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Structuring Direct and Indirect Investment in Latin America: Country Updates

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policy successes. My advice is to seize the moment in Washington and in the United States, as they offer tremendous opportunities for Latin American clients and interests, and we would be delighted to help you.

III. STRUCTURING DIRECT AND INDIRECT INVESTMENT IN LATIN AMERICA: COUNTRY UPDATES

A. *Country Update in Emerging Capital Markets*

1. Argentina Update

WILLIAM P. ANDREWS

We are going to start today with a country update for Argentina. I would like to introduce to you Ricardo V. Seeber. Ricardo, a partner with Beccar Varela in Buenos Aires, is in charge of the corporations department, particularly on matters relating to foreign investment and transfer of technology. He also provides advice relating to those issues to foreign clients in Argentina.

RICARDO SEEBER

I wish to thank to the International Law Section of The Florida Bar Association for the opportunity to present my views on the most significant events that have occurred in Argentina in 1994 and continue to occur today. It is very important for any foreign investor to know the general climate of a country. A foreign investor should know about the status of general legislation of a country, legislation that relates not only to foreign investment of the transfer of technology but also to the country's Constitution, to its general laws and its behavior in the past. An investor should be aware of whether a country has been changing. In this respect, during 1994, Argentina has continued to produce those types of changes that began dramatically in 1989 when President Menem took office. Most Argentines do not realize that we are living in a totally different country than we were ten years ago. Previously, a division existed among Argentines. This division was represented by President Peron, leader of the Peronista Party, and Jorge Luis Borges, one of our most famous writers and an aristocrat. They were the utmost expressions of two different worlds. Now, however, there is no dispute that both of them were Argentines and with their virtues and defects, a part of our people, our past, and our history. When President Menem took office in 1989, he quoted both of them in his message to the Congress. This reveals a deep change, not only in our economic policy but also in our mentality. Of course, there are some things that remain unchanged, generalizations persist. Argentina is still a country where Jews are Russians, Arabs are Turks, and Americans are gringos. Also, we still have a passion for soccer.

The most significant change in Argentina during 1994 was the reform of our Constitution, which marked the beginning of living in a new country. This reform of our Constitution did not result in a division among Argentines, as happened in 1949. In 1949, President Peron encouraged and obtained a change in the Constitution to permit his re-election. This created a deep division in Argentina, which resulted in President Peron being turned out by a military coup. In 1955, the military government abrogated that Constitution by decree. Today, the reformed Constitution has been passed and is enforced, but there is no new division. Basically, the purpose of the Constitution is to permit President Menem's re-election. Since they had to revise it in order to permit President Menem's re-election, the members of the Constitution Convention saw that it would be a good idea to change some things that were written in 1853 and needed to be modified because we are almost in the twenty-first century. One of the main criticisms of the modifications is the introduction of a semiparliamentarism government, with the creation of the Chief of the Ministerial Cabinet. This modification is a result of the political agreement reached by the two most important political parties in Argentina.

The main changes in the Constitution include: The ordinary sessions of the Congress start on March 1 instead of May 1 and end on November 30 instead of September 30. There will be three senators per province and for the Federal District of Buenos Aires, instead of two. They will remain in exercise of their mandate for six years and are indefinitely re-eligible, but the Senate will be renewed by one-third part of the electoral districts every two years. In addition, some new rights and guarantees have been introduced in the first part of the Constitution. Guarantees were introduced for the protection of the environment and the protection of consumers and users of goods. Guarantees also were introduced for the legitimation to activate, which allows a person to file a prompt and rapid action for protection, always provided that a more suitable legal means does not exist, against any act or omission of the public authorities or individuals which, in fact or potentially, are to harm, curb, change, or threaten, with evident arbitrariness or illegality, the rights and guarantees recognized by the Constitution, a treaty, or a law.

It is no longer a constitutional requisite for the President to be a Roman Catholic. The President and the Vice President will stay in office for four years rather than six and may be re-elected for only one term. At present, it is considered that President Menem's current term is his first, and he may be re-elected. In fact, he is running for re-election. If the President and Vice President have succeeded each other, they must wait one term to be re-elected.

Also, the Constitution introduced the Ombudsman or People's Defender, who shall act with full functional autonomy, without receiving instructions from any authority. The Defender's mission is the defense and the protection of human rights, guarantees, and interests under the guardianship of the Constitution and the laws, in the face of the deeds, acts, and omissions of the Administration. The constitutional text creates the Chief of the Ministerial Cabinet with political responsibility before the Congress. This is intended to limit the powers that were granted under the old constitutional text to the President. Therefore, the Chief of the Ministerial Cabinet has to exercise the general administration of the country, attend the Congress once a month, and exercise functions that the President delegates.

The new Constitution determines the autonomy of the City of Buenos Aires. It provides that Buenos Aires have its own powers of legislation and jurisdiction, and the people of Buenos Aires elect the city's mayor. Currently, the mayor is directly appointed by the President.

Not many new laws were enacted during 1994. The legislative performance of the members of the Congress was, frankly, very poor. One reason was that they were very busy with the Constitutional Convention that amended the Constitution. They are politicians as well, and as such, they not only had to be at the Convention but also had to campaign four months before the elections in April. They did accomplish a few things, such as enacting the law on funds related to the Commission. By Law 24,425, Argentina ratified the Uruguay Round of the GATT. Other laws that in the opinion of the Minister of Economy would help reduce costs of goods manufactured in Argentina are still being discussed. Basically, the drafts intend to make the present labor legislation more flexible. It will be difficult to obtain enactment of these drafts because many of the members of the Congress have labor union origins, and it is very difficult to deal with them without some exchange being given for the enactment of such laws. Eventually, the new labor legislation will be enacted and that will be for the good of everybody in Argentina.

At present, the effects of the ratification of the Uruguay Round of GATT cannot be measured, but at some point, Argentina should meet the TRIPS provisions and honor its promise to the U.S. authorities by enacting a law on pharmaceutical licenses. Currently, there is a bill proposed by Executive Power to the Congress, but the Congress is reluctant to enact it. Mention of this issue raises an intense debate between the multinational pharmaceutical companies and pharmaceutical companies of Argentine origin.

The legal regime governing transfer of technology and foreign investments has not been modified. Through the enactment of Decree Ner. 1853/93 on September 19, 1993, foreign investors are not distinguished from local investors. Foreign investments, unless special laws and regulations so require, are not subject to prior approval or restriction except in the area of television and radio broadcasting. However, U.S. investors are not subject to that restriction due to the Treaty for the Reciprocal Protection and

Promotion of Investment between Argentina and the United States, which was executed on November 14, 1991 and became enforceable on September 19, 1994. Under this Treaty, citizens and corporations of both countries have no restrictions on investing in the other country, provided that no special reserve has been made by the country where the investment is to be made. Concerning radio and television broadcasting, Argentina did not make any restrictions, as did the United States, therefore, foreign investments from the United States in television and radio have no restrictions. As a result, there currently is a big deal for the purchase of cable television by a U.S. corporation.

Concerning the transfer of technology, all license agreements between a foreign licensor and a local Argentine licensee, whether executed between related or independent parties, are subject to registration before the Application Authority on the Transfer of Technology Law in order for both to share tax advantages. Until September 1993, it was necessary to obtain the approval of the government on transfer of technology agreements between related parties.

It also is important to mention how past legislation influences the current economy of Argentina. On September 23, 1993, a law was enacted that created the Integrated Retirement and Pension Benefit Scheme. It provided the people with the option of choosing between the state scheme or a private scheme in order to increase domestic savings. For example, during the second semester of 1994 the pension fund companies collected 1.40 billion U.S. dollars, and after deducting the payment of insurance and commissions paid to those companies, 680 million dollars were invested in the different financial instruments permitted by law.

We need to take a quick look at the economy. This would have been very easy until December 1994 when the Mexican crisis affected our economy in Argentina. It is very difficult to answer the question of whether Argentina is going to deregulate the peso. The government is strongly and firmly trying not to deregulate, and I think it will not for the time being. Basically, the government has increased the VAT from 18% to 21%. It has approved a special review for medium and small companies that have less than forty employees. The main fight will be against the deficit, which is very high. The commercial deficit is still high, but new investments are being made. For example, Chrysler Renault is investing in Argentina. Sometimes I think that foreign investors are more confident in the future of Argentina than are Argentines.

Finally, we have very significant and interesting times ahead. The elections will be held in May 1995, and the polls show that President Menem will be re-elected. There is no doubt that I am going to vote for Menem. He has not offered me anything from the government unfortunately or fortunately. The fight has to continue against corruption. Corruption is at a very high level and requires close attention by the government. If Argentina succeeds in controlling corruption, many problems will be solved.

2. Chile Update

WILLIAM P. ANDREWS

It is a pleasure for me to introduce Jose Maria Eyzaguirre. He is a partner with Claro & Cia, one of the oldest and most prestigious law firms in Santiago.

JOSE MARIA EYZAGUIRRE

I would like summarize what Chile has done during 1994. Chile has been doing quite well from an economic standpoint. From a political standpoint things also have been going smoothly, especially when compared with the past when we were fighting each other. We all understand quite well that this is history, and we are not going back. Right now Chile has a government that is governing the country with a supporting coalition. Chile also has opposition parties that are working with government to develop a consensus on the most crucial issues; it is in this manner that we have brought a number of things to the table. New legislation has been passed, and new matters have been governed by the types of transactions that are constantly being developed in the international marketplace and are currently supported by the whole country. That certainly is something worth underlining. That was not the case in the past when things were changed from socialism to a market-driven economy. Everybody in Chile thinks that a free market is certainly the best thing that could have happened to the country. A free market economy is the only way we can grow and bring prosperity to those areas where investments must still be made. I would like to outline four important issues that we have been addressing in terms of the economy. The most recent concerns the dollar going up all over Latin America, while in Chile it has been going down. This has created a number of problems for the Chilean economy. Chile lives off exports; most of its profits come from the export of either assets or services. Therefore, devaluation of the dollar certainly has a dramatic impact on the economy since most assets and services are being exported to the United States or sometimes to outside the United States but still paid in U.S. dollars. The devaluation was 10%, and in the last twenty-four months the dollar has gone down around 28%. That is a lot.

Another important issue is the membership of Chile in APEC. Chile has a large Pacific coast, and most of the attention of the Chilean government has been devoted to the growth of the Pacific Rim. APEC was certainly an option that Chile could not discard. We worked hard to become members of APEC in 1994. Chile also is trying to become a member of NAFTA. It remains to be seen what will happen, but the tequila effect will certainly have an impact. We are seeing a number of representatives from both the Republican and Democratic parties in the United States visiting Chile. The United States has an opportunity to show Latin America as a whole that it still believes in Latin America. This is something that the United States, in my opinion, has not done for almost twenty-five years. It is time to bring things up-to-date. Latin America offers the United States a market that it can hardly find anywhere else in the world. The European Community is closing its frontiers and will continue to do so for at least the next ten years. Asia is a continent worth exploring, but it is very difficult to do business there. Countries such as China will become extremely important in the twenty-first century, but for the time being do not offer the purchasing power of benefit to the United States. Latin America is doing relatively well; it is time to say that Latin Americans have learned the lesson that market-oriented principles are the only ones that can improve their condition; and now the trend is to lower the price, or rather it was the trend until the tequila effect. The tequila effect will not be permanent. It may cause a three to five year delay, but nothing else. Mexico has to adjust. I cannot see how no one realized that Mexico had to bring things down to earth. It was fairly obvious to most of us who had gone through exactly the same thing ten to fifteen years ago. We went through that and through what is going on now in Buenos Aires. The Argentine government under Menem is doing the right thing. Fortunately, the Argentine people firmly believe in him, and that is very unusual. Typically, when you want to make changes you have to make economic changes first and then political changes. Otherwise, when you decentralize power from a political point of view, it makes things very hard when you have to change the economy. Menem is an example for a number of countries in Europe, maybe even Russia. He represents growth in democracy, and that certainly is something difficult to achieve. Mexico is one of the best examples on how difficult this can be. What did Mexico try to do? Salinas began by opening the economy without taxing the political scenario. What happened? When he began opening the political scenario, all of the economy became very difficult to handle. That is only one of Mexico's problems; there are a number of other things that affected Mexico. Certainly, these examples demonstrate how difficult it is to bring development to countries that are trying to escape from a socialist past. Another very important issue is where Chile stands on privatization. Right now, privatization is a key element of market-driven economies, which on the one hand are trying to let privatism carry on business with as much freedom as possible, but on the other hand need revenues. A country raises revenues through taxes. This is not always the best way because at the end of the day you end up collecting less than if more people had been allowed to do more business at a lower rate. Chile has privatized a number of companies. Approximately ten billion dollars could be raised by privatizing the companies that are still in the hands of the government. These companies generate roughly fourteen to fifteen percent of the Chilean GDP. That is a lot of money. Unfortunately, there is no general policy in this area. It is very difficult to put together a coalition comprised of some who believe in socialism, albeit sometimes more moderated than in the past, and others who are in the middle spectrum of politics. Maybe that is one of the reasons why Chile, with a few exceptions, has failed to come to grips with privatization. However, those exceptions clearly show what is expected to happen in 1995-96 and maybe up to the twenty-first century. Infrastructure is going to be subject to privatizations in Chile for at least ten years. The building of roads and ports, the construction of airports, everything in the infrastructure segment will come from the private sector and no longer from the government. That is very attractive. Chile realizes that it needs to privatize its infrastructure; the first bid is expected to begin on April 12 and is worth roughly 100 million dollars. It is not the largest project. Another area where we expect growth in terms of privatization is mining. One of the largest projects involves Coelco and is worth over one billion dollars. It will be handled through joint ventures typically with foreigners rather than nationals, and it will involve the private sector where control will be left in private hands. In 1994, the privatization process continued in energy and thermal electrical power plants. The government is working on the legal framework by which airports will be privatized. In 1994, foreign investment in Chile amounted to four billion dollars, which is basically twenty-seven percent of the Chilean GDP. Now you can see how much investors believe in the macroeconomic perspective of the country.

The final issue is how business is done in Chile. There are several questions with respect to Chile that might arise in a meeting with a foreign investor. For example, does Chile have any restrictions on investments? In Chile, there is only one restriction and that is in the written media industry. There are no restrictions on radio or television. In fact, some radio and one television channel are partly owned by foreigners. Eighty-five percent of ownership in the written media must always remain in the hands of Chilean nationals. This is a general rule all over the world. I think in the United States, there are even stricter regulations in this area. As far as intellectual property is concerned, investors may wonder whether there are any restrictions and whether Chile is up-to-date with the United States. The answer is basically yes; in Chile, you do not have problems with software, which is protected by copyright and on which there are no restrictions. In 1991, Chile changed the law in the patent field of pharmaceutical products, and now you can request a patent for anything in the pharmaceutical field. Another issue of importance is eventual expansion into other Latin American countries. You can bring business into Chile and then from Chile expand into other areas of Latin America. This is what you have seen from Chilean companies. Chile is investing a lot in Argentina, Peru, Ecuador, and Colombia, and a little bit less but still an important amount in Brazil. There are no special incentives other than the general incentives for investing outside of Chile. However, we do make things easier for those companies regarding taxes. They do not have to pay taxes twice. We have a foreign tax credit, so income taxes outside of Chile are used as a credit against income taxes paid in Chile.

In reference to the issue of Mercosur, Chile will not become a member of Mercosur. Chile most likely will become an associate or a partner with Mercosur. Chile believes that Mercosur is an alliance that should be fostered and is possibly the beginning of a free-trade idea in Latin America, which in ten or fifteen years will become a reality. Chile will not become a member of Mercosur because from an economic perspective, development is a little different in each country. Chile began making changes at different times. In order to become a member of Mercosur, Chile would have to think of having a common tariff rate. It would not be wise for Chile to raise its tariff from 11% to 20%, which is the tariff of Mercosur.

Treatment of foreign investors in Chile is equal to the treatment given to nationals. That has been the rule in Chile since 1974. Access to foreign currency is unrestricted. In Chile, there is free access to the banking market. The Chilean exchange system is very peculiar, but it is relaxing slowly, albeit more slowly than we would like. The only restriction is one year for capital instead of three, as in the past. This, however, will probably be removed within the next twelve months.

B. *Planning Strategic Alliances in Latin America: Agency, Ventures, Licensing, Distribution, and Franchising*

WILLIAM P. ANDREWS

Now we are going to move into strategic alliances. We are very pleased to have with us Saturnino Lucio. Nino is a native of Havana, Cuba and came to the United States in 1961. He practices in domestic and international law, including corporate law and tax law, contracting, distribution, trade, and all the elements that comprise international commercial law. Nino co-chairs the International Business Committee for The Florida Bar International Law Section. He is a Vice President of the World Trade Center and was the Legal Counsel to the Florida Exporters and Importers Association for over six years.

SATURNINO LUCIO

My topic encompasses a broad variety of transactions. I tried to distill what it is about this topic that is of relevance to us as lawyers and to some of you as internal house counsel for companies. When you speak about agency venture licensing and distribution issues, they are really just points on a continuum of penetrating a foreign market. In Latin America, what can you do to go from the least involvement to the most in terms of doing business. I want to discuss some of the strategic considerations used in evaluating which of these options are the most useful for your kind of business or your objectives. I will discuss the considerations that go into the planning as well as the doing stage on some of these projects. If you look at it as a continuum of different methods of doing business, at one extreme you have franchising and licensing, which take very little commitment on your part. It is not a question of selling a product, but rather of selling your technology, your know-how. Essentially, you are doing something to enable someone in a foreign country to manufacture the products using your technology. You are doing something that will set them up in business. It is their show, and your interests are essentially in the form of a royalty fee or technical assistance fee, but you stay pretty much locked within your own market. You are selling an investment or business opportunity, and oftentimes, the person who is buying this opportunity is not very sophisticated in that industry. You are not just licensing the name or the technology, instead you are getting involved in the different aspects of providing technical assistance or exercising some degree of supervision over the person's activities.

The next logical step in this continuum is sometimes called agency agreements. An agent is someone you select in a foreign country to promote the sale of your products or services. The agent will deal with customers and refer them back to the company's home base to do business. The agent is that person in the foreign country whose job it is to talk about the greater glories of your product. The next step is distribution. In a distribution relationship, you are essentially selling your products to someone overseas, who does all the work. It is another step in the process of being able to develop your market. The final step is to go ahead and invest.

There are many different factors for a company to consider when it decides to go international. For example, it must consider how it is going to penetrate the market, whether to use an agent, a distributor, a franchise, a license, or a joint venture. The initial factors that a company must take into account to decide these important questions are called subjective factors. These subjective factors can be broken down into subcategories.

One subjective factor is how aggressive or timid is the company's management about developing a market in Latin America. Because the United States itself is such a large domestic market, most U.S. companies are reluctant to enter foreign markets. Less than five percent of U.S. companies are engaged in export. The other ninety-five percent are very content with their domestic business. This reluctance in the United States to invest abroad is compounded with regards to Latin America because U.S. companies are concerned with the political and economic instability that has plagued most countries in Latin America for years.

The knowledge and experience of those making the decisions for a company are another subjective factor in deciding whether to invest. Are they knowledgeable about foreign markets? Do they think that one country in Latin America is just like another, or do they see gradations, saying, "Well, maybe in this country I cannot do it, but maybe in this one I can." To what extent are they experienced in and knowledgeable about the mechanics of international business and trade? Do they know what a freight forwarder is? Do they know what a letter of credit is? Do they know how to structure a sale overseas? Are they knowledgeable about local customs or language? Do they know how to do all of the different things that are essential in order to be able to consummate an international sale?

Finally, there is the subjective factor of what could be termed "the time horizon." A company must consider whether this is a short-term or a long-term investment. If a company just wants to make some short-term profits, then a casual contact with a country would be more appropriate than a long-term joint venture. If, however, a company wants to develop a market and is there for the long-run, then perhaps a joint venture is the way to proceed.

In addition to the subjective factors are product-specific factors. What approach is best suited for a particular product line? Depending on the nature of the product, this factor may be useful. For example, cement is very expensive to transport. If someone has good cement-making technology, prestressed concrete technology, it probably makes more sense for them to license or franchise that technology overseas than to ship huge boatloads of the cement overseas.

There are country-specific factors. There are some industries and companies that are not open to U.S. companies, at least not completely. For example, in Venezuela, a foreigner may only acquire 19.9% ownership of cable television. In Mexico, it is about 49%. In other words, sometimes there are things about a country that make a particular approach either more difficult or more productive for what you want to do.

There are market-competition factors, that is, "What are your competitors doing?" The reaction of a company to what its competitors are doing could be one of two: it can be imitative and defensive, "If they are doing it, we might as well, too"; or it can be aggressive and offensive, "They are not doing it, let us do it. Let us be the leaders and go out into the market to see what we can do."

There are control factors. How extensive is the control that a company wants to exercise? For example, in one of the countries in the southern cone, a client wanted to control the resale price of their product but could not because of the local anti-trust laws and other issues having to do with the alienation of property and the inability to control the price of something you have already sold. The client had a very interesting idea. They entered into a joint venture with a local company. The joint venture provides that, for the next ten years, all of the profits are going to go to the local partners. So, the client is essentially licensing and providing the technology. They are really not investing. But because certain joint decisions are made by the company, the price at which the product is sold to the local market is something over which they have some control. Since it is a joint venture, it is not a problem with regard to trade competition factors. Sometimes, the degree of control you want to exercise may be exercisable through one form rather than through another.

There are practical factors, such as, what is doable? Does the company have the manpower? Not just experience and knowledge at the very top of the company, but do they have a knowledgeable traffic manager? Do they have an export person who is willing to travel quite frequently to these markets to establish contacts? How extensive is the organization and the willingness of the people in the group to do that? There is the issue of financial resources. Does a company have the financial resources to pursue each kind of market penetration strategy? If they do not or if they have limited resources, they might prefer a licensing or franchise approach, which might require fewer resources than a joint venture or a direct investment.

There are a number of special factors. Will a particular approach give you an advantage, either under U.S. laws or foreign laws with regards to incentives or tax benefits? There are some cases where, by structuring the investment as a fifty-fifty joint venture, you might be able to evade foreign corporation status, which is, a tax no-no to the extent of something called supportive income. These are the factors that must be entered into the equation.

What is the role of legal counsel in the effort by management to select among their different options. Legal counsel, especially if they have experience in the international area, can be a sounding board for senior management, particularly if management lacks experience or has not been active in the area for a number of years. Counsel can provide a way to talk about and refine these ideas and to develop business strategies. Lawyers can do what lawyers normally do, which is advise on applicable legal requirements and to recommend good lawyers from Latin America, who can help their client locally.

A legal counsel also can advise on background checking and selection of potential distributors, agents, or possible joint venture partners. A lawyer structures the deal and negotiates the terms, whether it be an agency agreement, distribution agreement, or a joint venture agreement. Finally, as legal counsel, you can resolve any disputes, instead of creating them.

Licensing and franchising transactions are two possible ways a company can enter a foreign market. Licensing transactions usually involve the licensing of a trademark, a technology, or the transfer of know-how. The key is that this is your asset. You are providing the name. One of the most important things that you need to do is to protect your trademark by registering it before you start dealing with distributors. If you are going to license your technology, make sure you are protected, not only with regards to the person with whom you are dealing but also third parties. Make sure that what you are selling is something you can deliver.

There are some basic considerations when creating the terms of a licensing agreement. For example, under what conditions can the trademark be used? What are the market and product limitations? What are the quality controls or standards? How are you going to monitor the use of the trademark? How can you be sure that this product that now bears your name and supposedly your technology is not going to fly apart the moment it is put to use by a consumer because of inferior materials or construction by your licensee? Another key issue is cessation of the use of the trademark upon the termination of the licensing agreement. It happens in all markets when people look overseas. It happens in the U.S. market too.

How should you respond to an infringement? What are the local laws and rights conferred upon licensees? There are sometimes significant severance payments when one dismisses an agent, particularly without cause or notice, so you need to take that into account. In the Dominican Republic, for example, dealers who become registered under Law 173 are vested with a tremendous amount of rights and are entitled to significant severance payments if the relationship has existed over a number a years. You have to be careful how you approach that.

Franchising transactions are essentially like a trademark except that they require more effort in order to maintain the integrity of the franchise. You are trying to convince someone overseas to invest in your vision, your business, your hope. There are a number of franchise restrictions. One is on personal involvement by the owner. You do not want people to stockpile franchises. You want them to work each one. That is the best guarantee that your franchise will be respected. Some of the major franchisors, when looking for franchisees, want that degree of personal involvement. They will not license to a money group just because they happen to be the third most important group in the country. They want to be very sure that somebody is going to work their product and their line. Because there is an investment component, there has been an increasing amount of protection in Latin America for franchisees. There is a new Brazilian franchise law. Mexico has franchising rules. Some other countries are either in the process of establishing or have recently established franchise rules. So, you cannot just sign up people in any sort of way and think that is enough. If you are considered a franchise and have not registered, you may not be able to get currency from the Central Bank. The franchisee may have the ability to void your contract and require the return of his money. You need to be very sure beforehand about what type of a business you are in and how the country views you.

I want to speak briefly on agency and distributorship agreements. One could go on at great length about agency and distributorship agreements. We could hold a whole conference just on them. I will not do that, however, but will just mention some of the major points. First, there is a difference between appointing an agent and appointing a distributor. An agent essentially works for you. An agent places orders that it gets from clients with you, and you fulfill that order. You have a direct relationship with the customer. Whereas, in cases where you have a distributor, you are essentially selling to the distributor, and that is all you need to be concerned about.

In negotiating or structuring an agency and distributorship agreement, the key is first to define the nature of the relationship. Is it an agency or a distributorship? Is it exclusive or nonexclusive? Everybody in the world likes exclusive distributorship agreements, and the degree to which our clients often give exclusive agreements baffles me. They want to give all of Brazil to somebody that they sat to next at the airport counter without knowing what the person's capabilities, and without recognizing that perhaps there are different elements in different regions. Viewed from a U.S. perspective, it would be as absurd as running into someone in Miami and then giving them the exclusive distributorship for the entire U.S. market.

So you need to define whether someone is an exclusive distributor. You need to be very sure that you are creating a good relationship, that you are not creating something that is doomed to fail. Many times I find myself arguing with my clients about one of two things. Number one, I tell them not to drive too hard a deal with the distributor. If they do, it may be profitable for them, but will not be profitable for the distributor. If they are really looking to expand and develop a market overseas, that will end up the last product on the shelf that gets moved. I always tell them, if you can, try and make your product the most profitable one for that agent or distributor, because then they will move it. That does not mean give the farm away but be very careful.

The second argument that I have with my clients is, it is easier to give more rights later than it is to give rights and then take them away. Psychologically, there is a big difference. What I normally tell my clients is not to give exclusive distribution for the entire western hemisphere, but for Venezuela, for example, if that is where they are based. If they are able to sell a certain number of products in a particular market, give them that. If they can sell in another market, give them that. Give them additional distribution rights over time rather than, six months down the road, saying "Aha! You have not sold anything to Canada, so whoosh, there goes Canada as a territory."

Another term of the distribution agreement concerns the nature of the products that are to be handled by the agent or distributor. Are they specifically named or generically described, in existence or to be developed in the future. There is the issue of the channels of distribution over which the agent or distributor will be given authority. You must select wholesale or retail. What type of retail? Beauty stores and beauty salons are different markets. Many times, particularly in large markets, the same person will not do it all. If you can restrict it to channels of distribution, you might be able to get a more extensive analysis of the market. There also is the issue of delineation of the territory. What kind of territories can you or can you not sell?

There are a number of performance factors in connection with an agency or distributorship agreement, including sales quotas, purchase quotas, and advertising promotion quotas. These quotas can have a bite to them. "You must do this and if you do not, you pay me for it." Or they can have a softer edge. "These are goals for which you should strive, and if you do not fulfill them, then I can pull rights away from you or I can restrict you in the future." You want not only to make a sale to a foreign agent, but also to have that foreign agent then sell into the market. It does you little good to have a guaranteed profit each year if your product dies and is not known overseas. You want them not only to buy from you, but also to sell to others, because that is how you develop your product and its name in a foreign market.

There are issues of trademark rights and the right of the agent or distributor with respect to the use of trademarks. Normally, we tell our clients that if they are dealing with an individual, incorporate him. Even pay for his incorporation. But deal with him as a company rather than as an individual. In some cases, when you hire an individual as an individual, he will be vested with the status of employee under local law, which means you may be subject to issues of severance. You may have to pay for maternity time and things of that sort. When you keep it as a company, if there is any dispute, the dispute is with the company, and you are not involved in any sort of local labor issues. If his company then wants to hire him as an employee, that is fine. But we recommend that clients deal only with corporate entities and not with individuals to avoid a whole parcel of problems. What we normally do in some major companies is have the company drop down a special subsidiary to deal with the market. That special subsidiary will pay, if necessary, to have the local person set up an operation, and then the parent company will license the subsidiary to then sublicense the use of the trademark overseas. So at the very worst, they can just scrap everything below the parent company and start over again with a new company and the new person.

There are issues in the distribution agreement as to whether the local agent or distributor will be required to maintain any local inventory. There are certain products that may need replacement parts, and the buyer cannot wait for the part to come back from Europe or the United States, but wants it as soon as possible. So you may want the local agent to keep a certain level of inventory in the foreign country. You also may want the agent to keep some level of service capability, so service can be taken care of locally and the product does not have to go back to the United States.

Another issue involves local laws that impinge upon the freedom of the parties. For example, unlike in the United States, in many Latin American countries, you cannot terminate an agreement with any long-term party without just cause. In our distribution agreements, we define just cause because the definition of just cause in most of these countries is very limited. They do not define it as failing to meet a performance quota or failing to provide reports regularly. Just cause to them is stealing from you or committing a violent crime. We try to make significant events the basis for the definition of just cause. In the agreement, we say the agent or distributor can be terminated for just cause, which includes a, b, and c. Fortunately, we never have had a situation where we had to go to court in a foreign country over any of these issues. In many of these countries, this is really a matter of contractual relations, but our theory is that the parties have to define it in a specific way because local law will have a tendency to be more tolerant if it is defined than if you leave it totally up in the air. You also want to choose an arbitration forum outside of the country. You do not want to litigate with the distributor in the Dominican Republic over the scope of the agreement, if you can avoid it. You need to do these sorts of things to preserve your rights.

Now, I would like to discuss joint ventures. Joint venture is a phrase that often is incorrectly used. Joint venture is a business arrangement between two or more parties. In an international joint venture, there must be a foreign party with whom one achieves a common, but limited objective. The venturers share, not necessarily on equal basis, the profits, losses, and control of the joint venture.

Joint ventures encompass a number of transactions. Some of our clients, for example, do not buy into an existing company to control or operate it, but just own a piece of it. They then provide a piece of their own company to the other side. That may seem foolish, but it establishes principles of cooperation between the parties. It also means that they hold hostage a certain interest in the United States in the event the other side challenges them or does something very bad. So it is not a completely crazy idea. It provides some wealth that you can use to protect yourself in the event something goes wrong overseas.

In many of these countries, there are a number of different requirements for going into a joint venture. Many prohibit a certain percentage of foreign ownership in companies. If you want to go into the business, you have to be a minority partner. Now, there are a number of different control provisions that you can use to maintain consensus control without necessarily having most of the stock. There also are ways to structure the relationship so that, outside of that country, you are doing some activity essential to the joint venture and taking a disproportionate share of the profits there, so that you can satisfy yourself.

Another reason for a joint venture is that you can have special access. Special access could be to markets, materials, resources, transportation facilities, or decisionmakers. If you pick a strong local partner, chances are you are not going to have petty corruption in the company because your local partner will stave it off. Secondly, you will be more insulated from political pressures if you have a local partner working with you. Obviously, another reason for joint ventures is you share the cost and the risk of funding the vehicle. Instead of an investment vehicle costing you a hundred million dollars, it costs maybe thirty million, if you have two or three partners. Perhaps, your company has expertise and some money to invest, and there is a local group that has a lot of money but no expertise; it is a match made in heaven. You provide your know-how and some money while they provide most of the money, and you are all in good business together.

There are many different types of joint ventures, ranging from a general partnership, which is the usual form, to a mere cooperative working relationship. There is the choice of exchanging minority interests in each others company, each side runs its own show but has a stake in the other's operation. A joint venture could split an entity, minority-majority to fifty-fifty. There is a mechanism, for example, in Mexico whereby you take an interest in the profits of an existing company, perhaps, for a year. We have done this in the agricultural sector, where the company pays all the taxes, does everything, but for example, your share is thirty-five percent of the profits, that is what they pay you at the end of each crop-growing cycle.

One should not approach a joint venture agreement in a mechanical way but be very creative and deliberate. It is very important to first define the scope of the joint venture. What exactly are you going to do? This is critical if you are not going to have majority control in the company, in which case you need to be very sure that this joint venture sticks to what you specify and does not proceed outside that area. Sometimes, there are people who subordinate their own business for the joint venture. They sign agreements that say, "Okay, I am not going to continue to be active in this field. We are going to run everything through the joint venture." There are other joint venture agreements that say, "We are only going to do this one thing in this one country for this one time, and I can do anything I want to do, and you can do anything you want to do in your businesses outside the scope of this venture." Defining the scope of the venture is crucial.

There are questions on changing control. How do you admit a new party? How do you transfer control? What happens if one partner wants to buy out the other? What if they cannot get along? These are the sorts of things that one needs to define. Restrictions on operations is another key issue. How is the company going to arrive at decisions? I like to put a requirement in joint venture agreements that first the parties must come up with an operating plan and a budget, which will be revised annually, and then the company performs pursuant to it. Because the planning document is done at the very beginning, it will help you carry through a lot of things. You will establish a budget, and it will not go over that amount. Also, it will be very useful regarding issues of governance.

Finally, when the joint venture is to be terminated, how will it be done? Is there a transitional period? Can one party buy out another? In some countries, because of the nationality restrictions, a U.S. partner cannot end up owning the majority. If you are going to have a corporate divorce provision, you must have some sort of exit procedure where you will to be hurt the least.

Dispute resolution is very critical. Where you litigate, where you arbitrate, the language you use, the law, and many other things come into effect. Again, these are business considerations, but as lawyer, I find myself assisting my clients through this. It is a complicated thicket in many cases, and to the extent that you can provide clients with a sounding board and perhaps argue with them, as people within their company might not, I find that you can help a client achieve something more significant. You can steer them in terms of their expectations about what they want and assist them onto the best path towards the best development of their product in Latin America.

We had a client this past year for whom, unfortunately, the deal fell through, because they had a squabble with their partner in the Dominican Republic. They were planning to build a very extensive development, covering about twenty-six miles, which included a free-trade zone in the northwest corner of the country, right next to Haiti. It was going to be very significant, and they had expectations that a lot of people would use it. Free-trade zone means different things in different places. There are free-trade zones where you can enter products, and as long as they are in the zone, you can assemble them, change them, manufacture them, do different things, and yet not have to pay any tariff on them.

The real question then is why or why not the Dominican Republic? The Dominican Republic has wonderful resources, though they are not as vast as many other countries, and the labor force is fine. However, the Dominican Republic by itself is not a very large market, and it is next to Haiti, which presently is definitely not a great market. With free-trade zones you want to be next to a market where you can move your products. For example, people use the Miami free-trade zone. They will bring in coffee during the summer months at a low rate and keep it there until the winter months because coffee sells at a higher price in the United States during the winter months than it does during the summer months. So, for them, the coffee that is being brought in is simply held. In other cases, people actually transform the products, people make denim into jeans and things of that sort. People are aware that there are free zones in the Dominican Republic, in Costa Rica, in Panama, and some other places, but why would they want to go there? Each jurisdiction has to convince people that they can find better skilled labor, cheaper materials, and have good distribution places there. One of the things about which our clients were concerned in the Dominican Republic development was that there were not any deep water ports except in Santiago, which has been in disuse over a couple of years. For them to actually do the free-trade zone, they would have to hire a Chinese company to dredge the basin to permit bigger ships to come through. There are a lot of well-kept secrets out there; people need to look at what makes better sense for their product, situation, and particular country, and at where they can go from there.

C. *The Challenge Facing Latin American Economies*

WILLIAM P. ANDREWS

This morning we are pleased to have with us Willy Morgan, publisher for *The Economist.* He is going to discuss future economic trends in Latin America. He joined *The Economist* in 1981 and ran its business operations in continental Europe from 1984-1989. He came to New York as advertising director in 1990 and in 1993, became the first ever publisher in 150 years. He is President of the U.S. chapter of the International Advertising Association.

WILLY MORGAN

I would like to address my comments to the overall trends and challenges facing Latin America as a whole. Let me begin with a quote from a rather unusual article that *The Economist* published several months ago. The article began, "In a world full of turmoil, there ought to be some countries that are just plain normal." Indeed, more and more claim the title. Japan prides itself on conformity with the norm, proud to call itself a normal nation. In the Czech Republic, Prime Minister Vaclav Klaus insists cheerfully that the Czech Republic is no longer a post-communist country in transition. In 1992, Felipe Gonzales Prime Minister of Spain said, "My heartfelt desire for many years of my life was that Spain should be considered a normal country." And so it goes, with countries around the world striving to become normal, sometimes even when normal is nothing to boast about. Nicholas Christof, a *New York Times* reporter, has written about China, "Corruption, religious zeal, and public skepticism may be the marks, not of a disintegrating country, but simply of a normal nation." Where have I heard a region talked about like that?

When we begin to look at Latin America and the economic challenges that it faces now and will face going into the twenty-first century, how should we evaluate change, and against what standards of normalcy? *The Economist* tries to provide some guidelines to this question. Since our founding in 1843, the magazine has zealously subscribed to the notion of free trade and to the notion that a system of democracy in principle provides for greater well-being for a country's inhabitants than any other political system. *The Economist* would argue that democratization is an essential condition for all other parameters related to sustainable prosperity. These elements include long-term strategic investment in capital markets, labor, education, and social programs aimed at health care, population control, and nutrition. Becoming normal then, or normalcy, as seen through the eyes of *The Economist*, is a concept. A concept of prerequisite conditions that provide for the sustainable and prosperous development of a country.

This then is where I would like to begin today, and it is with the following question. In the context of looking at the challenges confronting Latin America, what are the prerequisite conditions for sustainable development? What reform challenges have already been met? What remains to be confronted as the region approaches the twenty-first century? For those of you looking for some sort of order to my remarks, as it were, normalcy in my speech.

First, I will explore what has been done in the area of reform from a regional standpoint, touching on economic and political reforms, foreign investment policy, and infrastructural developments. Second, I will plan to touch briefly on reform issues and challenges on a country-specific basis. And finally, I will conclude with comments regarding some of the challenges yet to be confronted as Latin America hauls its collective mass into the future.

So let us begin with what has already been accomplished in the region. If I had stood here before you four years ago and told you that Mexico, then the darling of the international investors, would be on the brink of financial collapse; that Argentina, then a hyper-inflationary basket case, would develop a vibrant economy, only to be threatened with deep-set recession; that Peru, then overwhelmed by a depressed economy and Maoist guerrillas, would register growth resembling that of a successful Asian tiger; and that Fidel Castro's Cuba would be on the way to adopting capitalism, you might have called me a bad forecaster, or worse, crazy. I probably still am, but remember in 1962, those at *The Economist*, who were all teenage scribblers — we have only had four editors over forty in 150 years — claimed Japan would become an economic superpower, and we were booed off the stage.

Well, anyway, welcome to 1995. Mexico, as you know, is still trying to avert an economic and financial meltdown and is in the throes of political crisis. Argentina's successful return to economic stability has felt a ripple effect from Mexico, as has most of the world, and is now threatened by dramatic loss of investor confidence. Peru has gotten rid of its guerrilla terrorism. Last year, its economic growth of twelve percent was the highest in the world, rivalling that of China. Finally, Cuba is in a transition towards a market economy. Proven by the fact that they now take in thirty-seven copies of *The Economist* a week — up from one! It used to be two, but Fidel found out who the other guy was.

In 1995, the story for Latin America is, as we have all noticed, mixed. Some ups and some downs. But no one could have predicted the recent turn of events just three years ago. In the context of reform challenges that have been met, let us take a closer look at the highlights and headlines of the past several months. First and foremost, was the Summit of the Americas held in December. Heralded as the most important meeting of western hemisphere leaders in history, it culminated in a blueprint for opening up hemispheric trade over the next ten years. Bolstered by the recent victory for GATT, President Clinton's team was eager to embrace the notion of a global economy and a hemispheric free-trade zone. Remember, only ten years ago, Mexico refused to join GATT for fear that it would hurt its own protected industries. Enrique Iglesias of Uruguay, President of the Inter-American Development Bank, was quoted after the Summit as saying, "When I was foreign minister in 1985, there were countries that had never been visited by the Presidents of their neighboring countries. Now, they use the familiar *tu* with each other and even their wives know each other. So much for global trade and familial relations."

Moving on from the Summit, Latin America also points to the successful creation of Mercosur, which provides for a customs union, duty-free trade within the four southern cone countries. This common market of the South ensures that, effective January 1, ninety percent of trade within these four countries will be duty-free. On the same date, the Andean Pact formed a customs union. Talks of merging these two pacts into one also are in the works. Finally, and also commencing on the same date, a third free-trade group, consisting of Mexico, Colombia, and Venezuela, came into effect; it is known as G-3. I reiterate the significance of these free-trade pacts, because, from where we stand, free trade is the major requisite to normalcy. It also is an indication that governments are willing to bury historical rivalries and turn away from protectionist economic policies.

Latin America as a whole also has embraced another continental trade trend, which moves it towards reform. That is privatization. Privatization serves the business self-interest of both domestic and foreign investors, but more importantly, it opens up the opportunity for long-term investment in a country's infrastructure, facilities, and services. According to President Cardoso, quoted last November in the *New York Times*, "The entry of private capital" — and by this I usually mean long-term infrastructure investment rather than portfolio investment — "is no longer a question of ideological preference." It means the "difference between carrying out or not carrying out necessary investments."

Increased trade, privatization, and foreign investment unfortunately have an underbelly and not just that of the aforementioned and gravely-felt short-term investment. Despite all the benefits of Latin America's new economies, including inflation control and open markets, millions of people have quite simply been left out. According to statistics from the U.N. Economic Commission for Latin America and the Caribbean, thirty-nine percent of families live in poverty in the 1990s. Poverty is defined as lacking the income for a minimum level of food, shelter, and health and education services. This is a statistic that is only projected to drop by one percent into the twenty-first century. Economic growth has been earned at a high social price, which includes increased poverty, increased unemployment, and widening income inequality. Although some countries, such as Chile, have made notable strides in regards to social reform, it is hard to give Latin America, as a region, the same high marks in this area as compared to the progress it has made in trade and economic areas.

So, in very broad strokes, I have touched upon reform issues from the point of view of market economies, increased trade, infrastructural development, and social reform. Political reform is perhaps better explored on a country specific basis. I will not discuss every country. I see that some of them have been covered probably much more authoritatively than I can. So, I have chosen three: Mexico, Chile, and Brazil.

Let us start with Mexico. The obvious and most immediate threat to Mexico's economy is the dramatic devaluation of the peso, unexpected even up to the time of the Summit of the Americas. As far as I can see, the fifty billion dollar bail-out of Mexico still has not brought stability to either the peso or the Mexican stock market or other stock markets. Last week's events foreshadow dire social consequences of the tough economic measures imposed by the government. Five hundred thousand people are expected to lose their jobs over the next two months on top of the quarter of a million who were let go in the first two months of the year. Thousands of businesses are expected to go bankrupt; interest rates on mortgages, credit cards, and car loans may approach ninety percent or more; and many families will be forced into insolvency. Last Friday, as you know, gasoline prices increased by 33% overnight and electricity costs rose 20%. Private sector analysis forecasts that inflation this year will reach 70%, up from 7% in 1994, and that output may fall by 2%. These figures are probably all completely devalued already.

In addition, officials are battling to restore from collapse much of the local banking system, now deluged with defaults. On Tuesday of this week, President Zedillo has said, "I thought it was going to be rough, but I must be honest, I never expected anything as complex as what we have lived through over the past few months." Beyond the peso, a host of other challenges confront the nation. Last year, before the economic ground began to sink beneath his feet, the tasks set before Mr. Zedillo seemed to be that of simply acting as midwife to the birth of Mexico's modern democracy and in so doing, separating the powerful Institutional Revolutionary Party (PRI) party from the state. The economy seemed in fairly good shape, at least good enough to allow Mexico into NAFTA. But then there was the rebel uprising, which helped to precipitate the loss of economic confidence in December.

To bring democracy to Mexico, it is probable that Zedillo will need to deal with the transformation of the PRI, rather more urgently than he had previously thought, into a multiparty system. There does seem to be some progress behind all the Machiavellian shenanigans that are going on. Last month, Zedillo reached a deal with the main parties on procedures to install a genuine democracy. *The Economist* called this a bold and far-reaching agreement that may well end the monopoly of state power. Other reforms Zedillo will need to effect include the creation of an independent judiciary and civil service, uncorrupting the police force, protecting free press and television, cleaning up elections, and ending patronage. As if that were not enough, he finds his government embroiled in bringing to justice Raul Salinas for planning the murder of Jose Francisco Ruiz Massieu. On top of this, we know, the arrest may be linked to yet another murder investigation, the assassination of Luis Collosio, once thought to be the work of a lone psychopath; now the ex-president who, in inverted commas, appears to have been banished this week, is being involved. All of this is not good for reassuring the rest of the world.

What is the verdict regarding Mexico? The jury is still out, but it would appear that it actually is stumbling towards democracy faster than anyone could have foreseen a year ago, and is moving, albeit against the rising tide of social and economic tensions, towards an enigmatic paradigm of normalcy.

In describing Chile, *The Economist* has stated: "Tucked away between the Andes and the Pacific and on the way to nowhere in particular, Chile almost resembles an Asian tiger mistakenly attached to a different continent." The economy has grown without interruption for eleven years. The average annual rate of growth is seven percent over the past eight years. The country's investment rate is twenty-five percent, not quite at Asian levels, but jolly good by Latin American standards. Inflation is in the single digits, as is employment. Foreign trade is in a surplus, and external debt is under control.

The main goal of Chile's macro-economic policy is to maintain a competitive, real exchange rate. Its economic success of the past decade has been based on trade liberalization and an increase in exports. The capital city of Santiago is replete with mobile phones, futuristic skyline, and U.S.-educated officials eagerly conversant on topics such as privatization and prospective membership in NAFTA. Unlike Mexico, Chile is small, has only forty million people, and is far away. The distance is very important for U.S. workers, eight hours from Miami to Santiago, and therefore, relatively unintimidating to U.S. workers who fear job losses to the south. Micky Kantor is fond of telling people that by 2010, the United States will be exporting more to Latin America than to Europe and Japan combined. Chile represents the first potential enlargement to NAFTA and according to U.S. officials, is a benchmark for hemispheric integration.

And what of democracy in Chile? After the traumatic Pinochet period, which combined political repression with economic liberalization, democracy is well-established. And Chile, according to U.S. officials, is a pleasure to deal with. A pretty normal nation, all things considered.

Then there is Brazil, which is a bit too big to ignore: one hundred and sixty million plus people, accounting for more than half the population of South America, and its 450-billion dollar economy is twice the size of Eastern Europe's. In the nineteenth century, Brazilian states were run as independent fiefs, and some would argue, still are. These states within the state still own banks, factories, utilities, and companies of every kind. No one knows for sure, but the estimate is that the state governments may have rung up around forty billion dollars in debt, most of it owed to their state banks. Still, the private sector is making inroads via the latest barrage of constitutional amendments to make government monopolies flexible.

Speaking of constitutions, Latin Americans, and particularly Brazilians, seem to love them. Enrique Krauze, Mexican historian, was quoted in *The Economist* as saying, "The more chaotic the country, it seems, the more intense its interest in drawing up new fundamental charters." In 1988, Brazil began to revise its own constitution, and currently it has been revised and repaired yet again. If they get it right, the real engine of Latin American growth could be Brazil. This means that its new president needs to rally the legislature to accept needed fiscal reform, including wider privatization in what is still a primarily state-run economy. Launching of the new currency has helped slash inflation. This has been done by loosely tying the currency to the dollar, in addition to lowering import barriers. It is nice to go there today and see that not every car is a Volkswagen Beetle.

Brazil's economic reforms, although still in danger, have been impressive when compared to the past, but they still have a long way to go. It also should be continuously stressed and rammed down the throats of all teen-aged traders and investment analysts, that Brazil does not have the same problems as Mexico. Instead of trade and current account deficits, it is running surpluses. Its forty billion dollars in foreign reserves, at my last count, was far larger than Mexico's reserves, even when it uses quite a lot of it to intervene thirty-two times in a day to protect its currency. Economic growth is still strong, and combined with strong foreign capital inflows, is straining the economic plan. The government started this year with a deficit of around ten billion dollars, and Cardoso needs to convince his new Congress to pass tax and spending reforms to guard against inflation and reliance on foreign capital.

Needed even more than economic reform is political system reform. There are nineteen parties, and none dominate. Many are not even real parties, but rather guises for influence and money. If Cardoso can win the cooperation of Congress or, better yet, get them to show up for congressional sessions, a third of which have been canceled since October for lack of a quorum, he may have a chance to move the needle closer to normalcy.

Let me move to the third and final part of my remarks today by posing a question. What are the most compelling challenges that Latin America continues to face as it moves forward into the twenty-first century? What changes need to be effective, so that collectively and individually, the region moves towards normalcy, towards sustainable and prosperous development?

Number one, and I quote from a report issued by the OAS, in preparation for the Summit, "Poverty is the greatest challenge for the economies of Latin America and the Caribbean." Recent estimates place the number of poor at the beginning of this decade, depending on the definition of poverty, somewhere between 130 and 196 million people.

Number two, is maintaining and managing economic growth, balanced against low inflation rates, and including the establishment of sound fiscal policy that encourages savings, trade liberalization, and privatization. Some countries such as Chile, since the mid-1970s and despite its social problems, and Colombia have realized the macro-economic order years ago. Others such as Brazil have a ways to go.

Number three is *apertura*, which is the continued liberalization of markets through regional trade integration and broadened integration northward as shown by continued progress with trade agreements such as NAFTA and Mercosur.

Number four is investment in people, which includes education and the work force. In Brazil, illiteracy ranges from eleven percent in the urban south to fifty-five percent in the poor northeast.

Finally, number five is constructing strong institutions to give solid footing to democratic and social systems, including independent judicial and civil services.

So, with fundamental areas of reform still to be tackled, am I suggesting and leaving you with a gloomy prognosis for the region? In fact, quite the opposite. From a business standpoint, *The Economist* says, "Nobody ever said that the emerging markets were free of risk. But there is still plenty of growth to come from Latin America, and plenty of money to be made — provided that the herd instinct does not prevail." It would appear, despite the gloomy headlines as of late, that U.S. companies are strengthening their positions in Latin America, making the region the fastest growing U.S. export market, buying and taking almost ninety billion dollars worth of U.S. goods in 1994. The Commerce Department estimates the region will surpass Europe as a customer for U.S. wares by the year 2000 and by 2010 will surpass Europe and Japan combined. In essence, while we are seeing a jittery response from short-term investors, for the most part, companies focusing on strategic direct investment, are staying the course.

To conclude then, one must be careful not to jump to knee-jerk decisions regarding such a vast territory, projected to include 510 million people by the year 2000, because of its history of political and economic instability. On the other hand, claiming that Latin American economies have been successfully reformed, as we are now seeing, is overly simplistic and fraught with danger. One must take into account that the region has a history of reform and relapse, behaving, as we also state, like an addict of the drugs that grow so well there. Yet, if Latin America does accept the gravity of challenges ahead, and of systemic reform, not short-term fixes but long-term strides towards sustainable prosperity, and normalcy, then even the most skeptical among us has grounds for optimism.

IV. SIMULTANEOUS BREAKOUT SESSIONS

WILLIAM P. ANDREWS

In this session our first speaker is Jeff Snyder. He is the author of numerous works on international trade and speaks frequently on international export matters. Presently, Jeff is a partner in the International Trade Group in the Washington D.C. office of Graham & James. His practice includes representing foreign companies and governments in the United States in a variety of disputes. He also represents U.S. companies in disputes with foreign companies that are resolved here in the United States. So he is involved with both sides. Most of us who are involved in international trade know that as international trade grows, so do international disputes. As our clients begin to look at foreign markets as opportunities, as lawyers, we know that they also are looking at foreign markets that may cause problems for them at some time. For example, terminating distributors tends to be one of the very first problems that clients run into if they have not come to you before going international. When clients take their U.S. distributorship agreements and decide to use them throughout Latin America, bingo, about two or three years later, you usually get a call. That is often the beginning of the education process for our clients. Unfortunately, all of them do not