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Latin American Economic Integration

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LATIN AMERICAN FREE TRADE ASSOCIATION (LAFTA)

Three additional countries have recently ratified the Protocol of Caracas, extending the time under which the free trade zone is to become operative. This will make a total of five countries which so far have ratified that document — Argentina, Brazil, Bolivia, Mexico and Paraguay. In the interval, both the consolidation of the free trade arrangements completed to date as well as their possible application, constitute the governments' main concerns as they continue their efforts to improve their position in the international consortium outside the area, through greater participation in the U.S. and European markets.

THE CARTAGENA AGREEMENT

Within the scope of the Cartagena Agreement and of the Central American Common Market, the development of economic processes clearly shows that the juridical problems involved become more important each day. Further, that an early solution is urgent if the juridical approach is to constitute, not an obstacle of a non-economic nature to integrated development, but rather the most logical means of carrying out changes and transitions in an orderly and sound manner.

As the law on foreign investments enters into force by executive decree with certain amendments as to its application, its juridical aspects are already under discussion in circles with diversified interests. This matter has traditionally been regulated by the legislative bodies, some of which are of the opinion that while they must approve the instrument that regulates the entire law, its application may be left to the national administrative and judicial authorities.

The constitutional validity of the Cartagena Agreement was even questioned when the Chief Executives of the various countries adopted

the Agreement within the framework of the Montevideo Treaty, and as an outgrowth of that Treaty rather than as a new one. The constitutionality of the pact was brought before the Supreme Court of Justice of Colombia. In its decision, the official text of which is as yet unavailable, the Court declared that because the pact was incompatible with the Montevideo Treaty and because it had not been ratified by Congress, the pact was unconstitutional. However, at the same time, the Court declared itself not competent to pass judgment on approbatory acts of international agreements. For the reason stated, the pact itself will remain in force, but obviously, doubt has been cast on the constitutional validity of the process. It is hoped that it will be possible to give a more detailed analysis of the Court's decision in a future issue.

CENTRAL AMERICAN COMMON MARKET

Within the Central American Common Market, two significant developments are worthy of mention. These, however, should be viewed with cautious optimism, given the difficult circumstances confronting the Common Market. The first is directly related to the bilateral problems between El Salvador and Honduras resulting from the armed conflict of July 1969. Although the principal, this is not the sole obstacle to the integration of the area. The second is more directly related to the economic process of the Common Market.

Both reference countries have agreed to resume negotiations in the Bilateral Working Group, under the moderatorship of Dr. José A. Mora, Minister of Foreign Affairs of Uruguay. The discussions will cover all problems affecting the relations between the two countries, as well as a solution to the problem of the delimitation of their common border. Obviously, this is a positive step in the difficult task of eliminating any obstacle which may exist or which may affect the resumption of the integration process of the five Central American countries.

The second development concerns the establishment, by the Ministers of Economy of Costa Rica, El Salvador, Guatemala and Nicaragua on July 1, 1971, of a Committee to Normalize the Central American Common Market. This Committee will serve as an interim vehicle regularizing the Market's operations, especially as regards the distortions created by the abnormal circumstances under which it is operating. The Committee is empowered to draft proposals for the improvement of the Common Market, expanding it to cover other economic sectors and correcting those aspects that hamper full development of the Market.

Although the Committee is authorized to function for a period of only six months, at which time it must present its proposals, certain characteristics relating to its competence should not be disregarded since they may influence the expected juridical-economic restructuring of the process. Thus, Article 13 of the informal agreement signed at San Salvador provides that the resolutions and recommendations of the Committee must be reported in writing to the governments, and that they should enter into force on whatever date is decided by the Committee. Even more remarkable is the fact that during the interim period compliance with the resolutions (approved either by consensus or by a majority) will be mandatory for all member countries, regardless of whether or not, as stipulated in Article 6 of the Agreement, their representatives have attended the Committee's meetings, have voted against those resolutions or abstained from doing so.

In this connection, and bearing in mind the fact that the Committee will have the same authority as the Central American Economic Council and the Executive Council of the 1960 General Treaty for Economic Integration possess within the juridical framework of principles and rules established by the respective treaties, this authority which clearly gives *erga omnes* validity to its resolutions, is a significant breakthrough in the juridical-institutional concept of the Central American process. Accordingly, the transitory nature of the Agreement does not detract from its importance, particularly since the Central American process has always allowed considerable margin for experimentation with empirical formulas proven useful in avoiding obstacles, without relying on rigid juridical concepts, which as a rule reflect classic juridical approaches not always adequate for channeling a development integration process, such as the Central American one, under the rule of law.

The Committee, unlike the two organs it temporarily replaces, is integrated by eight members — the Ministers of Economy and a representative of each Chief Executive. Honduras' participation depends on its own decision to do so in agreement with all the governments of the area. In Central America, facts continue to bring out most eloquently the need for a new approach in juridical thinking if we are to contribute substantially to the joint undertaking of integrated development.