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CHAPTER IV: OTHER FREE TRADE ZONES

TREATY OF ASUNCIÓN

Emilio Cardenas¹

This conference has spent quite some time on the proposed North American Free Trade Agreement (NAFTA), but I am glad that we also spent some time on the other integration efforts south of the Rio Grande and of México. One wonders why so much time has been spent on the NAFTA. I think that the reasons are basically two-fold. On the one hand, there are economic reasons; the Mexican importance and proximity to the United States. On the other hand, let us say it and admit it, there are the frustrations of the previous integration efforts in the rest of Latin America. If you recall, the Europeans started their integration efforts in 1958 with the execution of the Treaty of Rome. In Latin America it was two years later, 1960, with the Treaty of Montevideo and, as we all know, the Latin Americans basically went nowhere.

If you compare today's European environment with the American environment, you will see that Europe has a population of roughly 350 million people, these are 1990 figures, as opposed to 720 million people in the Americas. Europe has a gross national product of approximately \$5.3 billion United States dollars as opposed to the Americas, whose figure is about \$8.7 billion United States dollars. Europe however, has the larger per capita income. Europeans average about \$17,000 United States dollars these days, and in the Americas we only reach roughly \$9,000 United States dollars. The European internal trade is much larger than the American internal trade. European internal trade is roughly \$680 billion United States dollars in the Americas.

There are however, remarkable changes occurring in the foreign trade relations of this continent. In the last two years close to twenty different trade agreements have been executed in America, including the Caribbean. If one wants to define what is going on, I think the best term I have found was in an article in the Washington Quarterly,

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which defined the present situation as "modular multilateralism." What does it mean? It means that there are all kinds of model efforts. There is a lot of bilaterialism and there is some regionalism, but they are still behind the multilateralists.

Let me give you one example. Our neighbors, the Chileans, have agreed to establish a free trade zone with Argentina by 1995. They have also agreed to establish a free trade zone with Venezuela by 1994. They have further agreed to establish a free trade zone with México by 1995. They have also started conversations with the United States to see whether they can become a partner in the NAFTA. They certainly are probably closer to success in their agreements because of how much they have advanced, tariff-wise. Just to give you an example, in their deal with México they have agreed to start with an average tariff of roughly 7% or 8%.

Four South American countries, namely Argentina, Brazil, Paraguay and Uruguay, started a new integration effort in 1991 with the purpose of creating a common economic space. That space is what we now know as MERCOSUR. They want to have that economic space fully in force and effect by December 31, 1995. In fact, one year earlier for Argentina and Brazil. It is an ambitious time frame. If you compare that time frame with the United States-Canadian time frame of ten years, with the European time frame or with the past Latin American time frames, it shows how much urgency the governments involved have given to MERCOSUR.

The relative importance of MERCOSUR can be shown by simply pointing out a few facts. Some 180 to 190 million people contribute about 40% of the Latin American GNP and about 40% of its foreign trade. Brazil, which is to be the locomotive, is the largest market. Brazil has about 125 million people. If you compare that with México, you find that México has 82 to 85 million people. MERCOSUR per capita income is \$2,400 United States dollars per year, with a working force of 70 million people.

In spite of the different degrees of economic development, I think that there are two main reasons why there is some hope that MER-COSUR will go forward, although maybe not in the calendar with which the parties agreed to work. The first reason it will succeed, in my opinion, is the breakthrough of democracy in those four countries. The consolidation of democratic institutions has a direct consequence, and that fact is evidenced by integration becoming a political goal.

For example, changes in the governing parties of Argentina and Brazil have not affected the integration effort. It can be said however, as far as I see the process in connection with the Brazilian business community, that up to now the integration process in MERCOSUR

has basically stemmed from public initiatives while the private sector has somehow remained absent from those efforts. We all know that political support is necessary, but political volunteerism will take us nowhere. This situation certainly has a lot to do with the Brazilian domestic problems and with the need to put their house in order. Leadership however is action, not necessarily position. If we look at what the public sector has been doing in both countries, as well as in Uruguay and Paraguay, the integration effort works. It works through the ten committees that have been working heavily for the last months and has certainly not stopped.

The second reason, in my opinion, is that the four countries, and Brazil is a little bit behind here as well, are now in the new economic model that has spread throughout Latin America. Let us say emphatically that Latin America has said "no more" to the old economic model. For example, I was in Washington two months ago at the Inter-American Development Bank and was listening to thirteen presidents. Every country's message on economics, in a nutshell, was similar. Today stabilization policies, focused on elimination of inflation, are everywhere. All countries look for a better balance between the state and the market. Privatization, deregulation, reduction of public expenditure, opening of the economies to foreign investment, liberalization of foreign trade and a clear outward oriented growth strategy seem to be the new objectives.

This strategy provides an appropriate political and ideological profile for those countries willing to pull together their growth efforts. Some of the Eastern European countries are apparently defining, or fine tuning, what they want to do with their growth strategies. Albania has been cited as one such country. Let me now use Mongolia as an example.

Mongolia has changed the constitution and has inserted exactly what Albania said, to follow market economy principles. Mongolia has even gone as far as changing the flag. For some of you who may not be familiar with that country, there is a real devotion to horsemanship. Their flag was, as you may have expected, red and, as you may have expected, a red star. The star has disappeared. There was also a horse running left bound. The horse is still there, but the horse is running right bound. There is a lot of symbolism there, but symbolism and volunteerism are not enough. Structural reforms are required and needless to say when you undertake structural reforms, you receive not the sympathy but the good will of those willing to trade with you. You make possible the coordination of economic policies, and this coordination is what some countries have done.

Those of you who are familiar with Argentina will realize that

Argentina has tapped the international capital markets even before Argentina has reached an agreement on its foreign debt, which has not yet occurred. The reason for that situation is that the international financial community, and most of Argentina's foreign creditors, believe that the structural adjustments, which are on their way and will not stop, evidence the political will to fade away from the model that Argentina has now repudiated. Let us say openly, when I say it has been repudiated, I mean that 75% of the population voted last September and October behind the market-oriented model; only 5% have said, "No, we would rather go socialist." That is the kind of endorsement that governments need. Not only to suggest, but to put in motion, the strategic reforms that are required.

To sign a new integration agreement, by itself, will not solve, and will not assure, that the objectives are going to be met. Let me just give you an example. In June 1991, less than three months after the signing of the Asunción Treaty, the Argentine government forcefully complained that the Brazilian government was buying subsidized wheat from the United States. A few months later the Brazilian government complained the same way about purchases of subsidized powdered milk by Argentina from European sources.

What went wrong? Well in my opinion not much, even if those sales occurred. What happened is that even if you change your ideology, you have to change your legal structure to operate in the new frame of mind. The solution for both cases was in the field of traderelated law, countervailing duties. That is, however, the new role and the new definition of the state. It takes some time and a lot of learning for countries that were accustomed to state paternalism to really find the role of the state. The new role is coming and lawyers have a lot to do and a lot to say as to how to regulate the economy with the new rules.

I said the Brazilians dominate the MERCOSUR scenario and I meant it. Brazil has 77% of the total MERCOSUR GNP, Argentina follows with 20%, Uruguay has about 2% and Paraguay even less than that. So you have one big country and a medium sized country with bigger incomes, and two small countries that basically are looking for an expanded market as a tool to improve their own development efforts.

In my paper, you will find references to where we come from; references to the Montevideo Treaty, to the Latin American Free Trade Association (LAFTA) and to the 1980 republishing of LAFTA. I do not think it is worth spending a lot of time talking about that. I would rather comment on what has happened since. In fact, the Declaration of Iguazú in 1985 between President Alfonsín of Argentina

and President Sarney of Brazil put this new movement in motion. Immediately after, they declared that they wanted to foster the integration process between the two countries that is central to MER-COSUR and the political alliance between Brazil and Argentina. The Declaration of Integration was signed on July 29, 1986. In 1988, an integration treaty was executed between the two countries. It was then foreseen that the two countries were going to integrate, in a ten year period, certain governing principles: graduality, flexibility, equilibrium and symmetry.

Both presidents, as is typical during an adjustment process, were replaced domestically. That fact notwithstanding, the following presidents decided that integration was a common goal and that they were going to go ahead with the integration efforts. They signed, Presidents Menem and Collor de Mello, the 1990 Declaration of Buenos Aires. It was decided to concretely establish a common market between Argentina and Brazil by December 31, 1994. That schedule is still the schedule for those two countries in MERCOSUR. The ten year period was changed later in the Asunción Treaty on March 26, 1991, and was reduced to five years.

In a nutshell, what MERCOSUR has agreed upon is a total elimination of intrazone trade tariff and non-tariff barriers in a five year period. It started in November 1991. The way one can define the situation, from a tariff standpoint, is that Argentina and Brazil have accepted a 40% intrazone trade tariff as the starting tariff and a 7% per semester reduction so that this barrier is completely eliminated by December 31, 1994.

MERCOSUR foresees a council, which is the political body. There will be an executive body that has not yet been defined. There is, however, already a group of ten different technical subgroups which are working on commercial, custom, technical, fiscal, monetary, transport, agriculture, energy and macro-economic policies.

In MERCOSUR we will have, if it is to be a common market, not only this intrazone trade sort of free circulation of capital and goods, but we will also have an external common tariff. That tariff is, by definition, what the common market involves. Talks on the external common tariff have not yet started because, before we move in that direction, Brazil has to lower its tariff protection and both countries have to agree on what has to be eliminated non-tariff wise.

There was a protocol signed last December whereby the arbitration mechanism was agreed upon for settling disputes in MERCOSUR. There is an objective of harmonizing all necessary legislation and all policies that may have a negative impact on integration itself. One can argue that this effort goes one step beyond the common market

and foresees that after the common market is achieved, and this may be defined as a tariff level, the countries will take further steps toward an economic union.

Another interesting development is that, together with the 1990-1991 agreements, both countries established the binational enterprise. Argentina has already ratified the binational enterprise. There is a statute that governs corporations, though it does not necessarily need to be a corporation. Corporate vehicles will be defined as binational companies. Those binational companies already ratified by Argentina and not yet, if my information is correct, by Brazil, will grant national treatment to whomever falls into the category of a binational enterprise. This category means tax credit incentives of every nature and purchasing from the state point of view. Those bilateral companies will be considered national companies. To become a bilateral company it is foreseen that parties from Argentina and Brazil must have 80% of the capital and votes and be domiciled either in Argentina or Brazil. That arrangement means that foreign companies operating in Argentina or Brazil can use this vehicle to operate in the joint market.

While the common external tariff is not defined, we will have similar rules of origin as have been used in our past integration efforts. We will also have some safeguard provisions and safeguard clauses which should not be used to stop the integration process. It is very clear that even if MERCOSUR does not go ahead, Argentina and Brazil have committed themselves to go ahead with their own binational integration. Their commitment has been stated very clearly.

There is also interest in reflecting a little bit on how MERCOSUR will integrate with the Enterprise for the Americas Initiative. I have seen at least one series of projections in a World Bank study, and I think I would like to share with you some of the early conclusions of that projection. If the Enterprise for the Americas Initiative moves forward, and it will have to move forward step-by-step, I think it is obvious that we should all assume that the first step will probably be México and Canada. I am beginning to believe that since Chile is so close to being ready, that if United States domestic political reasons drag the conversations, we may see Chile very close to joining the conversation group and eventually joining the free trade area.

At the later stage one envisages that the Americas, as I said at the outset, could work as a single integrated market. The World Bank has studied the effect, when projected, assuming today's facts. They say that a free trade area that will include all of the Americas, may cause an increase of anywhere between 8% and 9% in internal American trade. They also say that if things do not change fundamentally, about 90% of that increase will go to México and Brazil.

It is interesting to see what happens today with the possibility of Latin American countries entering into the United States market and being exposed to hurdles of a tariff or non-tariff nature. If you look at today's situation, because this is something that a larger free trade area will change, only 2% of Chile's exports seem to be affected by United States trade barriers. The definition of "trade barriers" made by the World Bank is a tariff of 5% or higher or an alternative in non-tariff barriers. Therefore the barrier is not very important.

If you look at the case of México, you will see that approximately 9% of all Mexican foreign trade is subject to these restrictions. Argentina has roughly 11% of its total trade subject to tariff or non-tariff barriers. Brazil has roughly 13%. There is a lot that the countries can improve even if volume-wise the trade does not increase as significantly as the Mexican or the Brazilian trade may increase.

For the time being Latin America sees the results of the June 1991 Four-Plus-One or Rose Garden Agreement, whichever you prefer, as an opportunity to improve its access to the United States market. I think it will also provide a mechanism which would allow a better discussion to settle the present trade differences. Settling these differences is very important for Latin America. Latin American markets account for roughly 9.2% of total United States exports. However, the United States market is roughly 37% of Latin American total exports.

Let me conclude by saying there is a different opportunity today. MERCOSUR was born in a different environment. It is still too early to say whether MERCOSUR will be a success. I would rather say that MERCOSUR has a different chance than the chance that LAFTA had. We are all working in that direction. Today the governments are convinced that they have to carry the bulk of the effort and they are doing so.

As I said, the private sector in some countries seems to be more absent than in others for a variety of reasons. You may have read already that there are some commentators that have a skeptical view about the prospects of MERCOSUR. I am not that skeptical. The size of MERCOSUR and the environment and scenarios in which the different governments are today talking, I think, may lead us to conclude that this time the regional effort, the different model, may have success.

The question arises why Chile is not a part of MERCOSUR. I have talked about this situation many times with Chilean business people. I think the situation is that they do not believe that MERCOSUR can be ready to integrate with a tariff scheme like the Chilean kind, fast enough. For the time being I agree with that. Chile is,

however, not looking at MERCOSUR as a reality that may occur soon but is in the meantime looking, for example, to Argentina directly and signing with Argentina agreements, the effect of which is to have bilateral free trade. That convinces me that integration is in the future even if it advances, this time, on a modular basis.

ANDEAN PACT DEVELOPMENTS

Sebastián Pérez Areta²

I will discuss a general outline of the Andean Pact from its onset as well as of the evolution it has undergone. My intent is to provide a useful guide for understanding the current situation of the Andean Pact, as well as for understanding the steps taken by the members of Congress to change their attitude towards the world.

On May 26, 1969, in Bogota, Colombia, representatives of Ecuador, Bolivia, Colombia, Chile and Peru subscribed to a regional integration agreement known as the Cartagena Agreement or Andean Pact. The Andean Pact, an international agreement, intended to establish policies and programs for economic integration in Latin America. The agreement was a joint effort of several states whose commitment was to obtain a balanced and harmonious development for their people.

The Common Regime for Treatment of Foreign Capital on Trademarks, Licenses, Patents and Royalties, known as Decision 24, was issued in December 1970. The Decision was tainted with nationalistic hues and resulted in restricting the admission of foreign capital into the countries. The countries maintained that nationals should own the wealth and receive the revenues. The members asserted that by assuming common rules for these countries, foreign capital would be secured. According to such policies, investment had to be previously approved. Investments were restricted or forbidden in many areas. Investments were also heavily taxed and remittance of profits abroad was limited. Investments were to become gradually national until they were mandatorily transferred to local investors.

Another factor affecting foreign investment was import substitution. Import substitution is a policy that might be valid in countries with a large local consumption market, but it is questionable in countries in which the majority of the population has a low income and therefore has a small number of actual consumers. As long as these conditions remain, any attempt to maintain this policy would lead to misuse of the benefits that could be obtained with a more appropriate application of the principle of comparative advantage.

In the case of the Andean countries, the theory of import substitution did not fully encourage industrial development. Instead import

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substitution created more restrictions on foreign investment and hindered development in these countries since the actual location of each country was not taken into account. Furthermore, the degree of competition between national industries in the Andean countries was not improved. As a consequence of the policies and guidelines adopted, the Andean Pact was not successful because benefits were not obtained for the individual countries or for the subregion as a whole.

Perhaps the most serious consequence of the Andean Pact was the creation of a mentality involving a reluctance towards foreign capital. After sixteen years of lacking substantial achievement, the Andean countries began to realize that they should attract foreign capital. Therefore, in May 1987 Decision 220 was issued, which contained a new common regime for treatment of foreign capital. This decision initially attempted to give freedom to each of the member countries of the Cartagena Agreement to allow the country's own rules to open doors to foreign investments. Its effects were minimal, especially because internal relations were issued from the same restrictive standpoint.

Many events and political changes suddenly began to take place and the world pace changed. This development led the Andean Pact member countries to issue rules for attracting foreign investment. Confronted with this new world situation, the Andean countries began to realize that they must face the world as actual competitors. They must struggle for new investment with other countries that have traditionally based their development on freedom of capital, such as the Asian countries, or others that have recently issued rules favoring an open economy. However, any trend relating to foreign capital should be based not only on rules that will directly apply in the future, but also on rules that affect daily activities, such as the rules governing labor relations.

In view of the foregoing, this agreement moved forward. The presidents at the meeting held in La Paz, Bolivia, in November 1990 stated that the Andean countries should tend to establish policies that will render their economies more efficient on a competitive level by liberating the Andean economies and opening them up to foreign trade and investment. Furthermore, the countries were encouraged to seek implementation of an economic rationalization plan based on private undertakings, physical discipline and a streamlined state. Moreover, the Andean countries agreed to remove obstacles to foreign investment and to foster free circulation of the regional capital.

The new foreign investment policies prevailing in this subregion made it indispensable to revise and update the common rules approved by Decision 220 for the purpose of fostering and promoting the flow of foreign capital and technology toward the Andean economies. Therefore, it was decided to substitute Decision 220 with Decision 291.

Decision 291 reflects a new philosophy and a change of attitude. The restricted sector has been eliminated. Foreigners have been granted the same rights and obligations as nationals. A prior authorization of the state is no longer required for investing. Unlimited remittance of profits is permitted. Freedom of contract, for technology transfers, is recognized. The mandatory progression of nationalization of foreign enterprises has been definitely suppressed under restrictive criteria according to economic sectors that have been set aside.

The criteria to be applied in each country for rules containing regulation for application of Decision 291 is fundamental. It will be the basis for updating an original economy vis-á-vis the world's. Depending on the way in which each country will treat Decision 291, an important step might be taken towards modernizing the Andean region.

As an example, the regulations issued in Ecuador seek to attract foreign investment. At present, a few sectors exist in which foreign investment is forbidden, such as national defense, social security, radio, television, the press and other sectors that are specified in the Special Laws. This regulation means that provisions relating to foreign investments are now the exception rather than the rule. Remittance of profits is free. Registration of foreign investment with the Central Bank of Ecuador is required for statistical purposes only. In addition, transfer of technology is encouraged.

Another important topic that I should mention is trade in the region, as reflected in the rest of the world. The Fifth Andean Presidential Council held in Caracas in May, 1991, accepted commitments for the creation of the Andean Free Trade Zone. In September, 1991, the special meeting of this original organization occurred. The Ministers of the five Andean countries subscribed to a ten-point document entitled the Cartegena Agreement.

This document established a significant reduction of external import tariffs in the Andean countries as well as a regulation for commercial agreements with third countries. With this reduction, the new import tariffs range from 5% to 20%. The reduction of import tariffs is substantial. Some examples taken from the former import tariff in Ecuador, compared with those currently in force, show this reduction. Automobiles formerly were subject to a tariff of up to 290%. Now the maximum tariff on automobiles will be 40% until June 1, 1994, and will be reduced to 25% after that date. Rubber was formerly 80%, and now is 5%. Flour and grains were formerly 70%, and now are 10%.

The Cartagena Agreement promoted a quick reduction of tariffs for certain products and promoted the adoption of a newer structure for a common minimum external tariff that will guarantee greater openness in the Andean Pact import tariff policies. The Agreement outlines an action plan aimed at strengthening the political and economic links of the Andean group with MERCOSUR, the United States, the European Community and Japan. The Agreement also provides for regulation of bilateral dealings with third countries in order to define the conditions of commercial agreements.

On the other hand, the Agreement determines that a common list of sensitive products will be prepared for the subregion, and member countries should agree not to grant any concession or preferential treatment to third countries. The Agreement also poses the need to establish a single safeguard clause to be applied to all trade within the subregion which would substitute the previous multi-safeguard regime. Finally, the Agreement states that specific requirements of place of origin are to be eliminated.

On January 1, 1992, free trade started to operate in the Andean subregion. Import tariffs are not charged, with an exception provided for Peru and Ecuador since these two countries are to join the free market in July 1992. The establishment of the common customs in the Andean subregion as of January 1, 1992, however, is not yet a reality since there are still differences of opinion among the five partners as to the common external tariff.

The common external tariff was supposed to be defined before December 31, 1991. However, at the meeting held in Bogota in the last week of December, the Andean Pact was divided into two blocks. While Colombia and Venezuela will apply the same tariff to products coming from third countries, Ecuador and Peru will postpone their decision. The tariffs to be applied by the Andean countries to more than 6,000 items will be 5% for raw materials, 10% and 15% for intermediate and semi-manufactured products and 20% for finished products. The issue that causes friction and differences between the five countries is the listing of goods in the various import categories. Here is where each country defends its own interest.

An example of this self-interest is the export of iron. Some members of the sub-region maintain that iron should be taxed with a 10% tariff, while Ecuador considers the applicable tariff for iron to be 5%. Although the five states have not reached an agreement on common external tariffs, the Andean Free Trade Zone that came into effect on January 1, 1992, will continue. When I left Quito two days ago, the Ministers of Commerce of the five countries were negotiating precisely on this point. Besides establishing the Andean Free Trade

Zone, the five presidents resolved in Caracas to move the common customs intersect to an earlier date. However, according to experts, these decisions are not merely a question of agreement. These decisions entail domestic problems in each of the countries which cannot be solved immediately, one of the most serious problems being the treatment to be given to products coming from third countries into the five nations. For the free trade zone to be real and efficient, the people in the subregion need to become aware that integration will bring benefits, that Andean integration will harmonize economic policies with free trade agreements and that the opening of doors will not constitute a pitfall.

In my personal opinion the Andean Pact and its resulting subregional trade and subregional market should be our countries' stepping stone towards the world market, and the countries must make every effort to obtain that goal. In an integration process, such as that in which the countries in this subregion are engaged, both an opening up and protectionism are to be taken into account. Protectionism does not refer to import tariffs only, but rather to equal opportunities and incentives for investment and trade. The results of integration, whether good or bad, will depend on the extent to which the countries manage to balance and handle these two concepts.

The Andean countries should strive to obtain more competitive costs, to reach international markets and to introduce themselves into the world market. It should also be understood that micro-policies relating to price fixing may sometimes imply surrender. The case of energy products illustrates the problem. A gallon of gasoline costs two dollars in Peru, fifty cents in Ecuador and ninety cents in Bolivia.

Finally, the countries' internal legislation needs to be updated in relation to labor, taxation, customs, transportation and privatization, as well as in relation to laws relating to their administrative bodies. It is essential to streamline the administrative and service structures without reducing the size of the public sector. This structure permits each country to exploit, in a more adequate manner, its resources in furtherance of its development.

Decision 283 of the Cartagena Agreement contains rules for correcting distortions in the general area of competition, deriving from dumping practices and subsidies. This Decision actually reflects the subregion's change of mentality. In September 1991, Ecuador issued regulations for preventing or correcting dumping practices and subsidies.

Decision 288 provides for freedom of access to cargo by ocean transportation coming from and investing in the subregion. Decision 297 regulates and integrates air transportation in the Andean subregion. Decision 311 replaces previous Decision 85 concerning industrial

property markets. Issues still remain unresolved and unregulated, such as circulation of vehicles and persons of the Andean subregion. Labor integration has not occurred and changes in social security need attention, but there is an awareness about the need for amending the laws.

Taxes paid by foreigners are still higher than those charged to nationals, but the differences are not as great as they were in the past. In the case of Ecuador it is worth mentioning that congress has taken a step, although not yet concrete, towards establishing equal taxes for nationals and foreigners. Results should soon be forthcoming.

Progress has been made in other aspects. New types of investments are now possible in subregions such as Maquila and the free zones. The new open door policies will undoubtedly benefit the economies of the Andean countries. Nonetheless certain resulting aspects present potential problems and risks of which we must be aware. Increased drug trafficking could be the most serious consequence. Concrete steps are being taken to fight drug trafficking. The objective would be to improve and to broaden the operative and contextual framework of the February 1990 declaration submitted to President Bush by the Andean Presidential Council. The February 1990 declaration encourages alternative opportunities to farmers who produce cocaine as well as to promote the actual implementation of the Andean's Regional Center for Coordination and Information for Fighting Drug Trafficking. In conclusion, allow me to point out that the Andean countries have eliminated the former attitude of rejecting and opposing any type of economic liberalism. They have adopted a new attitude, accepting and searching for a more moderate liberalism that is opening up to the market.