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THE MULTINATIONAL ENTERPRISE IN THE CONTEXT OF LATIN AMERICAN ECONOMIC INTEGRATION: THE ANDEAN AGREEMENT MODEL

I. INTRODUCTION

Latin America is indubitably experiencing a new wave of economic nationalism. This has been reflected most poignantly in recent free trade and economic integration efforts as well as the more dramatic actions such as expropriations and nationalizations of American subsidiaries in Chile and Peru. The ramifications of this modern era of economic independence is of pressing importance to foreign investors. Therefore, an examination of the multinational enterprise in the context of recent economic integration efforts is crucial to an understanding of the foreign investor's future in Latin America. There have been a legion of integration efforts, the most notable being: the Latin American Free Trade Association (LAFTA), the Central American Common Market (CACM), the Caribbean Free Trade Association (CARIFTA), and most recently, the Andean Subregional Integration Agreement (also known as the Cartagena Agreement, the Andean Group, Andean Agreement, Andean Common Market and AnCom). Because the Andean Agreement is the most recent, the most comprehensive, and holds the greatest potential, (in that it appears to surmount many of the blunders made by earlier economic integration efforts), it can be considered a model integration agreement which, if successful, will be repeated in the future by other lesser developed nations.

This study endeavors to discuss in a broadly circumscribed manner: I. What may be considered the three major goals of the Agreement and how those goals will be realized within the rules of the Agreement; II. The repercussions of those rules on U.S. investors' decisions on whether to invest in the face of such controls on foreign investment; and III. A prognosis and some sugges-

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1. Agreement on Andean Subregional Integration May 26, 1969. 8 INT'L LEGAL MATERIALS 910 [hereinafter referred to as Agreement].

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tions for harmonizing economic independence with the growth of multinational investment.

An initial caveat must be sounded however. The Andean nations' economic problems are not necessarily indicative of all Latin American nations. An analysis of the multinational enterprise in regard to Andean economic issues will not serve as a panacea for all of South America. The study of the multinational enterprise within this particular agreement then, will clearly not serve as an economic crystal ball. Neither is this discussion devoted to an exhaustive study of the nuances of the Andean Agreement. Two central issues will be addressed in this article. First, how does the Andean Agreement seek to ameliorate Latin American economic development? Second, will the controls on foreign investment as embodied in the Agreement prove too rigid and thus result in the dissipation of foreign investment in Andean nations? A brief overview of the Andean Agreement is therefore germane at this point.

The initial Andean Agreement of 1969 consisted of Chile, Peru, Colombia, Ecuador, and Bolivia, although in early 1973 Venezuela also became a member. The Agreement states as its goals the promotion of

- a balanced and harmonious development of the Member States, to accelerate this development through economic integration . . . designed to secure the progressive improvement of the living standards of the people of the Subregion;
- . . . an equitable distribution of the benefits resulting from integration of Member States by effecting a reduction of the existing discriminations that aggravate them . . . taking into account . . . expansion of global exports of each State, [the] conduct of the trade balance with respect to the Subregion, the development of [the] gross territorial product, the generation of new employment, and . . . capital formation.

To realize these somewhat abstract goals the Agreement plans for coordination of economic and social policies, intensified subregional industrialization, a common tariff, stimulation of the agricultural and livestock sector, and investment financing.

In 1971 a dynamic and cogent Investment Code was added as well
as a Code on Multinational Enterprises And The Regulations With Regard To Subregional Capital. But it is the new Investment Code that actually carries the major economic impact, and it is the Investment Code with which foreign investors are primarily concerned. The Code provides for, inter alia, prior restraints on the entry of direct new investment; control over technological transfer and patent and trademark restrictions; regulation of remittance of profits to foreign parent corporation; total restriction on foreign investment in certain sectors; and, most importantly, divestiture of foreign controlled subsidiaries down to 49% foreign control within fifteen years of the date of the Code. (20 years for corporations in Ecuador and Brazil.) The latter article provides the major thrust of the Investment Code in that it endeavors to transmute foreign controlled corporations into local corporations. The Code even sets up a divestiture timetable or "fade-out" formula which calls for local control of multinational subsidiaries at the following rates: 15% local control within three years, 45% local control within 10 years, and 51% local control within 15 years.

This in no way outlaws foreign subsidiaries that will hold greater than 49% of the control. All this means is that corporations holding greater than 49% control will not be allowed to share in the advantages of the regional trade agreement, e.g. elimination of tariffs. In reality however, this means that a multinational corporation will have to comply with divestiture rules if it is to survive in Andean nations. This is because complying corporations will be able to vastly undercut prices vis-a-vis non-complying corporations due to the advantages they will have under reduced tariffs. Hence one may assume that, under the Code, multinational enterprises realistically have only two alternatives: comply.

8. Investment Code, supra note 6, Art. 2.
10. Id., Arts. 7-11, 21, 37.
11. Id., Art. 41, 42, 43.
12. Id., Art. 29, 30.
13. Id. Control is not only determined by financial holdings but by "technical, administrative, financial and commercial management of the enterprise" as well. MNE Code, supra note 7, Art. 10.
14. Investment Code, supra note 6, Art. 27.
with divestiture timetables or withdraw from Andean investment entirely.

These restrictions and regulations allegedly will provide a basis for economic growth of the Andean nations. This growth and integration will eventually combine with the Latin American Free Trade Association for a more pervasive Latin American integration. In the interim however, the Agreement seeks to strengthen Andean economies by encouraging foreign investment while simultaneously harnessing and directing such investment toward more nationalistic goals. All too often the goals of multinational investors run counter to domestic desires. Latin Americans are well aware of this and thus are often distrustful of U.S. investments. Since the events of the past mold current attitudes, a brief history of U.S. investments in South America will yield a reason for their distrust.

One may start by noting that such suspicion rests on a solid historical foundation. United States' economic and political policies have been grounded in the view that the South American region is merely a fertile producer of raw materials for exportation. "The economic interests of the United States lay principally in promoting private investment and enterprise and serving the business interests of its citizens in the area." U.S. history of foreign policy may be summarized as one of political and military muscle against foreign governments to further U.S. business interests. This is not to say however, that American foreign investment in Latin America has been completely devoid of any positive impact on the "host" country. As will be discussed in greater detail later, foreign investment has brought new capital, has diffused technology to the host country, and has paid higher wages and offered better social services to employees than have many local entrepreneurs.

In the past, the multinational enterprise did not take on the overbearing posture it assumes today. It was essentially national in

15. Agreement, supra note 1, Art. 110.

To more acutely emphasize the point a U.S. Marine General once stated: "I helped make Haiti and Cuba a decent place for the National City Bank boys to collect revenues in. I helped purify Nicaragua for the international banking house of Brown Brothers . . . I helped make Honduras 'right' for American fruit companies. Looking back on it, I might have given Al Capone a few hints." Gunther, Inside South America, (Pocket Books 1968) at 161.
nature with only minor subsidiaries in foreign countries. But in this century, the growth of multinational subsidiaries has been astounding. In view of such expansion there is no denying that "international business is now the dominant factor in determining changes in the pattern of world exports as well as capital flows." What this means in the eyes of Latin Americans is that their economies are puppets on the strings of foreign investment decisions. Perhaps Raymond Vernon sums it up best.

Practically all countries that harbor the subsidiaries of multinational enterprises suffer from a sense of dependence, a sense that is nurtured by the assumption that these enterprises may have extensive geographical options and that the exercise of these options could easily affect the local economy ... this sense is especially acute in the less developed countries because of their relative size and their relative reliance on foreign controlled raw material exporters. The history of raw material exploitation, as is well known, is filled with cases in which those options were exercised.

So it is not surprising to find in Latin Americans today, an apprehension that their entire economy, indeed their very sovereignty hinges on the whim and caprice of foreign investment policies. Possibly even more frightening to Latin Americans is the fear that past economic control presages ultimate foreign political domination and cultural disintegration. Obviously, the objectives of the multinational corporation and the foreign investor generally are not seen as compatible with the goals of the nation state. The decisions of local subsidiaries are made by parent corporations in other countries. These decisions often take little or no account of the national goals, desires or idiosyncrasies of the host nation. "Few persons, or nations, like to put their well being in the hands of others. Governments are not happy that decisions affecting the welfare of their nationals and affecting their own national policies can be made by foreign corporations."

18. For example, out of a group of 187 American parent corporations whose holdings account for 80% of U.S. foreign investment (outside Canada), there were 250 subsidiaries by the end of World War I, 500 by 1929, 1,000 by 1945, 2,000 by 1957 and over 5,500 by 1967. Rubin, *Multinational Enterprise and National Sovereignty: A Skeptic's Analysis*, 3 LAW AND POLICY IN INT'L BUS. 1, 2 (1971).
19. Id.
20. VERNON, SOVEREIGNTY AT BAY (Basic Books Inc. 1971) at 181.
Yet while Latin Americans are suspicious of multinational enterprises they realize that their economies are simply too unstable to survive without them. The problem is theoretically simple—economic development depends on capital; foreign investment supplies necessary capital; therefore, without foreign investment there can be no development. This has fostered a schizophrenic “love-hate” relationship with foreign investment. There is a love of such investment because it brings in the missing elements of production such as capital, entrepreneurship, technology, and financial backing. The hate element arises from a realization that multinational corporations often stifle local development and force too much reliance on investment from abroad, thus placing Andean nations in the precarious position of seeking to assert economic independence and yet not at the cost of driving off too much foreign investment. Too dramatic a response to foreign investments, such as outright expropriations, is certain to scare off foreign investment. A more subtle, yet cogent step is economic integration.  

Within the Andean model for economic integration both the goals of the multinational corporation and the goals of the host country can be achieved with a modicum of friction. The multinational corporation, while it may lose some profits in the short run, will gain the stability of a predictable business environment in the long run. This is because policies will be harmonized among the Andean nations so that multinationals will be able to function in a more mobile and efficient manner.

The integration effort is thus an assertion of national sovereignty—an attempt to extricate the Andean nations from the economic grip of foreign parent corporations. “What AnCom basically has done is to dramatize the distrust many countries have of foreign investment and codify these misgivings to shape the ownership patterns and business practices of companies that wish to profit from the benefits of the market.” Yet in this effort the common market must maintain the very delicate balance of maximizing economic independence while simultaneously maximizing the attractiveness of Latin America to multinational investors.

22. In fact, it is felt that the Andean Agreement “was prepared as an alternative to the outright taking of alien's interests by the host state.” Oliver, The Andean Foreign Investment Code; A New Phase in the Quest for Normative Order as to Direct Foreign Investment, 66 AM. J. INT'L LAW 763, 779 (1972).

II. ANDEAN INTEGRATION MEANS AND ENDS

In light of the foregoing discussion it should be clear that Latin America is not directly inimical to foreign investment. The Investment Code states that "the contribution of foreign capital and technology may perform an important role in subregional development." It is understood then, that foreign investment in the context of multinational corporations is a powerful force for economic growth. But currently it is a force that needs harnessing and direction toward more nationalistic goals. (And with Latin America's shortage of competent economists the task is even more formidable.) The Andean Agreement seeks to funnel foreign investment towards three primary goals. 1) Technological growth and amelioration of employment skills. 2) Expanding and coordinating markets. 3) Equitable allocation of industries and benefits. It must be noted that these three goals are by no means a summary of Andean economic problem areas. They are simply the three major areas of concern within the Andean Agreement. And it must be remembered that the Agreement does not purport to be a panacea.

Technology and Labor Skills

Leading economists agree that "the multinational enterprise has proven to be an especially proficient vehicle for developing, transferring, and using complex technology." This technology, which is currently being diffused at a vigorous pace, is not only a major source of research and expertise for the host country but also aids in the training of local personnel. In this sense foreign technology has a didactic function in that it raises the mean competence of local labor. This means that with the multinational corporation comes a concomitant injection of new labor skills as well as a general modernization of the entire productive structure. Not only that, but as indicated earlier, in spite of charges of exploiting "cheap labor" in under-developed countries, many multinationals

24. Investment Code, supra note 6, Declaration, par. 2.
25. Alejandro, supra note 17, at 328.
have paid higher wages and provided better social services than local employers. Additionally, they employ substantial numbers of nationals that otherwise might well be unemployed. Therefore, since technology breeds skilled labor and productive efficiency, it is not surprising to see a great concern on the part of the Andean nations to a) encourage and capture existing foreign technology, and b) foster development of local technological resources. Towards these goals the Andean Agreement has clearly addressed itself.

The Agreement has delineated a policy dedicated to forcing multinational enterprises to transfer technological advances into the hands of local entrepreneurs and to use imported technology for greater expansion, specialization and diversification of industrial production. It hopes also to “contribute to the generation of employment in the Subregion.” What the Andean Agreement has sought to do, in the words of its technological studies director Constantine Vaitsos, is “to bring commercial bargaining into technology transfer, just like any other product.” To further encourage technological growth the Agreement has proposed inter alia, joint programs of research and development, as well as “national research and development centers.”

Unfortunately, although countries have had rules in the past regarding multinational holdings it was “generally possible, through straw men, options and other devices, to avoid their impact.” For this reason the Investment Code has severely cracked down on what had amounted to anti-trust activity in the past in the fields of licenses, trademarks, etc. For example, foreign parent corporations often entered into agreements with host countries in which the host country agreed not to compete in certain areas of technological study. Such agreements are now prohibited under the Investment Code. Likewise prohibited are special purchase

28. In the less-developed nations U.S. subsidiaries employ over three million domestic personnel. Vernon, supra note 20, at 171.
29. Agreement, supra note 1, Art. 38.
30. Id., Art. 32 (a,c).
31. MNE Code, supra note 7, Art. 7(j).
33. MNE Code, supra note 7, 8(e)(4); and Agreement, supra note 1, Art. 37(e).
34. Investment Code, supra note 6, Art. 23(c).
36. Investment Code, supra note 6, Art. 20(d).
options in favor of the supplier of the technology as well as any agreement that restricts the export of a licensed product.\textsuperscript{37} This obviously means more freedom of exportation of Andean goods. The Code also provides for special tax and other benefits to be granted to investments which involve local technology.\textsuperscript{38}

Perhaps most striking of all is the broad power allocated to the Control Office. Not only must all technical assistance agreements be registered with the Control Office but they must be approved by such office as well.\textsuperscript{39} And to prevent the multinational enterprise from encroaching upon certain areas the Commission\textsuperscript{40} may prohibit certain products or product groups to be patentable in member countries.\textsuperscript{41}

In summary then, the Andean Agreement has sought to ameliorate the labor situation through diffusion of foreign technology. It has regulated foreign technology in hopes of not only stimulating local technology, but also in hopes of freeing products produced by foreign technology from restrictive agreements which have traditionally encumbered the export of those goods.\textsuperscript{42}

\textit{Expanding Markets and Market Control}

Resolving problems of technological advance and improving labor skills will prove fruitless if other facets of the economy are not also improved. "Nations that to a considerable extent still compete in raw material production will have little to trade with one another until their industrialization reaches higher levels."\textsuperscript{43} Therefore, integration efforts endeavor eventually to have industrialization replace import-oriented economies of the Andean na-

\textsuperscript{37} Id., Art. 20, 25.
\textsuperscript{38} Id., Art. 23.
\textsuperscript{39} Id., Art. 6(f).
\textsuperscript{40} Agreement, supra note 1, Art. 6. \textit{See generally} Chapter II, Organs of the Agreement.
\textsuperscript{41} Investment Code, supra note 6, Art. 26.
\textsuperscript{42} The purpose of this is ostensibly to push foreign investment out of certain fields and hopefully to direct foreign investment towards the higher risk ventures, leaving certain "secure" product group production in the hands of local companies.
\textsuperscript{43} GRUNEWALD, WIONCZEK, CARNOY, \textit{supra} note 16, at 29.
tions. But industrial growth, as a substitute for importation, is dependent upon the increase in national markets. If industrialization is dependent on expansion of markets then it is not surprising to find that enlargement of markets and protected trade in a common market is a major goal of the Andean Agreement. Furthermore, since locally manufactured goods cannot compete in the markets of more advanced countries, (since the technology, capital, and entrepreneurial know-how in such economies far exceed that found in Latin American economies), the Andean nations must work toward developing their own economies as major marketplaces for Andean manufactured goods.

Obviously, one of the fastest routes to an enlarged market is economic integration. The reduction of trade barriers will, hopefully, not only stimulate inter-regional trade but will make Andean nations an attractive region for foreign investment. The profits and growth that could be realized are enticing. For example, one study prepared for LAFTA indicated that the annual benefits of producing 14 products regionally as opposed to importing them from the United States is estimated to range from $180 million to $230 million (depending on transportation costs and rates of exchange).

Historically however, Latin American production has not been geared toward integration but rather toward exportation of raw materials. This is because transportation and trade mechanisms were designed by foreigners interested primarily in raw material exportation. Consequently, there has been little inter-regional trade and no regional industrial policy. This must be altered if the Andean Group is to expand and develop industrially. In response to these problems AnCom has set up a program to organize "a common trade policy with respect to third countries."

44. Andean economies are often deemed "export-oriented" because they derive what wealth they have from exportation of raw materials. However, when this author uses the term "import-oriented" to describe Andean economies it is in reference to the fact that most all of the more refined industrialized goods are imported from abroad.

45. Not only is it hoped that markets can be expanded but it is felt that with greater inter-regional trade will come a stimulation of sectors such as communications, transportation (notably seaports, riverports, highways, railroads, and airports), and such social projects as schools, hospitals and housing.

46. "Such a regionwide market might appear more durable to the Latin American business community than would markets opened up through special trade preferences in developed countries. The permanence of developed countries' concessions would always be uncertain...." GRUNEWALD, WIONCZEK, CARNOY, supra note 16, at 28.

47. Id., at 34.

48. Agreement, supra note 1, Art. 26(e).
includes tariff and trade agreements covering 175 items\textsuperscript{49} as well as an elimination of trade barriers on products not yet produced.\textsuperscript{50} But the Agreement seeks not only to expand markets by preferential trade arrangements, but also to direct multinational investments into selected production sectors. The Code on Multinational Enterprises provides that multinational corporations should "contribute to the strengthening of subregional entrepreneurial capacity in order to take fuller advantage of the expanded market . . . facilitate access to international capital markets . . . [and] strengthen the Subregion's capacity to compete in the markets of third countries."\textsuperscript{51} Furthermore, in an effort to align foreign investment with national goals the Multinational Enterprise Code requires that the multinational corporation must be of "subregional interest."\textsuperscript{52} The Agreement also closes off foreign investment entirely from certain "sensitive areas" such as public services, insurance, commercial banks and financing institutions, internal transportation, and publicity (e.g. radio).\textsuperscript{53} This is apparently an attempt to prod foreign investment towards solving "problems that unfavorably affect the process of subregional integration."\textsuperscript{54}

Thus we can see within the Agreement a two-pronged approach; the first approach is to open new markets and expand existing ones, and the second, to direct foreign investment towards sectors of production that are most beneficial to Andean national interest. What will hopefully transpire out of such an approach is a lowering of manufacturing costs (since capital goods may be acquired more cheaply through inter-regional trade), increased investments (since multinationals will want to take advantage of the tariff reductions—if they will take the disadvantage of divestiture along with it), and finally, more beneficial and efficient allocation of resources within the region.

\textbf{Distributing Benefits}

If the Andean Agreement endeavors to metamorphose economies from import orientation of sophisticated goods to export orient-
tion; to expand markets; and to direct multinational investment into selected productive sectors, then it raises the additional problem of allocating the benefits among member nations. This problem entails two competing concepts—efficiency and equity. The Agreement stresses the benefits to be gained by greater efficiency—an ability both to lower the costs of goods internally in the region and to make the products more competitive internationally. It also emphasizes "an equitable balancing of the benefits among the participating countries—'reciprocity'—so that the more rapid growth of the advanced countries in the region is not at the expense of the less developed ones." On the one hand then, the Andean Agreement seeks to maximize gain to the union as a whole, but on the other it must insure that industrial allocation is distributed in a fair manner so as to avoid the dissension among the economically weaker nations that has plagued LAFTA. In LAFTA the smaller nations have complained that inter-regional trade has not led to sufficient reciprocity of benefits and in fact the smaller nations are essentially subsidizing the industrialization of the stronger powers. For example, Argentina, Mexico and Brazil, who have an aggregate of 80% of the regional industrial production doubled their favorable trade balance between 1962-1966. The middle powers, with 17% of LAFTA's regional industrial production doubled their trade deficit. The smaller nations, with 3% of regional industrial production have now become severe "regional debtors".

Realizing the failings of LAFTA in this area the Andean Agreement has evinced, albeit in rather broadly couched terms, a genuine appreciation of the problem. The Agreement states as one of its objectives "[a] balanced and harmonious development [which] must be conducive to an equitable distribution of the benefits resulting from integration of the Member States." But no satisfactory "game plan" can be devised at the outset of the Agreement nor even now, three years later. The answer to the problem is inextricably bound with the national idiosyncratic needs of each nation and the changing conditions of the times. However, certain industries have already been scheduled for a country by country allocation. Those industries include drugs, steel, autos, glass, fertilizers and petrochemicals.

57. Agreement, supra note 1, Art. 2.
58. Wall St. J., supra note 32.
At least one major inequity among member nations however, is evident at present. This is the gross disparity between the economic strength of Ecuador and Bolivia as compared to the remaining member nations. The economies of Bolivia and Ecuador are substantially weaker than the economies of other Andean nations. In fact, with the exception of Paraguay, Ecuador and Bolivia have the smallest GNP's in all of South America.\textsuperscript{59} Taking into account the fact that these two nations are sorely without the tools for rapid industrial growth (such as skilled labor, technology, management and capital), the Agreement has allowed for preferential treatment of Bolivia and Ecuador. The chapter of the Agreement on “Objectives and Operation” specifically states that \textquotedblleft preferential treatment \textquoteleft\textquoteleft to be accorded Bolivia and Ecuador.\textquotedblright\textsuperscript{60} The Agreement further calls for the “progressive elimination of differences existing in the development of the Subregion” and in striving for such Ecuador and Bolivia will enjoy special treatment “to permit them to achieve a more accelerated rate of economic growth, through effective and immediate participation in the advantages of area industrialization and liberalization of trade.”\textsuperscript{61} To heighten this acceleration the Investment Code allows multinationals 20 years to divest down to the 49\% level as opposed to 15 years in other member nations.\textsuperscript{62} The reason for giving Ecuador and Bolivia greater time to divest themselves of multinational control is because the existing structure of those economies are simply too heavily dependent on multinational control to survive without it. In short, too rapid divestment of foreign corporations would place too substantial a burden on local production facilities in these weak economies.

The Andean Agreement, unlike LAFTA’s failure, addresses itself directly to allocation of benefits flowing from participation in the subregion. “The specific programs to be suggested by the Commission, will not only determine the applicable liberalization and common external tariff, but more important, will allocate the products subject to the program among the various members, with priority to Bolivia and Ecuador, and determine the means to assure

\begin{footnotesize}
\begin{enumerate}
\item GRUNEWALD, WIONCZEK, CARNOY, supra note 16, at 22.
\item Agreement, supra note 1, Art. 3(h).
\item Id., Art. 91.
\item Investment Code, supra note 6, Art. 28, 30.
\end{enumerate}
\end{footnotesize}
that allocation will be complied with."63

Summary

The foregoing discussion of three areas of concern within the Andean Integration Agreement should illustrate that regional integration would permit Andean nations to enter the more sophisticated areas of manufacturing as well as permitting Andean nations to gradually take part in the world trading community. The Agreement hopes to achieve this via close controls on technology, a preference for local technology, prohibition of foreign investment in certain sectors of production, reduction of tariffs, allocation of foreign investment to meet more nationalistic economic goals and an equitable distribution of industries and benefits among member nations. If integration efforts arose out of fears by Latin Americans of "the possibility that their economies will be dominated by single firms, that there will be price-controlled conspiracies, [and] that new technology will be bottled up,"64 then the response to these fears is engendered in the Agreement's attempt to direct multinational enterprises toward national economic independence goals.

There is always the danger however, that such attempts at economic independence as embodied in the Andean Agreement will be anathema to the multinational corporation. The foreboding fear now is whether foreign investors will be so disconcerted over new divestiture rules and other regulations that they will withdraw investment from Latin America entirely. It does seem clear that at least some investment will be withheld initially. The multinationals will probably slow down investment in order to give them time to size up the impact of the integration effort before initiating new investments. Therefore, economic independence will not come without a price. But the long-run benefits for Andean nations will probably far exceed the short-run costs. There are those however, who would disagree with the last statement and claim that the Agreement "will result in the stagnation of the industrial development process and of economic growth."65 Whether foreign investors will decide to withdraw or remain in Andean nations is the dilemma analyzed in the following section.

63. Ereli, supra note 56, at 494.
III. THE MULTINATIONAL ENTERPRISE'S DILEMMA: DIVESTMENT OR INVESTMENT

The new stringent controls on foreign investments have brought about a growing apprehension on the part of multinational corporations over their enterprises in Latin America. In addition, there seems no indication that economic independence efforts are likely to subside in the future. The issue then, is whether foreign investment will remain in the Andean nations in the face of the controls discussed in the preceding section. The net effect of those rules might be to divert investment away from Andean nations. Some negative reactions to the Agreement have been strongly voiced. Senator Jacob Javits of New York has stated:

The Code, as it is presently drawn could prove detrimental to the economic interests of these nations by making more difficult the securing of sources of outside capital financing—particularly for major new projects requiring major capital financing.

Representatives of the Chase Manhattan Bank have stated that the Agreement appears “certain to curtail the flow of new foreign private investment to the Andean area. Accordingly, chronic shortages of local capital and foreign exchange will be further aggravated.” The U.S. Commerce Department has issued a statement noting that “foreign capital will not go where it is not wanted. If a nation wants to attract foreign capital, it must establish clear ground rules, and build a business climate in which the investor can have confidence.”

One might thus conclude that multinationals feel that the years of profitable Latin American investment are coming to an end and that the wisest policy for the future should be total divestment. But the more enlightened view holds that foreign investment will remain in the Andean nations and in fact that the multinational enterprise can mature simultaneously with Andean economic independence.

66. See infra notes 68, 69, 70.
67. In fact, the Investment Code provides that each nation may put even further regulations on multinational enterprises. Investment Code, supra note 6, Art. 40, par. 5. The only thing the multinational corporation can be assured of is that it will never receive more favorable treatment than a local corporation. Investment Code, supra note 6, Art. 50.
69. Id.
70. Id.
71. One author contends that total divestment in Latin America would
The first, and probably primary reason why total divestment by multinationals will probably not occur in Andean nations (and Latin America generally) is that in spite of economic independence efforts, Andean investment can remain profitable. In spite of the agonizing and lamenting over the new restrictions on foreign investment, businessmen still realize the importance of these developing countries not only as a prime source of essential raw materials but also as an integral part of the growing global market. To illustrate the importance of Andean nations it is noteworthy that the 1969 figures indicate that the combined GNP of AnCom nations was 31 billion dollars, and is growing.\(^{72}\)

Likewise, the population is growing and to withdraw from this expanding population is to sacrifice an immense marketplace for goods produced through Andean subsidiaries. In the period from 1957-1966 for example, exports by U.S. manufacturing subsidiaries grew sevenfold.\(^{73}\) In light of such growth and potential even if multinationals meet the 51% divestiture requirement there still appears much room for profit with 49% ownership in the subsidiaries, for one must remember that the Agreement does not limit profits per se. In fact, the Agreement hopes to assure investors of continued profits within the common market. To ease the pain of divestment, the “fadeout” or divestiture timetable guarantees repatriation of the originally invested capital to the foreign multinationals.

A second factor militating in favor of continuing investment in Andean nations is the fact that current investments are too pervasive to relinquish. In other words, multinational enterprises have already invested too much to give up the ship now.

Looking at the statistics regarding investment in Latin America one finds that the abandonment or rechanneling of such investment is a highly dubious proposition. For example, U.S. investments rose from $8.3 billion in 1960 to $13.8 billion in 1969. This has left the United States with a favorable trade balance of over be a major blessing to Latin American economic growth. See generally, Hirschman, How to Divest in Latin America and Why, PRINCETON ESSAYS IN INTERNATIONAL FINANCE No. 76, November, 1969. In his analysis Mr. Hirschman posits the theory that after a certain stage of economic development large amounts of foreign investment have a retardant effect on the economy. Assuming arguendo that this theory is plausible, it is still doubtful that many Andean nations have reached such a stage of economic development. But cf. Linowitz, Why Invest In Latin America?, 49 HARV. BUS. REV. January-February 1971, 120.

\(^{73}\) Linowitz, supra note 71, at 128.
$600 million.\textsuperscript{74} U.S. direct investment in the Andean nations (excluding Venezuela) exceeds 2.4 billion dollars.\textsuperscript{75} Finally, to totally divest in Andean nations would mean to divest in a region that accounts for 90% of Latin America’s copper; 50% of Latin America’s coal; 65% of Latin America’s iron ore; and 86% of crude oil.\textsuperscript{76}

It seems apparent that for reasons of self-interest the current investments in the Andean nations are too substantial to abandon. The more propitious policy would be for foreign investors to bear with the present economic independence efforts rather than “abandon the field simply because of a desire to do business as they have done in the past.”\textsuperscript{77}

Thirdly, investment should continue in Andean nations because there is nothing in the Agreement goals that is inherently in conflict with the goals of the multinational enterprise. While it is true that when there is a corporation that is multinational in outlook and a country that is nationalistic in outlook, a certain degree of conflict is inevitable. Nonetheless, multinationals are essentially seeking the same goals as the Andean nations. Those goals have been defined as production efficiency, expansion of markets, and stability of the economy. While multinationals consider immediate profits a prime goal “[t]hey would not even have to see larger profits in the offing, for they would be happy with the greater certainty afforded in a stable economic environment.”\textsuperscript{78}

Not only are multinationals seeking similar goals as the Andean Agreement but many Andeans argue that multinationals will be the biggest beneficiaries of the common market. To illustrate this, one must note that those corporations who meet divestiture requirements will have access to a tariff free zone consisting of well over 62 million people.\textsuperscript{79} It is only natural that with that sized

\begin{itemize}
\item \textsuperscript{74} U.S. exports to twenty Latin American republics were $5 billion out of $38 billion in total exports. Birns and Lounsbury, \textit{The Art of Survival in Latin America}, 6 \textit{Columbia J. World Bus.} No. 4, 36, 38 (1971).
\item \textsuperscript{75} $846 million in Chile; $684 million in Colombia; $704 million in Peru; and $220 million in Bolivia and Ecuador. Schliesser, \textit{Restrictions on Foreign Investment in the Andean Common Market}, 5 \textit{Int'l Lawyer} 586, 587 at note 4 (1971).
\item \textsuperscript{76} N.Y. Times, Jan. 26, 1970, at 77, col. 1.
\item \textsuperscript{77} Linowitz, \textit{supra} note 71, at 125.
\item \textsuperscript{78} Behrman, \textit{supra} note 55, at 68.
\item \textsuperscript{79} GRUNEWALD, WIONCZEK, CARNOY, \textit{supra} note 16, at 59.
\end{itemize}
market and the entrepreneurship, capital, technology and wealth of multinationals such corporations stand to be major beneficiaries within a common market structure. Even though certain rules regarding allocation of industries may stifle multinational freedom of expansion, the Agreement "contains a handsome carrot: a guarantee that competing projects won't be set up in other countries of the bloc." 

For this reason there have been a number of instances in which multinationals have shown greater zeal for integration than domestic enterprises. 

"A dozen complementation agreements to create preferential or free trade sectors have been negotiated and another 25 are under consideration . . . These agreements could be the basis for regional industrial integration but one of the obstacles to their effective use is felt to be the existence of foreign-owned affiliates, which (it is argued) will get the major benefit from them." 

Thus, there is not only a surprising similarity in the ultimate goals of the multinational corporation and the Andean Agreement, but a potential to use the multinational as a vehicle for reaching the objectives of regional integration. This means that there is genuine hope that the multinational enterprise can grow within the context of regional economic integration for the mutual benefit of the corporation and the host country.

One further point must be made regarding the possible divestment of all American investments in Andean nations. Even if such total divestment should occur, (although it is exceedingly unlikely), it may not prove all that disastrous for the Andean economies. This is because the modern economies of western Europe and Japan have both the capability and desire to supplant U.S. investment in Latin America. For U.S. multinationals then, it's the proverbial situation in which, "if you don't, your competitor will." In fact, in May of 1973, "AnCom officials contend[ed] that foreign investment and offers of technology are on the rise." 

It is clear from the preceding analysis that continued investment, while following AnCom regulations, as opposed to total divestment is the more economically appropriate approach for the modern multinational enterprise. While it is true that multinationals will have to adjust to the new demands of the host coun-

80. Wall St. J., supra note 32.
81. Notable examples are IBM, Olivetti, and Ford. See Alejandro, supra note 17, at 339 et. seq.
82. Behrman, supra note 55, at 64.
83. Wall St. J., supra note 32.
tries, there is nothing inherently hostile towards multinational
goals in the Andean Agreement. "In the final analysis the man-
agement of the parent corporation must decide how much short-
run gain it will sacrifice through support of development or eco-
nomic plans which foster growth in the host country."84

IV. PROGNOSIS AND SOME SUGGESTIONS

It is ironic that "[p]erhaps the most damaging obstacle to the
growth of multinational corporations is that their existence and
success foster the nationalistic reactions that could cause their long
run atrophy."85 In the preceding sections those nationalistic reac-
tions have been examined in the context of one economic inte-
gration model. This model well illustrates that the success and
growth of both economic independence and the multinational cor-
poration depends on a very delicate balance. A balance must be
maintained between the desire for foreign investment and the de-
sire for local independent control over the impact of such invest-
ment on the domestic economies. It is contended that such a bal-
ance can be maintained.

The acceptance of the hypothesis that multinationals can con-
tinue to survive in Latin America in the context of economic inte-
gration by no means heralds the demise of friction between eco-
nomic nationalism and the multinational enterprise. "Conciliation
of conflicting Latin American goals will not be easy, and will fre-
quently lead to inconsistent and hesitant behavior."86 Therefore,
further steps must be taken by both Andean governments and
multinational enterprises to insure a harmonious growth of the
multinational within the parameters of economic integration ef-
forts.87

85. Id., at 66.
86. Alejandro, supra note 17, at 343.
87. Some programs on a broader scale have been proposed. One is the
formation of an international investment code. This would be structured
and would function in much the same way the General Agreement on
Tariffs and Trade (GATT), now functions. See J. COMMERCE AND COMMERC-
IAL, Feb. 11, 1971, at 4. A proposal has also been made for a Latin Ameri-
can advisory group within the United States. This would consist of ex-
erts from a broad range of U.S. institutions. See J. LEVINSON, J. DE
ONTZ, THE ALLIANCE THAT LOST ITS WAY, (Quadrangle Books 1970), at 160-
61.
What is needed above and beyond that which the Agreement has called for is further coordination of national policies among member nations on price-fixing, taxation, anti-trust, and trading with the enemy agreements. More specifically some suggestions might include:

1) The seeking of tariff reductions and other preferences extended by advanced countries to the manufactures of less developed areas. This is desirable not only to stimulate exportation, but also such preferences would make multinational investment in Andean nations more attractive since foreign subsidiaries could also share in expanded exportation of domestically produced manufactures.88

2) "The Andean countries might do well to continue their law making efforts by going into fields of regulation of shareholding fiduciaries, including state stock acquisition agencies and the stock market itself."89 This would lead to greater governmental control over investments and the economy in general.

3) Perhaps most crucial of all is the stimulation of local entrepreneurship. This can best be realized by persuading local entrepreneurs to leave the traditional field of real estate and move into industry which in turn should foster a more active domestic economy while at the same time refining and encouraging local entrepreneurship. Concurrently, there should be an attempt to direct new foreign investment into the higher risk ventures, saving the more stable industries for local companies.

But the onus of change is not only on the host countries. Multinational enterprises must be prepared to alter their posture as well. "The whole relationship that has grown up between Latin American countries and the United States over the last century must be modified."90 This will entail a two-pronged approach consisting of altering not only businessmen's attitudes but U.S. governmental policy.91 Corporations, traditionally interested primarily in prof-

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88. See supra note 46.
89. Oliver, supra note 22.
90. GRUNEWALD, WIONCZEK, CARNOY, supra note 16, at 66.
91. A good discussion of why and how the governmental policy must change is found in Birns, supra note 74. The U.S. has already responded by establishing the Overseas Private Investment Corporation (OPIC). Foreign Assistance Act of 1969, pt. I, tit. IV, Stat. 805 (generally codified in scattered sections of 22 U.S.C.). "One objective of the Corporation [OPIC] is to encourage and support only those private investments in less developed friendly countries which are welcomed by the host country and are sensitive and responsive to the special needs and requirements of their economies and which contribute to the social and economic development of their people. Thus, OPIC will assist projects which are commercially
its, have not been concerned with local political or cultural ramifications of their policies on the host country. Multinational corporations must now mature to a point where they can "share a future with the region characterized by needed services, well rendered, reasonable profits, good will, and a dignified and enlightened relationship." Multinationals will have to become good "corporate citizens" and refrain from viewing Latin American nations merely as sources of cheap labor and raw materials. One author notes that a modification of current business attitudes may be achieved by, (i) avoiding partisan involvement in local political matters; (ii) purging the corporate memory of the good old days when profit margins could run at more than twice the domestic rate; and (iii) stress exports from the region rather than bringing home-country produced imports into the region.

One final problem is to assure multinationals that their investments will be secure. For, as alluded to earlier, multinationals would be willing to forego quick profits in return for more security in their investments. In response to this some investment insurance programs have arisen. Most notable is the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD). If successful, such investment insurance could greatly enhance the quantity of foreign investment to Latin America.

In conclusion then, economic independence is now too deeply ingrained in Latin American attitudes to be turned back. It thus seems inevitable that multinational enterprises can look forward to more regulations over their investments. If such enterprises are to survive in Andean nations (and all of Latin America as well), then they must "serve a policy which will deliberately achieve the harmonious and balanced development of the region." The An-

92. Birns, supra note 74, at 44.
93. Id., at 43.
95. Multinational Investment in the Economic Development and Inte-
dean Agreement seems a workable model toward achieving such a modern harmony between the goals of the multinational enterprise and those of the host state. The prognosis is favorable because the Agreement is "not trying to do too much in too little time."96

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