The Next Decade in Latin America: Anticipating the Future from the Past

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by Robert J. Radway*

I. INTRODUCTION

A company planning an investment for expansion in a Latin American country today must evaluate more than just the local market conditions... It must also look at the implications of Latin America's evolution toward economic integration, in terms of expanded export opportunities, growing import competition and the harmonized treatment of foreign investment. However, the progress of integration in Latin America has been slower than in Europe and the obstacles (natural, economic and political) are formidable. Moreover, setbacks in the past years have delayed the implementation of harmonization rules.

Largely due to the early efforts of development economists, most notably Dr. Raul Prebisch, a new business climate has emerged in Latin America, particularly during the 1970's. Regulation and control systems have emerged which clearly bear the mark of Dr. Prebisch and like-minded thinkers in singling out certain activities and sectors in the economy for attention.

Following his term as President of the Argentine Central Bank, Dr. Prebisch became the first Executive Director of the United Nations Economic Commission of Latin America (ECLA), where he and the economists gathered around him, together with leading university professors and high government officials, helped coordinate development planning efforts with ECLA, the Organization of American States (OAS) and the Inter-American Development Bank (IDB). Many of the joint OAS/ECLA/


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1 BUSINESS INTERNATIONAL CORPORATION, INVESTING, LICENSING, AND TRADING CONDITIONS ABROAD, LATIN AMERICA 1 (1980).
IDB studies produced during the 1950's and subsequently were and still are important in establishing or accomplishing development priorities and goals. In 1964, Dr. Prebisch became the first Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) and his thinking subsequently influenced the rest of the Third World. Dependency theory, which apparently arose from his work and that of his followers, has become the most widely cited and discussed theory in the background of today's development dialogue.

This article will review the economic strategies since World War II and the formation of ECLA, the principle theories which have influenced the development goals and priorities and given rise to these laws and regulations. Against this background, this article will address reappraisals in development strategies which will affect the priorities and methodology applied during the 1980's. Significant debate took place during the 11th Special Session of the U.N. General Assembly in the fall of 1980 to define the "International Development Strategy" (IDS) for the Third Development Decade. The proposal to formally initiate the "Global Negotiations" was defeated. Although it would be foolish to predict specific developments or laws in a region as dynamic as Latin America, this article will attempt to identify areas of public policy which the author believes will be elevated to high priority during the 1980's and will therefore be regulated more actively than in the past. Suggestions for the practitioner about specific areas where laws are to be anticipated are included so that clients can be counseled to plan accordingly.

II. EVOLUTIONARY TRENDS IN LATIN AMERICA

A. Prelude

The 20th Century has seen a marked shift in Latin American economic policy as a result of the breakdown in policies of economic liberalism adopted in the 19th Century in rejection of the mercantilistic policies followed by Spain during colonial times. In the early 19th Century, laissez-faire economics had appeared attractive to the newly independent colonies. It offered them expanded markets and permitted them to sell to countries offering the best price, buy imports where they were cheapest, and keep the profits themselves. The principle of the international division of labor was compatible with the productive patterns already established. Historically a supplier of food, agricultural and mineral raw materials to Spain, Latin America found itself with the comparative advantage of maintaining this supply to the countries in Europe and North

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2 Spain's policy toward its colonies sought to integrate the colonial economies with its own, to assure a steady or increased supply of primary commodities from the colonies while promoting industrialization at home and deliberately ignoring it in the colonies.
America which were undergoing rapid industrial expansion. According to classical economic theory, countries producing raw materials had no need to industrialize since they would reap their share of the benefits of technical progress through international exchange; efforts at industrialization would only serve to lower their efficiency.

Latin America was not content to be bypassed by industrialization, however, and sought to imitate the European model. At the end of the 19th Century, the region sought to develop its infrastructure (railroads, telegraph communications, ports and public utilities) in an effort to prepare for the diversification of production. When dealing in such general terms, it is important not to overlook a key difference between European and the Latin American social structures. When Latin America achieved independence, political power remained in the hands of the landholding class which represented only a small percentage of the population. While landlords during colonial times were directly responsible for their serfs, the combination of independence (making the workers free wage earners), and economic and political liberalism simultaneously relieved them of the responsibility for the welfare of their workers and permitted them to reap the monetary gains of the open market. Infrastructural improvements mainly served the landed proprietors as well as the foreign mining companies and other investors whose capital had financed these improvements. Proceeds from the sale of output were spent on imports from industrialized countries or, in the case of some mining companies, remained abroad. Living standards of most of the population remained at or below subsistence levels.

These conditions set off a chain reaction of revolt and reform which spanned some 40 years and took various forms, beginning with the Mexican Revolution of 1910 and the peaceful "policy revolution" in Uruguay which began in 1904.8 It was the unstable years of the 1930's, however, which saw a definite shift in policy trends in Latin America. The circle had been completed—from colonial paternalism to the free market to modern paternalism, in which the state assumes the responsibility for economic recovery, progress and development.4

B. The Great Depression and World War II

The markets for primary products collapsed with the onset of the Great Depression. As a result, most of the region's economies were virtually stranded because they depended almost totally upon the export earnings their products brought. Only government intervention prevented

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4 Id. at 44, 47-48.
complete economic collapse.

During World War I, due to the need to manufacture many consumer items locally which could not be imported, the seeds were planted which provided an added impetus to diversify production. World War II had a similar effect on local manufacturing, but for some of the smaller republics in Latin America it took foreign assistance under the auspices of the Food and Agricultural Organization (FAO) and the U.S. Point Four Program to institute a policy shift. As a result of the Great Depression, Latin American economists learned that primary products were extremely vulnerable to cyclical price fluctuations, and this realization has shaped their thinking ever since. The World Wars also illustrated the need to establish some degree of import substitution. The combined experience led Latin America away from desarrollo hacia afuera (an outward-oriented development path), to desarrollo hacia adentro (an inward-looking development path). 5

C. ECLA and the Prebisch Era

At this point in time a new, coherent ideology and economic program was advanced to explain the causes of the problems Latin America faced and the proper course toward their resolution.

Significantly this ideology and programme came from the newly established United Nations Economic Commission for Latin America (ECLA) whose offices were opened in Santiago de Chile in 1948. It is significant because the new ideology reflected more the frustrations of technocrats and intellectuals than that of a newly emerging powerful social class. . . . ECLA espoused an ideology for a class too weak to implement it. . . . Divorced from contact with the mass of the Latin American poor by his style of life, the international bureaucrat tends to look for compromises and for the lowest common denominator, thus not offending anyone. Not surprisingly ECLA managed to avoid the realities of the class struggle in Latin America and the role of the USA in that struggle. 6

ECLA’s perspective resulted from the belief that it was futile to apply conventional economic theory originating in developed capitalist countries to the problems of developing countries. An appreciation for the different historical situations and national contexts was required.

Dr. Raul Prebisch is credited for the main tenets of the ECLA’s early position. He argued that Latin America’s underdevelopment was the result of its position in the world economy and its adoption of liberal capitalist economic policies. According to Prebisch, the terms of trade be-


* Id. at 9.
tween the developed countries at the "center" and the underdeveloped countries at the "periphery" were increasingly disadvantageous to the latter. Over the long run, prices for primary products (Latin America's "engine of growth") tend to decline while those of manufactured goods remain stable or increase. This results in a chronic structural balance of payments crisis. Productivity gains in the center lead to higher wages and other factor prices. In the periphery however, they lead to a decline in commodity prices and stagnant wages.\footnote{Id. at 9-10.}

The solution proposed was industrialization behind high protective barriers which would assist "infant industries" and optimize allocation of resources. Prebisch recognized that the State would have to manage the industrialization drive particularly in terms of planning. The need to achieve economies of scale prompted a recommendation to create a Latin American Common Market. In these ways, Latin America would achieve \textit{desarrollo hacia adentro}. This strategy became known as "import substitution industrialization" (ISI). It established industries which would satisfy demand previously met by imports (accepting as given the existing demand pattern), thereby improving the balance of payments.


\section*{D. Economic Integration Movements and the Road to Development}

\subsection*{1. The Latin American Free Trade Association}

Although not the first of the Latin America economic integration movements, the creation of the Latin American Free Trade Association (LAFTA), through the Treaty of Montevideo,\footnote{Treaty Establishing a Free Trade Area and Instituting the Latin American Free Trade Association, (Treaty of Montevideo) signed at Montevideo, Uruguay Feb. 18, 1960 [hereinafter cited as LAFTA], \textit{reprinted in Inter-American Institute of International Legal Studies, Instruments Relating to the Economic Integration of Latin America} 207 (1968) [hereinafter cited as IREILA].} established free trade in
the combined territories of the contracting parties, which was to be brought into full operation within 12 years of the date the Treaty entered force. The LAFTA Treaty included a program for trade liberalization through reduction of tariffs, the expansion and diversification of reciprocal trade, and the granting of “most favored nation” treatment to the other contracting states for products and capital originating in or intended for consignment to member states. The Treaty also incorporated various escape provisions in the event of dumping or other unfair practices, established a preference for relatively less developed countries in the group and included the customary privileges and immunities.

Finally, reflecting both the preoccupation of the times and the realities of predominantly agricultural countries, the Treaty included special provisions concerning agriculture which sought to harmonize the agricultural development and commodity trade policies of the member states. These provisions included an objective to expand intra-LAFTA trade in agricultural commodities. This objective was to cover deficits in domestic production of any member states, allowing priorities for products of origin, but containing other protective provisions for those commodities of substantial importance to the importing country’s economy. Due to the strong dependence of most of the member states on a few basic agricultural commodities, these Treaty provisions created complicated issues. Significantly, the Inter-American Development Bank (IDB) was created in 1960 to play a key role in the integration movement.

2. The Central American Common Market

A great deal of planning preceded the Treaty of Managua, or the Central American Common Market (CACM) Treaty, which is generally acknowledged as the base document for Central American economic integration. It was preceded in 1951 by the establishment of a Central American Economic Cooperation Committee and the establishment of the Or-

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10 The original signatories were Mexico and the South American countries of Argentina, Brazil, Chile, Paraguay, Peru and Uruguay. Subsequently, ratifications were received from Colombia, Ecuador, Venezuela and Bolivia. See IREILA, supra note 9, at 221-22.
11 See IREILA, supra note 9, chs. II, III & IV.
12 Id. chs. VI, VIII & X.
13 Id. ch. VII.
14 Id.
15 Agreement Establishing the Inter-American Development Bank (1960) [hereinafter cited as IDB], reprinted in IREILA, supra note 9, at 341-64. See for example IDB Earmarks Agriculture and Energy as Key Lending Areas, BUS. LATIN AM, Apr. 16, 1980, at 121-22.
organization of Central American States (ODECA)\(^\text{17}\) within the OAS.\(^\text{18}\) The execution of a series of bilateral free trade treaties between the five member countries occurred between 1951 and 1957, and the creation of key technical institutions at that time was essential to the integration process. In June of 1958, a multilateral treaty on free trade and Central American integration, and an agreement for a regime for Central American integrated industries were concluded.\(^\text{19}\)

Unlike the LAFTA Treaty, the CACM Treaty provided for immediate free trade in a number of important products which originated within the region. It also included a list of protected products which were to be progressively freed and special provisions for sensitive products which had a significant impact on the economies of the member states. Nearly 50 percent of intra-regional trade was immediately freed in September of 1963 when Costa Rica ratified the Treaty thereby giving it effect.\(^\text{20}\) While LAFTA foresaw only the free trade area, the CACM Treaty contemplated a customs union with a common external tariff similar to the Rome Treaty establishing the European Economic Community (EEC).\(^\text{21}\) The Central American Bank for Economic Integration provided another important catalyst in this region.\(^\text{22}\)

3. The Latin American Common Market

At a 1967 Inter-American Summit Conference in Punta del Este, Uruguay, the Presidents of 17 Latin American republics signed a declaration proposing the creation of a Latin American Common Market over the 15-year period between 1970 and 1985.\(^\text{23}\) In addition to the calls for

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\(^\text{17}\) Charter of the Organization of Central American States (ODECA) signed at Panama City, Panama, Dec. 12, 1962, reprinted in IREILA, supra note 9, at 199ff.


\(^\text{19}\) Multilateral Treaty of Free Trade and Central American Economic Integration, signed at Tegucigalpa, Honduras, June 10, 1958, reprinted in IREILA, supra note 9, at 3ff.

\(^\text{20}\) Agreement on the System of Central American Integrated Industries, signed at Tegucigalpa, Honduras, June 10, 1958, also reprinted in IREILA, at 89ff.

\(^\text{21}\) For a comprehensive background discussion and the high hopes which greeted the Central American integration process, see Simmonds, The Central American Common Market: An Experiment in Regional Integration, 16 INT'L COMP. L. Q. 911 (1967).


\(^\text{23}\) Agreement Establishing the Central American Bank for Economic Integration, signed at Managua, Nicaragua, Dec. 13, 1960, see IREILA, supra note 9, at 143ff.

\(^\text{24}\) Declaration of the Presidents of America, translated in 6 INT'L LEGAL MATERIALS 535 (1967). The complete text of the declaration is reproduced in IREILA, supra note 9, at 395ff. See also Simmonds, supra note 20, at 917. The 17 states present and signing included Trinidad and Tobago, Haiti, The Dominican Republic, and Panama, in addition to the Members of the CACM and LAFTA groups, minus Ecuador, Bolivia, and Uruguay.
economic integration, goals included increased exports and foreign trade earnings, stabilization of commodity prices, modernized and improved living conditions for rural populations, higher levels of education, and promotion of the application of science and technology for development. The declaration of the Presidents defined the proposed Latin American Common Market as a progressive convergence of the LAFTA and CACM systems and took into account the interest of the Latin American countries not yet associated with either. The declaration was designed to encourage other countries of the region to enter into the system, and specifically included language calling for the conclusion of "temporary" subregional agreements in an effort to further the declaration's objectives. Two of these agreements were already in the formation process.

4. The Caribbean Integration Movement

The Caribbean Free Trade Association (CARIFTA) was established by an agreement in 1968. The four principal signatories were Barbados, Jamaica, Guyana, and Trinidad and Tobago, all independent states at the time the Treaty was created. The history of the integration movement included the 1962 collapse of the West Indian Federation made up of former British Commonwealth territories, which subsequently formed the West Indies Associated States in the Eastern Caribbean. The Caribbean Development Bank was chartered and its relationship with the Inter-American Development Bank continues to improve. They faced difficulties such as the progressive decolonization of many members during this same period. Many other complex problems contributed to a stalemate in the free-trade area, which faded and re-emerged in 1973 as the Caribbean Common Market (CARICOM). Only now has this regional grouping begun to prepare the studies and gather the concrete data necessary for the leaders of these largely independent countries to balance the difficult issues of sovereignty against economic viability, cooperation and market

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24. See Declaration of the Presidents of America, supra note 23, reprinted in IREILA, supra note 9, at 395ff.
27. The successor to CARIFTA, supra note 30, was the Treaty establishing the Caribbean Community, Treaty of Chaguaramas signed at Port of Spain, Trinidad, July 4, 1973 [hereinafter cited as CARICOM], reprinted in 12 INT'L LEGAL MATERIALS 1033 (1973).
The Andean Common Market

Formation of the subregional group by the Agreement of Cartagena is currently the most notorious effort toward integration. The Andean Common Market (ANCOM) was an attempt by the middle income countries of LAFTA to improve their bargaining power vis-à-vis the "big three" (Argentina, Brazil and Mexico) who had gained a disproportionate share of the initial benefits of LAFTA. The significant features of the system include the customary efforts to liberalize trade (it has already accomplished a number of tariff reductions internally, and a common external tariff, scheduled to be effected at the end of 1980, was again postponed), the establishment of sectoral programs for industrial development, a uniform product classification like that of LAFTA, and other measures designed to achieve standardization of economic policies. Proposals for a double taxation agreement and the formation of Andean multinational enterprises were included. In 1979, an agreement was reached to establish an Andean Tribunal, based in Quito, and an Andean Parliament in Bogota. Complications arose early in 1981 when Colombia failed to ratify the Andean Court agreement. Uniform industrial property rules have now been implemented in three of the five countries with a fourth expected in the near future, and other economic harmonization is anticipated. The establishment of the Andean Development Corporation was a significant forerunner to the launching of this subregional group. Decision 24, the code for foreign investment and technology, is the most widely discussed and controversial feature of this subregional group. Decision 24 contained familiar restrictions on foreign investment, transfer of technology, local borrowings, and the novel divestiture or "fade out" pro-

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30 BUSINESS INTERNATIONAL CORPORATION, supra note 1, at 6.
visions, as well as other restrictions. Political cooperation among these five countries was evident on several occasions in 1979 and 1980, but a series of political and economic problems reversed this progress. In 1981, local newspapers in several ANCOM countries carried obituary notices for the experiment.

6. The New Latin American Integration Agreement

As a result of an agreement at Acapulco, Mexico in late June of 1980, the Latin American Association for Integration (LAIA) has replaced LAFTA. It is speculated that this new agreement will reveal methods for integration which reflect the changes wrought upon Latin American societies by fundamental changes in the emerging world economy, notably the world-wide energy situation. This effort is only one in a series of modifications designed to continuously adapt integration and development plans to the realities of the hemisphere. The role of the multinational corporations in economic integration in Latin America has finally been accepted, after some stormy years of confrontation. Trade patterns have been established in the last two decades among the continental countries in Latin America and signs of the same can be seen between the mainland and several Caribbean countries. The agreements have received endorsement under the name of “commercial accords,” which, along with other “partial agreements,” appear to have replaced the system of national list concessions which spelled disaster for LAFTA when the risk-free items were exhausted. A new emphasis has been placed on bilateral agreements as a category of commercial accords. Facing a stormy future, ANCOM may subrogate subregionalism in favor of bilateralism as an intermediate path to integration.

E. Common, Larger Markets for Increased Production and Efficiency

1. Internal and External Tariffs

Dr. Prebisch and the ECLA theorists reasoned correctly: in order to

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All references to Decision 24 also include the modifications contained in Decisions 37, 37a, 70, 103 and 109. See Radway, supra note 29, at 295-304. Decision 103 modified Art. 37, revising profit remittances and reinvestment limits; see 16 INT’L LEGAL MATERIALS 138 (1977).

Agreement creating the Latin American Integration Association, signed at Acapulco, Mexico, June 27, 1980 (hereinafter cited as LAIA).


move the economies of the Latin American countries away from dependence on primary commodities, there was a need for rationalization of production and distribution in these countries. The economic integration movements were adopted as a means of increasing the size of the relevant market, thereby attracting capital and technology to produce semi-manufactured products on a scale which would be efficient and economical. To do this, technocrats identified the tariff structures existing among the Latin American countries and negotiated to reduce tariff barriers and facilitate a freer flow of goods among the member states. In reality, the LAFTA negotiations broke down after the relatively insignificant national list items were negotiated (and tariffs correspondingly reduced) when they faced the items which had an impact on domestic producers.

The single most important result of the LAFTA negotiations was the execution of 25 complementation agreements. These accords were reached by two, three or sometimes four countries (frequently Mexico and the Southern Cone countries) within a specific industry, and only bind and benefit the signatories. The negotiations primarily concerned those industries affected by a relatively limited number of very sophisticated multinational enterprises (e.g. chemicals, electrical and electronic products, office products, computers and photographic equipment). These agreements are effectively concluded through the industry associations (chambers) of the respective countries in which the local subsidiaries of those multinationals are active and important. This self-serving activity benefits host countries by creating new trade patterns among these countries, in addition to increasing the sales of those multinationals which are most active in the market. If economic integration is going to be successful, trade patterns must multiply among these countries where little existed prior to the Montevideo Treaty.

Beyond the reduction of internal tariffs, the goal was to establish a common external tariff so products originating outside the region would be discriminated against, thereby providing an incentive for internal manufacturing. The member states also wanted to keep all countries on an equal footing by avoiding harmful competition among themselves for importation of a finished product or its critical assemblies or components.

2. Rationalization of Production

As mentioned earlier, part of the Central American scheme was the Agreement on the System of Central American Integrated Industries,

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signed in 1958. This program's purpose was to provide incentives, benefits and guarantees for industries to be established in one country within the subregion, in order to serve the entire area with modern and efficient methods of production and improve the standard of living of the people. Among the benefits were duty exemptions, tax exemptions and reductions (including income tax exemptions if the entity qualified) and an agreement by the member states that none would grant federal fiscal incentives which might distort the effects of this elaborate scheme. These industries had to make feasibility studies, meet standards of quality and a host of other detailed procedures and controls. If it had worked, sole producers would have served the five-member CACM and gained the advantages of economies of scale.

Decision 25 was the Andean Common Market plan for sectoral programs of industrial development. This appeared to be patterned after the earlier Central American experiment, gaining valuable experience from its successes and failures in allocating production among the member states within the industry being negotiated. Thus, the market for the member nations would be identified and production allocated to take advantage of economies of scale while taking precautions not to allocate more than an efficient number of plants for any given product. In some cases one plant might suffice to produce products for the entire subregion, or if the subregional market would support more, two countries might receive an allocation. Decision 57 (now replaced by Decision 146) approved the Metalworking sectorial, Decision 91 approved the Petrochemical, and Decision 120 approved the Automotive program. At this writing, Fertilizer and Steel agreements are at the advanced stages of negotiations and others are well along.

In addition to rivalries and political competition among members, the problems with both the Central American and ANCOM production rationalization schemes involve the geographic, topographic and other characteristics of the countries and markets themselves. Although the Central American group is compact and small, the Andean group offers a drastic contrast. At the present time it is physically impossible to ship

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38 See note 19 and accompanying text supra.
40 Decision 57 of Aug. 20, 1972. For Spanish text, see 16 GRUPO ANDINO 19 Annex (1972). Decision 57 was modified by Decision 57a of Sept. 4-9, 1972. See also Furnish & Atkin, supra note 39. ANCOM Decision 146 was approved at the XXVII Period of Regular Sessions of the Commission, July 16-23, 1979, Lima, Peru.
42 Decision 120 of Sept. 13, 1977.
goods from the Caribbean coast of Colombia through to Bolivia by land. In fact, most shipments must reach Bolivia from the Southern Cone countries, with which Bolivia shares much more than it shares with the northern Andean countries. Communications and all forms of transportation are extremely difficult in this mountainous terrain. When this dilemma is coupled with the traditional problems of population growth, large unexplored or uncultivated territories, largely unsuccessful experiments with land reform and the near disastrous effect of ISI discussed earlier, it suggests that true integration of the Andean subregion is a formidable task, if possible at all with current thinking.

The Central American group has been literally torn wide open by war, insurrection, revolution and guerrilla warfare. While violence has been no stranger to Guatemala and other areas in the region over at least the last three decades, the violent revolution in Nicaragua and persisting civil war in El Salvador suggest that integration of this subregion also faces formidable barriers.

III. The 1960’s and 1970’s: Nationalism and Control for Self-Determination

A. Dependency Theory and Development

By the 1960’s, it became apparent that import substitution industrialization (ISI) had been carried out indiscriminately by across-the-board promotion of industries, often without regard to potential comparative advantage. Inefficient and high-cost industries emerged as a result of small markets, limited capital, and lack of skilled manpower.

The situation becomes especially pronounced in industries having high fixed costs. These industries require large-scale output in order to bring costs down to levels prevailing in more advanced countries. Outstanding examples of these are the steel and automobile industries which have been established in most of the larger Latin American countries. In the case of automobiles, the situation was worsened because a large number of these countries permitted the establishment of many firms, thus completely eliminating the possibilities of economies of large scale

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48 Thus, it should come as no surprise that allegations during the July 1980 Bolivian military coup ran to the effect that the Argentine military provided considerable assistance to their Bolivian counterparts. Allegations were also made that the Brazilian and Chilean militaries provided similar assistance. One need only know the history of the Southern Cone countries to appreciate these allegations. In fact, one could also infer that Bolivia’s reluctance to fully implement certain laws and regulations of the Andean Pact may increase and, if not leading to a Chilean-type separation, then conceivably Bolivia could be foreseen to pay “benign neglect” to the restrictive aspects (particularly with respect to foreign investment and technology) of the subregional integration efforts, and follow the model of its friendly Southern Cone neighbors.
The high tariffs, imposed in order to protect “infant industries,” reduced the incentive to increase efficiency. Credit resources allocated to new industries meant that fewer resources were available to agriculture. Export of traditional goods was neglected, while the composition of imports changed to reflect the need for raw materials and for semi-finished and capital goods to support the new industries. The rate of productivity increased. Labor absorption in industry lagged badly behind the rate of growth of the urban population; and because some countries had adopted labor legislation in the 1930’s and 1940’s which raised the level of wages in industry (e.g., Argentina, Brazil and Chile), no incentives remained to adopt labor-intensive techniques. Other serious economic problems included excess concentration of income (the growth of demand was insufficient to maintain initial ISI momentum), excess capacity (the very nature of the industries forced building substantially ahead of demand), the neglect of agriculture and other sectors (the artificial allocation of resources created severe bottlenecks), and regional concentration of industry and income (a problem which still faces Mexico, Brazil and Argentina). In short, the problems that the ISI strategy was designed to eliminate still remained or continued to worsen, and others unforeseen were added. It was not until the integrated industrial schemes in the late 1960’s that any attempt was made to at least promote ISI on a regional basis. Thus, ISI strategy as carried out in Latin America did not promote self-sufficiency and development. Instead, another form of dependency resulted, related to the technology, know-how, and capital possessed by the multinational corporations. In an attempt to explain the failure of ISI, the theory of dependency emerged.

While there were a number of different traditions within the theory of dependency, all shared one basic hypothesis. The theory was that development and underdevelopment coexisted within the world economy as a result of the normal functioning of the total capitalist system. Underdevelopment was not merely a different stage of a productive system but rather a position, serving a function within an international system of

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44 Baer, Critics of Latin American Import Substitution, in LEADING ISSUES IN ECONOMIC DEVELOPMENT (G. Meier ed. 1976), at 742.

45 Id. at 746-47.

46 See O’Brien, supra note 5, at 7.

47 O’Brien categorizes some of the authors subsequent to Prebisch as following the ECLA structuralist perspective (e.g., Osval Do Sunkel, Celso Furtado), a Marxist perspective (e.g., Ruy Mauro Marini, Theotonio Dos Santos, A.G. Frank) and straddling both of the above (e.g., Anibal Quijano, Fernando Cardoso, Octavio Ianni, Florestan Fernandes). “The differences between these groups,” stated O’Brien, “is clearest when it comes to perspectives for political action.” Id. at 11.
production and distribution. Those with an autonomous capacity for change and growth became the developed sector and those who lacked this capacity were dependent upon that sector.\footnote{Id. at 12-13.} Marxist writers on imperialism have traditionally emphasized that underdevelopment can only be understood as part of the world capitalist system. What emerged was the attempt to develop laws of motion governing the dependent economies based on an understanding of the world economic structure.\footnote{Id. at 13.}

Dependency theorists distinguished three historical periods when analyzing the nature and impact of foreign ties:

1) the colonial era, when dependence was tied to absolute colonial control of trade and production patterns;
2) the desarrollo hacia afuera period, when development took on a foreign orientation, as dictated by participation in the free market and foreign investment concentration in production of raw materials and agricultural products for consumption in the developed countries;
3) the post-World War II period, when dependence stemmed from investments by multinational corporations in industries geared to the internal markets of developing countries. This dependence resulted from the control multinationals possessed over commercial technology, and the related tendency for local industrialists to link with the multinationals in order to have access to modern technology.\footnote{Id. at 15. See also Dos Santos, The Structure of Dependence, in THE POLITICAL ECONOMY OF DEVELOPMENT AND UNDERDEVELOPMENT 110-11 (C. Wilber ed. 1973).}

In contrast to previous forms of dependency where trade was perhaps the predominant factor, the internal markets of the developing countries now assume special strategic significance.

B. Regulation and Control

Throughout the 1960’s and 1970’s, the Latin Americans, along with other Third World countries, began to assert their desire for effective control over natural resources and increasing control over economic activities.\footnote{See Charter of Economic Rights and Duties of States, art. 21, G.A. Res. 3281, 29 U.N. GAOR, Supp. (No. 31), U.N. Doc. A/9631 (1974). See also Brower & Tepe, The Charter of Economic Rights of States: A Reflection or Rejection of International Law?, 9 INT’L LAW. 306 (1975).} This assertion was the direct result of the development objectives they sought to accomplish and the application of the dependency theory.

1. Natural Resources (Extractive Industry)

A new wave of expropriations designed to break the links of depen-
dency by asserting sovereignty over natural resources swept Latin America in the 1960's and continued into the 1970's. This was preceded by the expropriation of oil properties by the Republic of Mexico under President Lazaro Cardenas in 1938, the nationalization of the tin mines in Bolivia during the 1952 revolution, and others. In the 1960's, however, the instances of expropriation became more widespread. Beginning with the gradualism reflected in the "Chileanization" imposed by the Frei Administration and the expropriations of the International Petroleum Company in Peru, and continuing through a steady stream of "nationalizations," most of the nations in the hemisphere began to assert effective control over their own natural resources. Many nationalizations were accompanied by harsh anti-foreign attitudes which were manifested in a disbelief or disregard of the assertions made by the multinationals in the extractive industries of the need for an adequate rate of return on the enormous investments and high risks involved in bringing the natural resources into production.

2. Infrastructure

Vital to the development of the nationalized extractive industries and deemed to be strategic, infrastructure was nationalized as a first step in asserting control over economic activities. Therefore, such industries as electric power, communications, railroads and trucking were nationalized during this same period. Airlines and shipping companies were also nationalized to some extent, although several countries continued to maintain at least one private airline and/or shipping line.

It is well known that many of these key infrastructure industries have been inefficient in the larger Latin American countries following nationalization. This inefficiency, in addition to the deregulation trends now prevalent in the United States, may cause the technocrats of Latin America to re-evaluate the policy of nationalization, and to more actively discuss the possibilities of partial deregulation and reprivatization in selected areas during the 1980's and beyond. (This is already happening in Chile, Argentina, Peru, and Brazil.)

52 There were earlier expropriations in Mexico, the Central and South American countries and, of course, Cuba. For a colorful account, see Eder, Expropriation: Hickenlooper and Hereafter, 4 INT'L LAW. 611 (1970); Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964); see also Expropriation in the Americas: A Comparative Law Study (A. Lowenfeld ed., 1971).

53 See generally Eder, supra note 52.

54 This was also literally preceded by expropriation of subsidiaries of American & Foreign Power Co. in Argentina in the 1940's and 1950's, and others scattered throughout the hemisphere. See Eder, supra note 52, at 612-13.

55 Id.
3. Banking and Finance

Mobilization of domestic and external sources of capital at unparalleled rates had to be accomplished to support the development goals. One of the significant achievements during the 1960's and 1970's in banking and finance was the introduction and development of the important role played by non-banking financial institutions. The Nacional Financiera S.A. of Mexico is a pioneer among such institutions in the hemisphere. The objective of these newly created institutions was to contribute to capital formation. Their introduction provided additional means of mobilizing savings and investment funds for industrial or housing activities.

Another major breakthrough occurred in Brazil, where financial experts devised a system of indexing an employee's wages, pensions, social security funds, fringe benefits, savings accounts and a number of other assets according to a "monetary correction" factor which was based upon some very complicated indices. One of the ideas was to adjust for the differences between imported and domestic inflation in order to maintain export competitiveness because the cruzeiro, like most of the other currencies in Latin America, is closely tied to the U.S. dollar. In recent years, other Latin American countries have adopted variations of the Brazilian indexation and monetary correction formulas, but none have devised as complicated a system as that of Brazil.

In addition, restrictions and limitations were placed on foreign banks beginning with the nationalization of foreign banks in Chile under the Allende government. The Andean Pact rules (Decision 24) called for divestiture of the majority equity position held by foreign banks. This has been diligently administered in Venezuela and Colombia. Foreign banks also reduced their position substantially in Peru during the Velasco Administration in the 1970's, and in isolated cases in Argentina during the Perón Administration.

Domestic investors began to turn their attention to the capital markets of several of the Latin American countries. Although stock exchanges in Latin America were not a new phenomenon (the Bolsa de Comercio de Buenos Aires dates back to 1854 with earlier roots in a mercantile exchange established in 1822; the Bolsa de Valores de Mexico dates back to 1894), this period saw the groundwork being laid for a deepening and

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68 See D. EITEMAN, STOCK EXCHANGES IN LATIN AMERICA 14 (1966).
broadening of the capital markets. But such development was badly hurt by some very severe speculation in recent years which wreaked havoc on several of the financial markets, particularly in the Rio de Janeiro and Sao Paulo stock exchanges. The more sophisticated structures and controls to reduce the possibilities of recurring damage are only now beginning to emerge.

4. Foreign Investment

Capital formation, or the conversion of savings to investment in classical economics, is the underpinning of industrialization. In order to implement these development strategies, it was necessary to identify and mobilize capital flows, including both debt and equity capital. Confounding these efforts were exchange rate fluctuations, a serious problem in virtually every country in the region. In addition to the unstable commodity prices, exchange rate fluctuations were the result of a complex interaction of domestic and international factors which have been treated elsewhere and are outside the scope of this article. In attempting to regulate and control these fluctuations, laws were introduced in Brazil in 1962⁵⁹ and in Colombia in 1967⁶⁰ to regulate foreign investment (both loans and equity capital) and the flow of foreign technology into the countries. This phenomenon was duplicated in the Andean Common Market (Decision 24),⁶¹ Argentina⁶² and Mexico⁶³ in the early 1970's.

One way the foreign investment laws enacted during this era attempted to limit the outflow of foreign exchange was by limiting the percentage of profit which could be remitted to a stated percentage of the registered capital base. Determining what planners believed was a "reasonable" return on investment was another example of State interven-

⁶¹ Decision 24, supra note 31.
⁶⁴ "The drastic deterioration of U.S.-Latin American economic relations since 1969 is reflected in the foreign investment restrictions enacted during that period." See Schliesser, Recent Developments in Latin-American Foreign Investment Laws, 6 INT'L LAW. 64 (1972).
The percentage permissible for dividend remittances varies from 12 percent in Argentina and Brazil to 20 percent, the limit now permitted in the Andean Pact countries; however, Mexico has no such ceiling.

In the majority of countries where dividend remittances are limited to a percentage of registered capital, an additional percentage may be reinvested without prior approval. Here the countries differ. The Andean Pact countries initially permitted reinvestment of only 5 percent. In 1976, after Chile had withdrawn (partly because of overly restrictive investment laws), the reinvestment limit was raised to 7 percent. Brazil, Mexico, Argentina and Chile have no limitation on reinvestment. In those countries in the Andean group which strictly enforced the 7 percent reinvestment limitation (Venezuela and Colombia being the principal ones), surplus funds were generated which could neither be remitted as dividends nor reinvested to add to the capital base and were therefore referred to as "limbo money." These funds are outside the system of controlled capital in those countries, and although they may be lent indirectly to be used as working capital, they are not available for capital formation. The rationale behind continuing this restriction escapes many observers. In December of 1978, Colombia modified its rule on reinvestment, permitting up to 50 percent of the earned surplus after dividends to be reinvested under certain conditions, including the mandate that the other 50 percent be used to buy government development bonds. In September of 1980, Venezuela issued a resolution with a similar effect.

As governments changed in Chile and Argentina during the 1970's different assumptions with respect to development strategy were introduced. Certain restrictions on foreign investment were eased. Chile has become the most liberal country in the hemisphere with respect to foreign investment restrictions. Argentina generally follows close behind. Argentina introduced additional modifications in early 1980 to further loosen the restrictions on foreign investment, and, in early 1981, introduced even more in the technology area. Mexico also introduced greater flexibility in mid-1978, and Brazil's ability to modify credit, investment and exchange control rules varies dramatically with its balance of payments sta-

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66 See Business International Corporation, supra note 1, at 10.
67 See Resolution 29 of 1978 of the National Council of Economic and Social Policy (division of the National Planning Department), 53 Legislación Económica 348 (1979), reprinted in Departamento Nacional de Planeación, Foreign Investment in Colombia, Basic Rules, June 1980, at 59-60.
70 Law 22.426 of March 12, 1981.
tus. Since the sharp increases in oil prices in 1974, Brazil has had to impose substantially greater restrictions on capital flows, particularly foreign loans, than existed during the "miracle" years of 1964-74. While it may not be possible to predict what will happen in Brazil, it is clear that foreign investment is encouraged, in an effort to move away from dependence on imported oil and to develop the agricultural sector.

Until recently, Colombia and Venezuela had the most restrictions on foreign investment within the Andean group. During that period foreign investment fell off dramatically in Venezuela and was maintained at a modest level in Colombia. It had virtually dried up in Peru since the expropriations and the stifling stance of the Velasco government in the early 1970's, until significant improvements in the economy and government policy in late 1978 and 1979 provided the atmosphere for change. The Colombians have been reviewing their policy on foreign investment since early 1979. The results have yet to be announced but subtle improvements easing restrictions have been observed. In 1980, Venezuela announced a liberalization in its foreign investment policy and the long-overdue appointment of an acting Superintendent of Foreign Investment within the Ministry of Finance to devote full time to that important agency.\(^71\)

5. Technology—Its Development and Transfer

Shortly after the convening of the first United Nations Conference on Trade and Development (UNCTAD) in 1964,\(^72\) the important role of technology in the development process began to receive universal acknowledgement. Studies were conducted within UNCTAD, by ECLA and by individual countries which produced the beginning of a steady stream of information on technology. These early studies emphasized two methods of technology transfer: the license agreement and the technical assistance agreement between a foreign parent and its locally owned subsidiary (usually 100 percent owned at that time).\(^73\) One of the conclusions drawn from the early studies was that these agreements were used often by the multinationals to drain those countries of additional profits which they could not remit through the normal, central bank-controlled exchange route. Instances were identified where abuses had been committed. Generalizations were made, and a series of laws were enacted in an effort to regulate this vital element of development. The evolution of and

\(^{71}\) See for example Mann, Venezuela Woos Investors N.Y. Times, July 15, 1980.


\(^{73}\) See Radway, Transfer of Technology to Colombia: A Proposal to Modify Decision 24, 12 Law Am. 321 (1980).
various approaches to the technology transfer laws in the different countries have been described elsewhere.\textsuperscript{74} One look at a list of some of the principal laws enacted in the course of the 1970's to regulate and control technology is staggering.\textsuperscript{75}

The technology laws are, however, another example of the belief that government must intervene on the side of its productive sector in order for the development strategy to be implemented. The dependency argument was used extensively and is called upon to justify these laws to this day. Another often repeated argument calls upon the necessity to increase the bargaining position and skills of those negotiating for the host country enterprise, be it public or private. If the truth be known, rarely were the intelligence and skills of the negotiators for the host country cause for inappropriate decisions being made. In reality, the more logical, technical judgment and experience of the officials in the user organization were frequently overruled or interfered with by political constraints and the poor judgments of others.

This is not to suggest that no abuses were committed. It is now admitted that abuses occurred, but it is also widely believed that most of them have been corrected. In addition, many of the governments have produced statistics showing that they have reduced by hundreds of millions of dollars the outflow of foreign exchange for technology payments. Brazil has used technology as a "whipping boy" and has released statistics showing that payments for foreign technology constitute the second largest outflow of its precious foreign exchange. These figures clearly include all capital equipment and hardware, including the nuclear hardware acquired from West Germany for its alternate energy program. Simultaneously, however, Brazil has embarked upon a most impressive technology development program in seven major centers throughout the country. Mexico has also pursued a highly sophisticated program to develop and adapt technology more suitable to its internal needs. Presently, it is estimated that Mexico, Brazil, Argentina, Venezuela, Colombia, Peru and Chile are exporting technology which was developed in those countries. As they further develop and export technology, the concept of reciprocity may affect the restrictive terms of regulation which they apply to imported technology.

6. Industries Reserved for State or National Companies

Latin American governments have expressed the desire to limit the influence of foreign cultures. The effect of "conspicuous consumption" in

\textsuperscript{74} See for example Radway, Comparative Evolution of Technology Transfer Policies in Latin America: The Practical Realities, 9 DENVER J. INT'L L. & POL'Y 197 (1980).

\textsuperscript{75} Id. at 204-06.
particular was viewed as a detrimental influence upon these developing nations. As a result, the governments have reserved certain "influence-oriented" industries, such as advertising, broadcasting and publishing, for national corporations. This rationale, coupled with the need to develop local skills, has led to the reservation of the "internal commercialization" sector for nationals. Venezuela appears to have enforced this restrictions much more zealously than other ANCOM countries. The exclusion of foreign equity participation in infrastructure industries has been justified on "public interest" grounds, while the national control of basic industries has been justified on "national security" grounds. It seems likely that the equity composition (parastatal, national and foreign ownership) in these countries will be modified as economies mature and become more diverse. The pressures of the past three decades will make way for other needs, such as increased productivity and competitive exports.

7. Industries Singled Out for Special Attention: Pharmaceutical and Automotive

The pharmaceutical industry and the automotive industry in Latin America exemplify a trend of increasing governmental intervention. The pharmaceutical industry has been under serious attack throughout Latin America and other Third World countries for many years. Reasons offered for this treatment include high profits and technology transfer. The high visibility of production and distribution of ethical and over-the-counter drugs and the direct effect on national health and welfare evoke considerable emotionalism. These factors were cited as justifications for intervention and increased regulation of foreign pharmaceutical companies.

Recently the States went further. Studies revealed that large numbers of pharmaceutical patents had not been exploited. The States' role was originally limited to the distribution of generic products to State enterprises. As predicted by foreign pharmaceutical companies, however, the role has expanded in at least Brazil, Mexico and Ecuador to include manufacture as well as distribution. The industrial property laws of Mexico and Decision 85 of the ANCOM countries categorize many phar-

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76 See e.g. sources cited in note 62 supra.
79 Regulations for the Application of the Norms on Industrial Property, Decision 85, 28 GRUPO ANDINO 11, (1974), translated in 13 INT'L LEGAL MATERIALS 1489 (1974); enacted in
maceutical products, compounds, and processes as "unpatentable." Such regulation and intervention in this industry is expected to increase.

The automotive industry is also the subject of governmental scrutiny in Latin America. The industry acts as the hub of industrialized economies and encourages the development of supplier infrastructures in each country through "multiplier" effects. Individual countries have instituted control over the automotive industry with varying degrees of success.

In Mexico, this treatment amounted to "Mexicanization." The government has required a progressive increase in local industry ownership and national content incorporated into the final vehicle. Foreign participation in the auto parts industry was limited to 40 percent and theoretically to 49 percent in the assembly industry. In return for commitments to the creation of new jobs, regional deconcentration and export quotas, however, the foreign automotive companies remain wholly owned in Mexico.

On the other hand, the automotive industry in Argentina has been a classic example of protectionism and inefficiency. Until a few years ago, 11 foreign automotive companies participated in a market which produced 225,000 vehicles annually, while it is generally understood that the break-even point for one producer is 250,000 units in these international markets. The result was not difficult to predict. Foreign auto manufacturers were discouraged by inadequate investment returns and the increase of anti-multinational feelings during the second Perón Administration. General Motors led the disengagement of foreign manufacturers. Only four foreign auto manufacturers remain in Argentina with the recent merger between the Argentine subsidiaries of Peugeot and Fiat and Volkswagen's purchase of Chrysler's interests.

Decision 120 established an automotive sectorial allocation plan in the Andean Common Market. This plan allocated production of various models to each of the five member countries and included some novel "co-production" agreements, notably between Ecuador and Venezuela. Duplication was theoretically kept to an absolute minimum. Recent critics of this plan have pointed out that it was originally submitted to the Junta prior to 1974 and that designs have not been modified to account for oil price increases. Substantially higher energy prices and very small


Law to Promote Mexican Investment and to Regulate Foreign Investment, supra note 63.

Argentine Auto Imports Fail to Displace Local Car Producers, BUS. LATIN AM., Mar. 5, 1980, at 80.

Decision 120 of the Andean Common Market, Quito, Sept. 1977.

For a detailed study, see Gwynne, The Andean Group Automobile Program; An In-
markets suggest that this plan may run into serious problems.

Auto manufacturers in Brazil have apparently met with great success in the substantial Brazilian markets despite restrictive "regulations" which are often unwritten. Part of this success, however, results from the exportation of models and assemblies manufactured there.

Some of these government actions are manifestations of increased nationalism, justified in a variety of ways in different industries and different countries. Others are clear assertions of increased self-determination and reduced dependency on external capital, technology and centers of decision-making.

IV. REAPPRAISAL OF DEVELOPMENT PRIORITIES AND STRATEGY

Although improvements were shown in many sectors and in several countries, deadline after deadline was missed, postponed or completely renegotiated. Development has not progressed in Latin America as Dr. Prebisch and his followers had hoped. Record high population increases throughout the 1950's, 1960's, and much of the 1970's diluted the total growth in most countries, causing per capital growth to fall below projected targets. The gaps between the rich and the poor increased rather than decreased, and poverty was not eliminated. Although substantial progress was made in building institutions for future growth and development, many problems still existed. There remained an overdependence on a few primary commodities subject to fluctuating prices. Corresponding fluctuations in foreign exchange rendered adequate planning for borrowing and growth virtually impossible. Unfavorable terms of trade, although improved in many ways, still prevented Latin American exports from gaining access to desired markets. Although substantial progress has been made in Brazil, Mexico and Argentina with exports of manufactured and semi-manufactured goods, Latin America still finds itself generally on the periphery of the patterns of commerce. It remains considerably dependent upon industrialized countries (the United States in particular).

In addition, a new and very serious problem has developed. There has been a tremendous increase in foreign debt, held mostly by private foreign banks on shorter, more expensive terms. This has led to a call for debt rescheduling to ease the burden of "bunches" of debt service falling due between 1978 and 1982.44

Liquidity crises occur when a country's external debt situation worsens as a result of external factors or domestic policy failures or a combination of both, which can then lead to reactions that compound the prob-

44 See THE WORLD BANK, WORLD DEVELOPMENT REPORT 1979.
lém and engender the need for debt reorganizations and painful adjust-
ments in domestic economic policies.\footnote{Id. at 30.}

Contributing factors include fluctuations in prices or volume of com-
modity exports; increased barriers to export markets due to protection-
ism; sharp increases in foreign currency expenditures due to unusually
high oil import prices; large quantities of food imports to fill shortfalls
caused by ISI-neglected agricultural sectors; large infrastructure projects
(e.g., the Brazilian nuclear program), military hardware expenditures (as
in Peru under Velasco) or "showcase" projects designed more for political
rather than economic or social gain. Another significant cause of liquidity
crises or debt mismanagement is excessive recourse to short-term foreign
borrowing to finance medium or long-term development projects (e.g., in
Venezuela under Carlos Andres Perez).

During the last half of the 1970's, ISI was attacked for ignoring the
development of the agricultural sector as the source of food for the ex-
panding populations of these countries, as employer for the increasing
number of laborers, and as a potential for increased agricultural exports.
ISI was also criticized because it fostered protectionism. Since the domes-
tic markets in many cases were too small to promote efficient production,
barriers were erected to keep out import competition. The aggressive new
development philosophy that was consolidated and emerged in the 1970's
is based on interdependence and collective self-reliance, among other ma-
jor principles. It is clear that the promotion of exports, manufactured
and agricultural, has been elevated to the highest priority. This means a re-
newed effort to increase efficiency and productivity in the agricultural
sector and, where the comparative advantage exists, the development and
improvement of processing industries which add value to primary com-
modities (including natural resources) and thus give the host country a
"bigger slice of the pie."

An international agreement has now been reached under UNCTAD
auspices to create a "Common Fund" which will aid in stabilizing primary
commodity prices and reduce the adverse effects on producing countries
in the event of severe fluctuations.\footnote{Agreement Establishing the Com-
mon Fund for Commodities adopted by the United Nations Negotiating
Conference on a Common Fund Under the Integrated Programme for
Commodities, June 27, 1980. For a summary, see Common Fund Confer-

Recent circumstances have dictated that the energy issue be given
highest priority. On the supply side, exploration and drilling for new oil
and gas will receive full political support, and the terms of risk contracts and other promotion laws have been and will continue to be modified to offer the necessary incentive to attract capital and technology from international firms. But beyond the search for more hydrocarbons is the additional goal of diversifying energy sources. Renewed emphasis on hydroelectric power has appeared, as well as a return to the use of and exploration for coal, and the development of nuclear power. There has also been scattered emphasis on alcohol as a fuel for automobiles, and thermal and solar energy, where comparative advantage exists. On the demand side, conservation of gasoline, adjustment of local fuel prices and other measures are expected.

In the last half of the 1970's, population growth rates were effectively arrested in the hemisphere and, in some cases, even reduced (e.g., Brazil, Mexico and Colombia, the three largest in population). Projections for the end of the century have been reduced from earlier astronomical levels. Nevertheless, high growth rates in the 1950's, and 1960's and 1970's provided impetus for the development of another objective that has been elevated to the highest level: the absorption of massive numbers of new workers into the labor force annually. According to recent estimates, Brazil and Mexico alone have had to absorb 2 million new workers annually into the labor force. This also clearly signifies the need for productivity increases to serve these growing populations.

V. Prognosis

These forecasts should not be viewed as precise but rather as general probabilities. Development strategies in Latin American countries will vary due to differing impacts of growth rates in the United States and other industrialized countries, world energy supplies and prices, international inflation, trade flows and other factors. Therefore, the associated laws and corresponding regulations will vary in order to compensate for external and internal pressures. For similar reasons, the forecasts should be interpreted within the context of each particular industry. Despite these qualifications, forecasting new policy priorities based on these development strategy reappraisals is useful because it may facilitate the planning that U.S. practitioners and their clients must undertake in order to conduct business in Latin America in the 1980's.

A. State Role in Industry

There has been very little evidence to convince the planners that intervention by the State in some forms was not justified. Although various political movements intervened excessively by nationalizing various industries (some of which have been subsequently sold back or placed on the block for “reprivatization”), and the creation of State enterprises to
run petroleum, mining or other basic industries in some countries has resulted in inefficiency and corruption, this trend is not likely to be reversed or eliminated. A need still exists for planning, for control of basic industries, for massive improvements in the agricultural sector (including selective land reform to improve productivity and utilize land still lying idle), and for massive efforts to devise comprehensive energy plans which simultaneously emphasize conservation, new exploration and drilling, and developing alternate sources of energy. The political expectations created by the past generation simply will not permit a return to a "free market" where fate is determined by the private sector. But greater selectivity will be exercised in the 1980's, and there will be some shifting from foreign investment control to investment promotion. Signs of this are already evident in Colombia, Venezuela, Peru and Argentina. Brazil will be seriously constricted until later in the decade by its balance of payments difficulty, and Mexico will apply its own unique formula for investment promotion.

B. Increased Competition

Free-market economics were introduced toward the end of the 1970's on a large scale in Chile and Argentina, and on a smaller scale in some of the other countries. The objective was to make domestic producers more efficient by increasing foreign competition. One result was the displacement of some of the inefficient producers into other sectors where more opportunity existed. The intended result was also achieved, as domestic producers modernized facilities and increased productivity. Unique applications of similar free-market theories have been applied more recently in at least Brazil, Peru, Mexico, Colombia and, later Venezuela. While protectionism will not disappear in the coming decade (indeed, protectionism in the United States and its effect on Latin American imports is a growing concern), those supporters of the market mechanism have clearly gained points in the internal debates throughout the hemisphere. Private enterprise, both national and transnational, will have a fresh opportunity in the 1980's to demonstrate its effectiveness as a true partner in development.

C. Capital Markets

Although growth for its own sake is no longer in vogue, capital formation remains at the heart of the process of investment, development, and growth. Strengthening capital markets has been the solution adopted to increase capital formation. But the desired plan for economic development must now be compatible with a more equitable distribution of social benefits. A method for achieving this goal has not yet been devised, but governments across the hemisphere are sensitive to this need. In the future, many investment applications will be carefully reviewed and ap-
provals doggedly negotiated to evaluate whether the net social contribution of these investments is positive or negative. Moreover, substantial energy has been directed toward strengthening and improving mechanisms which encourage greater domestic savings in Venezuela, Colombia, Mexico and Brazil, as well as other countries. Attempts to provide for greater stability and broader participation in the capital formation process will continue to be made through building new institutions and improving those already existing.

D. Deconcentration of Industry

Deconcentration tries to direct industries away from the highly congested urban industrial zones, where rural migration has made it impossible for municipal governments to provide overly congested areas with adequate facilities and services. Brazil is well known as the leader in attempting to open up new regions to industry. Brazil's Superintendency for Development of the Northeast Region (SUDENE) and Superintendency for the Development of the Amazon Region (SUDAM) offers programs with substantial incentives for companies willing to locate their plants in the northeast or the Amazon Basin. The Argentine Industrial Promotion Law of 1977, the Colombian Development Plan issued in 1980, the Venezuelan VI National Development Plan (1981) and others are expected to increase the effort to deconcentrate industry in the major cities. The 1979 National Industrial Development Plan of Mexico

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10 Superintendency for Development of the Amazon Region (SUDAM), created by Law No. 5.173 of Oct. 27, 1966, [1966] 7 Coleção 322 (Braz.), reprinted in BANCO DO BRASIL, Id. at 9-12.


13 The first draft of this Plan was originally presented by CORDIPLAN, the Venezuelan Central Office of Coordination and Development, on September 30, 1980. It has subsequently been revised several times. Due to the fact that 95% of Venezuela's exports are oil related and the price of oil has been reduced in 1981 due to market fluctuations, the Plan is again being drastically revised. Thus, no official citation for the final version is available at this writing.

14 The Mexican Plan was established by a series of four Federal Executive Decrees, see Decree [1979] D.O., Feb. 2, 1979 (which establishes geographical zones for the execution of the Program of Incentives for the Territorial Deconcentration of Industrial Activities); De-
is the most well-coordinated attempt that country has ever made to promote industry. While very few new deconcentration plans offer the infrastructural advantages of the Mexican Plan, they will attempt to address a problem given higher priority than in the past.

E. Regional Energy Cooperation

Mexico's President, José López Portillo, and Venezuelan Energy Minister, Humberto Calderón Bertí, as well as officials of the Inter-American Development Bank, have been promulgating suggestions for various forms of increased cooperation to help solve the energy problem within the hemisphere. Mexico has called for assistance by petroleum exporters to those oil-importing less developed countries (LDCs). The Venezuelan plans went considerably farther in proposing a regional or hemispheric energy cooperation system. The Inter-American Development Bank has called for a fund to support some of these activities. This attractive idea should gain support in the early part of this decade as inherent problems are identified and solutions are proposed. The joint hydroelectric projects of Brazil, Argentina and Paraguay may produce a regional power grid for the Southern Cone countries. A proposal for a Central American grid has been on the table for some time, but it has been delayed by political instability in that region. These grids and other interconnections will stabilize power usage in the various regions. Finally, the 1980's will see increased use of non-oil sources of energy, including hydroelectric, coal, natural gas, nuclear, alcohol and others.

F. Environmental Concerns

Industry has concentrated heavily in Mexico City, Sao Paulo, Buenos Aires and several other cities throughout the region. The population of ten cities in Brazil now exceeds one million. As a result, environmental concerns have increased during the 1970's. Most countries now have a national environmental commission looking into the establishment of standards and regulations. These commissions will face new problems in...
the coming decade. For example, considerable attention must be directed at avoiding environmental damage on areas previously untouched by industrial activity but now affected by deconcentration plans. Pipelines and alternate energy development, particularly nuclear, will also produce further concerns for the environment.

G. Agriculture

New and creative approaches to spur productivity in the agricultural sector will be developed and implemented. Post-harvest storage, transportation and credit facilities will be increased, along with the traditional brick and mortar (e.g., access roads). Solar energy has already been harnessed for drying purposes to protect grain against spoilage during shipment. Food processing industries are being encouraged to create more economic value, improve revenues, and utilize existing options for access to foreign markets. Emphasis on improving the diets of disadvantaged segments of the population has emerged in programs in Colombia, Mexico, and the Andean group.

H. Consumer Protection

Interest has been developing in Latin America recently for greater consumer protection. This will manifest itself in a variety of ways. Price controls are familiar throughout Latin America (notwithstanding that this impedes the free functioning of the market). Truer advertising rules and practices are being enforced to reduce deceptive and unfair practices in response to the growing middle class in several countries whose consumption patterns increasingly emulate those in North America and Europe. Experimentation with product liability laws is to be expected, following their successful introduction in Europe.

I. New Linkage

One of the vital elements in the new approach to development in

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* Colombian Plan Nacional de Alimentación y Nutrición, adopted Mar. 1975, as part of an overall social, economic and regional development program by the government of Dr. Lopez Michelson.


Latin America and throughout the Third World is the creation of new "linkages." The recent thaw in relations and signing of new agreements between Argentina and Brazil have extremely significant implications. These two countries have each included in their planning for the last 40 years the premise of a war with the other. Resources were dedicated and reserved for this premise. Territories of each country were effectively left as "buffer zones" and only minor attempts were made to develop these areas. Hemispheric and national security possibilities improve with this recent development. In 1980 Argentina agreed to ship hundreds of thousands of tons of grains to Mexico. While this does not represent a major percentage of Mexico's food imports, it is only one link in an expanding network of cooperation between those two countries.

In 1979, a U.N. conference was held in Arusha, Tanzania concerning "Technical Cooperation Among Developing Countries." The premise of this conference, now widely accepted and incorporated in current development thinking, is the "collective self-reliance" or "interdependence" (South-South) approach to development. As the Latin American countries begin to develop and improve regional trade patterns and other economic linkages, the prospects for economic integration and more effective development improve by a significant factor. Since 1979, Brazil has been trading with other developing countries to a greater extent than it has with the United States. Spain and Portugal, with traditional ties to Latin America, may become the bridge for increased activity between Latin America and the European Economic Community (EEC). The Andean Pact's initiative in 1980 in using Spain as an intermediary in negotiations with the EEC to obtain Lomé group status exemplifies this change. Japan's role throughout the hemisphere has increased multidimensionally and Korea is gaining an increased presence, especially in the Caribbean. It is anticipated that, during the 1980's, the ASEAN group will begin to build more bridges with Argentina, Brazil, Chile and Mexico. Thus, economic integration in the 1980's is likely to be of a different and more pragmatic nature. Far less dependence on the political vicissitudes of the United States can be expected and far more on these

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101 To lessen dependence on the industrialized countries, developing countries are encouraged to expand trade and technology exchanges among themselves. Since most of the developing countries are situated south of the Equator, this is referred to as "South-South" in contrast to "East-West" or "North-South."
102 See The World Bank, supra note 84, at 27.
104 The ASEAN group consists of Indonesia, Malaysia, the Philippines, Thailand and Singapore.
expanding linkages and the return to bilateralism within LAIA. In addition the role of the United States in trade, investment and finance in Latin America has diminished in relation to total statistics in each category.

**J. Corruption in Governments**

Ever since passage of the Foreign Corrupt Practices Act in 1977,105 U.S. practitioners have been troubled with "due diligence" inquiries on behalf of their clients with respect to operations in certain Latin American countries. While the promise of significant improvements in this delicate area would be reassuring, it is unlikely that such will be seen in the early part of this decade. Not immediately, however, but bearing some relationship to slight increases in competition, greater emphasis on productivity, consumer protection and self-reliance concepts, this commentator believes that selected countries (Mexico, in particular) will lead in the attempts to reduce the amount of corruption and inefficiency in their respective governments. It will take longer for countries like Paraguay, Venezuela and others with their particular histories, but it is believed that this movement will be augmented by a United Nations conference to be called on this subject during the next decade.

**VI. CONCLUSIONS**

Practitioners will be able to draw inferences from the aforementioned observations that certain types of laws, regulations, and other control mechanisms will emerge during the 1980's as factors to be considered in their clients' business planning. Increased competition will mean enforcement of existing but heretofore dormant anti-monopoly laws. This result has been seen in Chile toward the end of the 1970's. Argentina has recently enacted a new antitrust law.106 It can be expected elsewhere.

Deconcentration of industry should lead to interesting laws in various states, provinces, and even in municipalities which seek to derive revenues and other benefits from regulation of industry now moving into their territories. The question of conflict with or preemption by federal laws is a new one and will most likely emerge in the hemisphere during the next decade.

Consumer protection laws, such as product liability and "truth in advertising," are expected as well. Greater regulation of securities and capital markets in general is on the horizon. These regulations will be designed to attract institutional participation and fresh money, to pre-

vent abuses, and to increase disclosure for the benefit of potential investors along the lines of securities laws in the United States. Bilateral double-taxation treaties will be negotiated and possibly executed in this decade. Given the history of the last three decades, it is possible that we will see new and ingenious attempts at regulation of multinational enterprises since the grudging acceptance of these firms' importance in development and integration will not remove the desirability of using them as the target which they have so conveniently provided during the last couple of decades.

This summary should also be helpful in understanding why certain Latin American countries have been actively leading Third World efforts to seek solutions to problems of trade. These efforts are directed at the stabilization of commodity prices and the increased access to markets of industrialized countries. The Third World is also seeking solutions to the problems of energy, technology transfer, and financing of development (including debt rescheduling) which taken together, represent the five issues on the agenda for the proposed Global Negotiations,\textsuperscript{107} was scheduled to be discussed at the Cancun (Mexico) meeting in October of 1981 under the co-sponsorship of Austria and Mexico.
