contribution to R+D and innovation; (3) impact on GDP, exports, and local value added; (4) contribution to geographic decentralization; and (5) use of clean technologies. The decree also streamlined procedures for firms requesting tax exemptions and established single-window mechanisms to channel investment requests and guide investors. Foreign and local investors reacted positively to the new incentives.

A government decree establishes that government tenders will favor local products or services, provided they are of equal quality and not more than 10 percent 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). One hundred percent foreign ownership is permitted, except where restricted for national security purposes.

## **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. However, execution of guarantees is usually a slow process.

Uruguay is a member of the World Intellectual Property Organization (WIPO), and a party to the Bern and Universal Copyright Conventions, as well as the Paris Convention for the Protection of Industrial Property. In 1998 and 1999, it also passed trademark and patent legislation. In 2003, coordinating closely with U.S. and international IPR organizations, Uruguay passed new TRIPS-compliant copyright legislation. The United States Trade Representative (USTR) removed Uruguay from the Special 301 Watch List in 2006 due to progress in IPR, especially with respect to copyright enforcement. The USTR statement commended the "positive progress" and was "encouraged that Uruguay has set a positive example by its efforts to combat piracy and counterfeiting."

The 2003 copyright law represented a significant improvement over the 1937 law and led USTR to upgrade Uruguay from the "Priority Watch List" to the "Watch List." Uruguay signed the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) in 1997. Parliament ratified the WCT in October 2006 (Law 18036) and the WPPT on February 20, 2008 (Law 18253).

Patents are protected by Law 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 an additional five. The law 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. On average, filing a medical patent takes two years longer than in the United States.

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 has improved in recent years as a result of an intense anti-smuggling campaign.

## **Transparency of 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.

Article 10 of the Uruguay-U.S. BIT mandates both countries to promptly publish or make public any law, regulation, procedure or adjudicatory decision related to investments. Article 11 sets transparency procedures that govern the accord.

## **Efficient Capital Markets and Portfolio Investment**

Foreign investors can access credit on the same market terms as nationals. Long-term banking credit has traditionally been more difficult to obtain.

Uruguay's capital market is underdeveloped and concentrated in sovereign debt. While Uruguay is receiving "active" investments oriented to establishing new firms or gaining control over existent ones, it lacks major "passive" investments from investment funds that are an essential source of start-up capital and liquidity for new ventures and companies wishing to expand operations.

There is no effective regulatory system to encourage and facilitate portfolio investment. There are two stock exchanges. An electronic exchange concentrates on foreign currency transactions and a traditional exchange focuses on sovereign bonds. Only 12 firms are registered in the traditional stock exchange, and trading with shares and commercial paper is virtually nil. However, there has recently been a good deal of discussion -- encouraged and facilitated by the Embassy -- among the relevant Uruguayan actors about how to reinvigorate Uruguay's capital markets. There are few investment funds in operation, mostly serve domestic clients and invest their funds in Uruguayan sovereign debt. 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**

Uruguay is a stable democracy (Uruguay ranked as the most democratic country in Latin America, according to The Economist's 2008 Democracy Index) in which respect for the rule of law is the norm and the vast majority of the population is committed to non-violence.

## **Corruption**

Uruguay has strong laws to prevent bribery and other corrupt practices. In 2008, Uruguay ranked 23th (among 180 countries) in Transparency International's Corruption

Perception Index. Uruguay shared the top position in Latin America's ranking with Chile. Despite Uruguay's favorable rating and effective legislation, however, public surveys indicate a perception of public sector corruption. Several former Uruguayan officials, customs officials and one judge were prosecuted for corruption in recent years. Overall, U.S. firms have not identified corruption as an obstacle to investment.

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). Law 17835 (passed in 2004) established a good framework against money laundering and terrorism finance and, as of January 2009, a bill to further strengthen the legal code in these areas is before Parliament. Enforcement is improving at a good pace.

### **Bilateral Investment Agreements**

In November 2005, Uruguay and the United States signed a Bilateral Investment Treaty (BIT), which was subsequently ratified by both legislatures and entered into force on November 1, 2006. The full text of the agreement is available at [www.ustr.gov/Trade\\_Agreements/BIT/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/BIT/Section_Index.html) and <http://uruguay.usembassy.gov>. Among other benefits, the BIT grants national and most-favored-nation treatments to investments and investors sourced in each country.

Uruguay also has BITs with Armenia, Australia, Belgium, Canada, Chile, China, Czech Republic, Finland, El Salvador, France, Germany, Great Britain, Hungary, Israel, Italy, Luxembourg, Malaysia, Mexico, Portugal, The Netherlands, Panama, Poland, Romania, Spain, Sweden, Switzerland, and Venezuela. A BIT with India is pending ratification as of January 2009.

Uruguay has Double Taxation Agreements with Argentina, Chile, Germany, Hungary, Israel, Norway, Panama, Paraguay, and Switzerland.

### **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.

### **Currency Exchange**

In 2002, after three years of recession and in the face of devaluations in neighboring economies, Uruguay eliminated its decade-long exchange rate band. Since then, the peso has floated freely, albeit with some intervention from the Central Bank. 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 is well educated, and the government has instituted technical training programs to help meet industry's skilled labor requirements. At 97 percent, 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 about 30 percent. In addition to the worker's salary, employers must pay: (a) 7.5 percent of the wage to social security, (b) 5 percent to health insurance, (c) 0.125 percent to a labor restructuring fund, (d) a supplementary annual bonus equivalent to 1/12 of the annual pay (basically a 13th month's wages), and (e) a vacation pay equivalent to about 80 percent of the net wage received by the employee times 20 (days of leave) divided by 30 (days a month).

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 percent of their salaries plus free medicine and medical care. The government provides six months of unemployment benefits.

Uruguay has ratified 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 nominally independent from the government. Sympathy strikes are legal.

In 2006, the GOU passed a law on the "Promotion and Protection of Labor Unions" that renders any discriminatory action affecting the employment of unionized workers illegal. Among other measures, the law provides for the immediate reinstatement of the employee if any infringement of the law is proven. Business chambers strongly opposed the bill, arguing that it slanted labor relations heavily in favor of unions.

The level of unionization has increased steadily since the governing Frente Amplio Party took office on March 1, 2005. The umbrella labor organization PIT/CNT claims to have approximately 300,000 active members, or 28 percent of the workforce. An employer can freely dismiss workers as long as it is not discriminatory and pays the worker one month for each year of work, with a cap of six months.

In labor trials, the Judiciary tends to rule in favor of the worker, as he/she is considered to be the weaker party.

In 2005, the Frente Amplio administration reinstated Salary Councils, a three party board consisting of representatives from unions, employers, and the government. The councils are responsible for setting the wage increases for individual sectors; if the unions and employers fail to reach an agreement to determine the wage increase to be applied for

sectors, then the government makes the final decision. The councils were first instituted in 1943 and dissolved on several occasions, the last one coming in 1992.

In 2005, the GOU rescinded a 1966 decree that enabled employers to request police action to evict occupying workers and, in May 2006, passed a decree providing for obligatory negotiations between employer and employees prior to employees resorting to occupying the workplace. In practice, however, occupations have been early measures in several labor conflicts. Occupations surged in early 2006 but declined significantly beginning in 2007, as the GOU implemented regulations to restrain excesses, and the courts ruled to evict occupying workers in several instances. In November 2008, an International Labor Organization report was released, suggesting that Uruguay revise its legislation on this issue.

Parliament passed a law in January 2007 on outsourcing (No. 18099), which was adamantly opposed by the business community, as it made employers responsible for possible labor infringements on employees by third-party firms that were contracted by the employers. In November 2007, the GOU submitted another bill clarifying some of the private sector's concerns, which was passed in January 2008 as Law 18251.

Parliament passed a law in December 2008 providing between 6 and 12 days of mandatory leave for students to prepare for exams. Some businesspeople think the law could affect labor-intensive sectors that hire students, such as call centers.

In October 2007, the GOU submitted a bill on Collective Bargaining, which as of January 2009 has not moved forward in Parliament. Another bill on Collective Bargaining for public sector employees, submitted in February 2008, is also before Parliament.

### **Foreign-Trade Zones/Free Ports**

Law 15921 of December 17, 1987, regulates the operation of free trade zones within the country. Free trade zones (FTZs) permit all types of commercial, manufacturing, industrial, and service activities (e.g. warehousing, call centers, logistics and distribution, financial services, software development, and biotechnology). These activities are considered to take place outside the national territory. When goods from an FTZ are introduced into Uruguay's customs territory, they are treated as "imports" and thus subject to customs duties and import taxes. Goods of Uruguayan origin entering into FTZs are treated as Uruguayan exports for tax and other legal purposes.

Goods, services, products, and raw materials of foreign and Uruguayan origin may be brought into the FTZs, held, processed, and re-exported without payment of Uruguayan customs duties or import taxes. Current 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 percent of a company's labor force to qualify for FTZ tenancy.

Uruguay is a founding member of MERCOSUR, the Southern Cone Common Market composed of Argentina, Brazil, Paraguay and Uruguay (Venezuela's membership is pending). Since MERCOSUR regulations treat products manufactured in all member states FTZs as extra-territorial and hence charge them its common external tariff, with few exceptions, little manufacturing is done in local FTZs. Furthermore, products manufactured by Uruguayan or foreign firms in Uruguayan FTZs are not eligible for MERCOSUR certificates of origin and must pay the bloc's common external tariff upon entering other member countries.

Twelve FTZs are located throughout the country. While most are dedicated almost exclusively to warehousing, three host a wide variety of tenants performing a variety of services. One in particular (Zonamerica) was developed as a technology park to provide services and infrastructure for competitive development of companies with international reach. Two were created exclusively for the development of the paper and pulp industry.

### **Foreign Direct Investment Statistics**

Foreign Direct Investment (FDI) in Uruguay has been traditionally low (under 3 percent of GDP), even by Latin American and regional standards, 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. However, FDI has risen significantly in recent years – to about 5 percent of GDP in 2008 – in light of major investments in agriculture-related activities (forestry, ranching, farming, and slaughterhouses), construction (real estate in Punta del Este, hotels, and office buildings), and services.

Annual inflows of FDI rose from \$397 million in 2004 to \$847 million in 2005, \$1.4 billion in 2006, \$1.1 billion in 2007, and \$1.4 billion in the first three quarters of 2008. Surging inflows of FDI have led the stock of FDI to record levels (\$5.5 billion in 2007).

According to the most recent statistics by origin (2005), the United States was the third largest foreign investor in Uruguay with 4.2 percent of total FDI (\$35 million). Spain and Argentina ranked first and second, respectively, with 24 percent and 13 percent total FDI. Brazil has also made significant investments, especially in the agro-industrial (beef, rice and barley), financial, and energy sectors.

According to the U.S. Department of Commerce, the 2005 stock of U.S. direct investment in Uruguay amounted to \$599 million. Major U.S. investments include Weyerhaeuser (forestry), Conrad Hotels (tourism and gambling), and Sabre (call center), with significant U.S. investment in meat processing and agro-industry.

Finnish Botnia's construction of a \$1.2 billion pulp mill in 2005-2007 was Uruguay's largest-ever foreign investment. Another cellulose producer, Spanish firm Ence, plans to build a pulp mill worth \$ 1.0 billion over the next 2-3 years. A dispute between Argentina and Uruguay over these pulp mills investments led to strained relations between the two countries. Portucel and Stora Enso have also announced their decision to invest in additional pulp mills to be constructed.

In 2008, local and foreign investors reacted positively to Decree 414/07 (see Performance Requirements and Incentives) and, encouraged by the booming economy, submitted investment proposals worth over \$1 billion, more than double the 2007 request.

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