

January 1994

Introduction

Jana Sigars

Charles Dusseau

Follow this and additional works at: <https://scholarship.law.ufl.edu/fjil>

Recommended Citation

Sigars, Jana and Dusseau, Charles (1994) "Introduction," *Florida Journal of International Law*. Vol. 9: Iss. 1, Article 1.

Available at: <https://scholarship.law.ufl.edu/fjil/vol9/iss1/1>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Journal of International Law by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

Florida Journal of International Law

VOLUME 9

SPRING 1994

NUMBER 1

PROCEEDINGS OF THE SEVENTH ANNUAL CONFERENCE ON LEGAL ASPECTS OF DOING BUSINESS IN LATIN AMERICA: ADAPTING TO A CHANGING LEGAL ENVIRONMENT

I. THE SURGE IN TRADE WITH LATIN AMERICA:	
CONSIDERATIONS IN THE EXPORT TRADE	9
A. <i>Legislative Trends Affecting Latin America</i>	
<i>Trade Law: An Overview</i>	9
B. <i>Assisting Business in Developing Trade Between U.S.</i>	
<i>and Latin American Markets</i>	13
C. <i>Central American Country Update: Exporting to</i>	
<i>Central America and the Impact of the</i>	
<i>Central American Common Market</i>	20
D. <i>Market Access: NAFTA's Impact on Trade and the</i>	
<i>Acceleration of Regional Integration in</i>	
<i>Latin America — Mexico Country Update</i>	25
II. INDIRECT INVESTMENT OPPORTUNITIES AND CHALLENGES:	
AGENCY, LICENSING, DISTRIBUTION, AND FRANCHISING	39
A. <i>Recent Developments: Franchising Agency, Licensing,</i>	
<i>Distribution Law, and Related Matters</i>	39
B. <i>Brazil Country Update: Unique Opportunities for</i>	
<i>Indirect Investment</i>	43
C. <i>Chile and Venezuela Country Updates: Addressing</i>	
<i>the Laws and Legislation Affecting Antitrust and</i>	
<i>Competition — A Panel Discussion</i>	54
D. <i>Intellectual Property and Multi-Media in Latin</i>	
<i>America: Bringing Together Telecommunications,</i>	
<i>Entertainment, Computers, and Consumer Electronics</i> . .	62
III. STRUCTURING DIRECT INVESTMENT IN LATIN AMERICA:	
KEEPING PACE WITH NEW FINANCIAL REGIMES, INNOVATIVE	
INVESTMENT VEHICLES, AND CHANGING LABOR LAWS	66
A. <i>Country Updates: Peru, Ecuador, Argentina,</i>	
<i>and Venezuela, Addressing the Laws Affecting</i>	

Banking, Insurance, and Financial Institutions 68

B. *Planning Strategic Alliances in Latin America:*
Joint Ventures (Private and Governmental)
Wholly-Owned Entities and Other Alternative Structures 83

C. *Labor Market Issues: Dealing with the Hurdles*
and Possible Complications 92

IV. SIMULTANEOUS BREAK-OUT SESSION 101

A. *Financing Latin American Business Ventures: U.S.*
and International Agencies 101

OPENING REMARKS

L. JANÁ SIGARS¹

As chairperson of both the Florida Bar International Section and its continuing legal education committee, it is my pleasure to welcome you to the Seventh Annual Conference on Legal Aspects of Doing Business in Latin America: Adapting to a Changing Legal Environment. My name is Janá Sigars and I am the lawyer that heads up this committee. The International Law Section of the Florida Bar and the Inter-American Law Committee of the American Bar Association’s Section on International Law and Practice together with the Inter-American Bar Association and the International Bar Association have collaborated to continue our tradition of providing you with speakers and information that is on the cutting edge of changes taking place in Latin America and to increase the level of legal and business expertise of people operating in this hemisphere.

This conference is about change and adaptation. We believe that it is also an incredible vehicle for the facilitation of discussion among our own regional trading block members — those in the Americas and the Caribbean. However, our trading block also should be prepared for adaptation. As Serjio Prove Bonia of Uruguay said recently in a speech before the Permanent Council of the Organization of the American States: “trading blocks should be considered as a tangible and intermediate step toward the objective of free world trade — Converging with the ultimate goals of the General Agreement on Tariffs and Trade (GATT).” He also stated that the expansion of trade resulting from the Uruguay Round of GATT would encourage the economic recovery of industrialized countries. Efforts, however, must not end with the trading sphere. Rather, efforts to spur growth also should cover external financing, investments, and sustainable economic and social development. That is what this conference is about. That is what we have focused upon,

1. L. Janá Sigars is a partner in the firm of Holtzman, Krinzman, Equels, Sigars & Furia in Coconut Grove, FL.

expanding our ability and knowledge to adapt to the rapid changes taking place with economic globalization. The speakers at this conference are evidence of today's global reality that law, business, and social existence do not exist in a vacuum. For this reason, the speakers include not only lawyers, but educators, business people, and diplomats. We hope their views and information will help you enhance your understanding and ability to do business in the Americas.

In this regard, you will notice that we have organized this conference into four areas. The first is the surge in international trade with Latin America. This is sort of an overall view of doing trade from here to there and from there to here. The second area is indirect investment opportunities. That deals with such areas as agency distribution franchising and the like. The third area is structuring direct investment into Latin America. This focuses on new financial vehicles, joint ventures, and like mechanisms. Finally, we will have simultaneous break up sessions to give you a practical hands-on opportunity to interact with the experts in these areas.

As with any program of this size, history, and tradition, this conference is not the results of my efforts alone. I would first like to thank Josh Markus, chairperson of the ABA Inter-American Law Committee. Josh is one of the founding organizers of this conference and he, along with many others, including David Teichmann, had the foresight to see that this conference was of value in the world. He was instrumental in convincing the prestigious ABA Section on International Law and Practice of this conference's need. I also would like to recognize and thank the members of my Steering Committee. They were all very helpful and made my job much easier. They include William Andrews who I know and most of you know as Jay Andrews, Ariel Bentata, Michael Bromberg, Carl Erhardt, Jorge Gracia, Salvadore Juncadella, Josh Markus, Paul Mason, and Tony Santos. Thank you all. I also would like to thank the Chair of the Section, Len Rosenberg, and the Chair-Elect, George Moore. They were valuable supporters and encouragers.

The *Florida Journal of International Law* will be recording and publishing these proceedings and I would like to thank them for the beautiful and extensive work they have previously produced. This book was produced from one of our previous conferences and they plan to do that for this conference. In particular I would like to thank Michael Wallace Gordon, who is a professor and also the faculty advisor to the *Journal* and sits on the Executive Council of the International Law Section of the Florida Bar. Finally, I would like to thank Pat Stevens, for without her help and encouragement and her "just do it" attitude, this conference could not have taken place. She was a terrific help and encouragement to me.

The University of Florida has asked that we have a question and answer period after each speech. They have asked that for the production of the

proceedings they will come up to you if you ask a question and give you one of these sheets just to write out the question so that they can make sure it comes across clearly on the recording. If it does not come out on tape, then at least they will have it in writing.

Finally, without any further ado we are honored to have Charles Dusseau, the Secretary of Commerce for the State of Florida here with us. We are very honored and pleased to have him here. Many of you that are from Dade County, and probably Broward, know of his international experience and the terrific work that he has done in the international field. We are very very pleased to have him here and I would like to present the Secretary right now.

OPENING ADDRESS

CHARLES DUSSEAU²

Good morning everyone. Janá, thank you for that kind introduction. I do appreciate all the kind words you had to say. I am very pleased to be with all of you today. This group, from my perspective, is one that is filled with "change agents." In other words, people who are very much involved in the leading edge, pushing the envelope in terms of developing our international economy and obviously we are especially pleased to have you here in Florida and here in Miami where we see clearly the hub of international commerce between Latin America and the rest of the world. I just wanted to speak briefly about a couple of things. I look forward to hearing some of the other speakers this morning as well. This is one of those opportunities, I think, no matter how much you know about these subjects, to learn, as well as to help others learn, about the topic. I want to speak briefly about what the Department of Commerce is doing, I want to speak a little bit about NAFTA and a little bit about GATT, and then I look forward to hearing what other people have to say.

We are living in interesting times, and that is exactly what a Chinese curse declares: "may you live in interesting times." We are in a situation in this world where the pace of economic activities has sped up to the point where I think you can call it something like a popular new wave — one that you can either catch and ride or if you try to go against it you will be overcome by it. The pace of change in the economic world is such that we

2. Charles Dusseau is currently the Secretary of the Department of Commerce for the State of Florida. Secretary Dusseau has a Masters degree in international political economy from Georgetown School of Government and a Bachelor's degree in international finance from the University of Colorado. Secretary Dusseau is a former Dade County Commissioner, Chase Manhattan Vice-President, and Senior Vice-President for the AIBC Financial Corporation in Miami.

have no choice. If you look at what is going with the U.S. economy and the world economy, you will find some very interesting developments. Since 1989, the U.S. GNP has grown about 15%. The level of exports in the U.S. economy has grown by 23% and the level of export growth in the State of Florida has grown by 30%. So the growth in our economy clearly has been pushed by the international sector which for many years was seen as the 6% that was there and did not mean a whole lot in terms of our economy which was basically internally driven.

Clearly what has happened with the information age in which we live is that our economy is no longer internally driven. The people that formerly competed against someone just across the street now find themselves competing against people from across the world. And that is a trend that is not going to slow down. If anything, it is a trend which is going to accelerate. I think the question is what do you do with that. Having that information and knowing that international trade is the area that is going to grow, where do you start to focus? After all, it is a very big world out there and sometimes a very complicated one. I know all of you are here to try to learn a little bit more so you can make that complicated world a little bit simpler for your clients. If you look at some data from my perspective it leads to some very clear conclusions.

This is a flash report from the U.S. Department of Commerce. It points out some very interesting data from 1989 to 1992. As I said the growth in terms of exports from Florida is up by 30%, but where is that growth coming from? Our largest export customer is still the European community. But the growth in that area over that time period has been only 15%. That is still large, almost three billion dollars. But growth was only 15%. If you look at the far east, you will find that exports to Japan over that same period actually fell by 23%. And then you look and see where the real growth was. You see that Chile grew by a 119%, that Colombia grew by 56%, Canada grew by almost 60%, Venezuela by 93%, Brazil by 26%, and Argentina by 551%. It is pretty clear to me. I may not be that smart but I think I am smart enough to figure out where the future lies in terms of international trade growth. If you want to get on the wave of exports it is clear to me that opportunity is where there is growth. If you look at the European sector, whoever has been handling that nearly three billion dollars in export activity for the last three years is still there. They are still working on it, but where is the growth? The growth is in Latin America and that is the area, if you want to expand your business activity, where you clearly need to be. I recently heard Undersecretary Gardner of the Department of Commerce talk about what markets they are going to focus on. It is something they are doing at the U.S. Department of Commerce that has not been done previously, and I do not think we really have done it in Florida either. That is to start to have what one might call something of an industrial policy.

That is something that was always shied away from because everybody was afraid of making choices. They were afraid of picking winners and losers.

The odd thing about that is that anybody in business knows that is the first thing one does. They do not go out and say we are going to do business with everybody because they are there. They ask where are the best opportunities? Where can we best use our resources? And clearly if there is any message out there it is that government should do the same thing in order to maximize our own resources. Secretary Gardner talked about the major emerging markets and he pointed out ten countries, three of which are in Latin America: Brazil, Mexico, and Argentina. That is not to say that Chile with its major growth and tremendous market reforms is not important, but in terms of greatest potential when you look at the relative size and population of various countries, Brazil, Mexico, and Argentina represent the greatest potential. Thus, that is where the U.S. Department of Commerce intends to specialize and where the Florida Department of Commerce has its major resources. Here in South Florida, we have had an office for over twenty years and we have ten folks who have just recently moved in with the Florida Department of Commerce office and the U.S. Department of Commerce office. Also, the SBA and EXIM Bank have all centralized their offices out by the airport in the old Air Florida building. In addition, we have an overseas office in Sao Palo, Brazil and are opening an office next month in Mexico. We also have a sister state relationship with the Province of Buenos Aires and hopefully we are going to be exchanging people in the not too distant future with them.

What industries is the U.S. Department of Commerce focusing on? The three major industries where they are trying to dedicate resources are telecommunications, medical, and environmental. I think you will see that in the state of Florida, we are trying to do a similar kind of overlay in terms of industries and geography. That does not mean that we are not going to concentrate or use resources elsewhere. There are clearly alternatives. Looking at this list, Venezuela is still a better market for us than Brazil, and Colombia is still a better market for us than either Argentina or Mexico. But the question is in terms of where is the growth, where is the potential — that is where I think we want to be. We have seen the U.S. government and other governments throughout the world take some major actions in terms of NAFTA and GATT. Well what are they?

Having been in local government and having run for political office, what we generally find is that people in office react to what is going on out there in the world as opposed to anticipating. If you get too far out in front of the crowd, you are considered a crank. If you are right in front of that wave, as I say, then you are a leader. If the public identifies a problem and you help solve it then you are a leader and that is what is going on in the world. GATT and NAFTA are recognitions of reality. The reality is that trade is the

growth sector and everybody has figured that out we better do something to make sure that we manage this process in the most effective way or it will work against us as opposed to working for us.

NAFTA I think is probably even more important symbolically than perhaps GATT because the U.S. position in this hemisphere obviously is a very dominant one. If the United States had not approved NAFTA, I think the negatives would far outweigh the positives of actually improving it because for so many years U.S. policy has been trade, not aid. For many years U.S. government agencies working with governments tried to help them develop their infrastructure and their ability to do international commerce: declaring aid is going down and you have got to compete, you have got to be part of the world economy. Then, suddenly, we have something like NAFTA before us. Congress has to deal with it and then suddenly the United States has to put its money where its mouth is, so to speak. Suddenly this tremendous debate ensues which, if we had not approved NAFTA, would have contravened truly, all the policies this country has put forward throughout the entire decade of the 1980s. Fortunately, cooler heads prevailed and it was approved.

I think it will help solidify something that is already going on. There is no precipitous jump in exchange between the United States and Mexico. It sends a message to the Mexicans as well as to Americans who want to get involved in international trade that this really is the policy and we really are willing to bear the risk involved in committing ourselves to this kind of trade agreement. It does something perhaps more importantly in that somebody once told me that we cannot change history in terms of being political leaders, but we can accelerate it. That is clearly what NAFTA is doing. NAFTA has sent a specific message that we are serious about a joint trade mission within this hemisphere and somehow we are going to slowly evolve toward that. It tells people to take individual action and to get involved in international trade in this hemisphere, because the U.S. government and other governments in this hemisphere are serious about it. It will accelerate the process. It will not make it happen it merely accelerates it.

I think GATT in a similar fashion also is a recognition of reality and the growth in the trade numbers themselves clearly shows the progress. The question is how do we most effectively deal with it. There are some specifics within the GATT that I think are especially important to this group. Because if you listen to people like Robert Reich, the Secretary of Labor, who in one of his most recent books, talks about how a nation can best improve its economic position by enhancing the skills of its population and linking those skills to the world economy. The kind of skills that he is talking about are not assembling radios. They are the kind of skills that all of you have. They are the kind of skills that we can export but also by which we clearly benefit from much more than just exporting the job itself.

Clearly we are not going to get into the assembly business in this country again, unless it is at a very high tech level. They can do it much cheaper in other places and we should not market ourselves as a developing country as I think for too long Florida did. We need to market ourselves as a high skills area in order to attract high skill types of jobs and the wages that come with it. And that is what all of you embody and that is why it is so important that you are here today to continue to enhance your skills to increase this world economy. That, as the theory goes, will generate a greater level of economic activity that improves everybody's well-being.

Now if you look at what is going on as I started out to say, just in closing, it is very clear that in a sort of relative sense, in an Einstein sense, it is a relativist world. At one time change moved very slowly and one could pretty much run in place and still do alright. That is not the case anymore. As you all know the flood of information comes across all your desks that demands so much more of your time just to stay competitive and creates much greater demand on all of us than it did in the past. My father worked for forty-two years in the same job. Retired from that job. That is not going to happen anymore. None of us have the luxury of being able to stay in one place, to stay in one job, and expect our economic condition to even stay the same, let alone think about improving. We are going to continue to enhance our skills, to be flexible, to adjust to an ever changing world, and a world that continues to change ever more rapidly. So I certainly again appreciate the opportunity to be here with all of you, to welcome those of you who are not from Florida to this conference. This state and this region obviously are changing at a rapid pace and we are very proud of that and we are very proud of the fact that we can consider ourselves to be a world community and not just a player within the domestic economy.

I hope that if there is any way that any of you ever feel that the Department of Commerce can be of assistance to you that you ask. It is clearly our goal to improve both the level of inflow and outflow because unless we are buying goods from people overseas they are not going to have the dollars to buy from us. So it is a two way street, and we intend to broaden that street, add some extra lanes, some express lanes wherever we can to make your jobs that much easier in order that all of us might compete better in this ever competitive world. Thank you very much for having me with you.

L. JANÁ SIGARS

As usual Secretary Dusseau is right on point and brings a lot of experience in the international field to our state. Next, I would like to introduce a great friend, and a great professor and a great leader in our community: Mark Rosenberg. In Miami, and I say throughout Florida, Mark is known as a doer — he is known as someone who is focused on Latin America and someone that can give you some real answers and some real