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REGIONAL TRADE ARRANGEMENTS AND THE
ESTABLISHMENT OF A FREE TRADE AREA
OF THE AMERICAS

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REGIONAL TRADE ARRANGEMENTS AND THE ESTABLISHMENT OF A FREE TRADE AREA OF THE AMERICAS

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INTRODUCTION

The countries of the Western Hemisphere have announced their intention to form a hemisphere-wide free trade area to be known as the Free Trade Area of the Americas (FTAA). They have not yet designed or agreed upon a path to follow from the present situation to commencement of the operation of the FTAA, but a process of consultation and preparatory work has been set in motion. FTAA discussions are taking place in a context in which there has been a rapid expansion in regional and bilateral trade arrangements. Several regional and bilateral initiatives are now being discussed or negotiated. Existing trade arrangements as well as new initiatives could hinder or contribute to the eventual creation of the FTAA. Therefore, there is an urgent need to evaluate the possible paths to the FTAA, those that are evolving and those contemplated, with a view to ensuring their complementarity. Ideally, there should be consensus on a single process to follow to the FTAA.

I. FREE TRADE AREA OF THE AMERICAS

The creation of a free trade area encompassing the countries of the Western Hemisphere (excluding Cuba) was agreed upon at the Summit of the Americas in Miami in December 1994. The governments resolved to begin constructing a Free Trade Area of the Americas immediately, in which barriers to trade and investment would be progressively eliminated.¹ They also agreed to conclude the negotiations no later than 2005 and committed to make "concrete progress toward the attainment of this objective . . . by the end of this century."² The hemisphere's leaders did not, however, decide on a single path to

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1. Summit of the Americas: Declaration of Principles and Plan of Action, Dec. 11, 1994, 34 I.L.M. 808, 811.

2. *Id.*

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the FTAA; as a result, different paths are already evolving simultaneously and are likely to continue.

The integration of the Western Hemisphere into a single trade arrangement would create a market of 719 million people³ and could expand trade within the hemisphere to unprecedented levels.

II. THE PRESENT CONTEXT

The main features of the present context are economic reform and liberalization; regionalization of trade; and the emergence of trading hubs.

A. *Economic Reform and Liberalization*

During the 1980s and early 1990s there was a transformation in economic thinking in Latin America. As a result, a "new Latin American consensus" has emerged.⁴ The new paradigm, which is based on competition, market orientation, and openness, is aimed at macroeconomic stability through reduction of public sector deficits, opening of the external sector to foreign competition, and reducing the role of the state through privatization and deregulation.

B. *Regionalization of Trade*

Trade in the hemisphere is characterized by regional trade agreements and economic integration schemes. These include the North American Free Trade Agreement (NAFTA), MERCOSUR, the Central American Common Market (CACM), the Caribbean Common Market (CARICOM), and the Andean Pact. There are also a number of agreements that have not yet come into operation. In addition, there are twenty-six bilateral trade agreements and twelve others being contemplated or negotiated.

The portion of total trade in the hemisphere that is intra-regional has increased significantly in recent years. Between 1990 and 1994, intra-regional exports as a share of total exports increased by 243% in the Andean Group, 215% in MERCOSUR, and 24% in the CACM.⁵ Intra-NAFTA exports doubled, and CARICOM exports showed a marginal decline.⁶

3. *Fact Sheet: The Summit of the Americas*, 5 U.S. DEP'T ST. DISPATCH 647, 647 (1994).

4. SEBASTIAN EDWARDS, *CRISIS AND REFORM IN LATIN AMERICA: FROM DESPAIR TO HOPE* 41-43 (1995).

5. TRADE UNIT, ORGANIZATION OF AM. STATES, *TOWARD FREE TRADE IN THE AMERICAS* (1995).

6. *Id.*

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C. Emergence of Trading Hubs

Countries have scrambled to develop links to the member states of NAFTA and MERCOSUR. This has led to a proliferation of trade arrangements with the United States, Mexico, and MERCOSUR as hubs and with an increasing array of spokes.

1. The United States

The United States, as the largest economy in the hemisphere, is a natural growth pole and the likely core of a hemispheric free trade area. It is already a hub with several important spokes, including NAFTA (with Canada and Mexico), the Caribbean Basin Initiative (with the Caribbean and Central American countries), and the Andean Trade Preference Act (with Bolivia, Peru, Chile, and Colombia). Quite naturally, a frequently discussed proposal is for NAFTA to serve as the core of an expanded trading bloc by "docking" additional countries. Attempts by countries to negotiate free trade agreements with individual NAFTA countries started even before the conclusion of NAFTA. This was prompted by the worry that securing a free trade agreement with or joining NAFTA would be difficult after NAFTA ratification because the member countries might want to wait for a period in order to evaluate NAFTA's progress.⁷

2. Mexico

Mexico, currently a member of NAFTA, is also a participant in the Group of Three (G-3) with Colombia and Venezuela and signed an agreement in 1992 to promote free trade with Central America.⁸ Mexico has also signed bilateral agreements with Uruguay (1986), Argentina (1986), Peru (1987), Chile (1991), Costa Rica (1994), and Bolivia (1994).⁹ The emergence of Mexico as a node of catenation creates uncertainty, which is likely to continue until there is a clear schedule of accession to NAFTA. Some countries view an agreement with Mexico as a "back-door" entrance to NAFTA. This diplomatic jockeying could become unsavory and might be detrimental to the kind of regional cooperative initiative that a hemispheric bloc is intended to be. However, countries may be prevented from benefiting from access to the NAFTA market even if they enter into an agreement

7. Keith Bradsher, *Mexico Seen as Barrier to a Broader Trade Pact*, N.Y. TIMES, Mar. 1, 1994, at D2.

8. TRADE UNIT, ORGANIZATION OF AM. STATES, *supra* note 5.

9. *Id.*

with Mexico. Existing U.S. trade law prevents the extension of Free Trade Agreement (FTA) benefits to third countries. Strict origin rules mean that components produced in Mexico's FTA trade partners, even if completed in Mexico, still would not be treated as eligible NAFTA products when entering the United States.¹⁰

3. MERCOSUR

Brazil has proposed creation of a South American Free Trade Area (SAFTA), which would eventually be in a position to amalgamate with NAFTA.¹¹ The possibility of MERCOSUR becoming the core of SAFTA or the FTAA derives not only from the extent of integration within MERCOSUR, but also from MERCOSUR's size in relation to Latin America. MERCOSUR represents almost fifty percent of Latin America's GDP, more than forty percent of its population, and about thirty-three percent of its foreign trade.¹² In addition, intra-MERCOSUR trade is growing rapidly (e.g., from \$10 billion in 1993 to \$12 billion in 1994).¹³

III. THE NEED TO MOVE BEYOND REGIONALISM

There is an urgent need to move beyond the myriad of regional, subregional, and bilateral trade arrangements and economic integration schemes and avoid further proliferation.¹⁴

A. *Expand Trade and Growth*

Regional trade arrangements have substantially liberalized trade among member states and thereby contributed to the expansion of trade. The rate of growth of intra-hemisphere exports has increased every year, from 4.2% in 1991 to 16.3% in 1994.¹⁵ The average rate of growth was 11.1% during that four-year period, exceeding the 7.2% growth in world exports during the same period.¹⁶ Economic growth in the hemisphere has become increasingly export-led. This is the case even in the United States, where exports account for only eleven

10. See North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., art. 401, 32 I.L.M. 289, 349 (entered into force Jan. 1, 1994) [hereinafter NAFTA].

11. See Angus Foster, *Support for South American Free Trade Area*, FIN. TIMES, Mar. 14, 1994, at 5.

12. PETER H. SMITH, THE CHALLENGE OF INTEGRATION: EUROPE AND THE AMERICAS 8-9 (1993).

13. Maria Carlino, *South America May Bypass NAFTA-Type Pacts*, J. COM., Dec. 4, 1995, at 2C.

14. See Richard L. Bernal, *Regional Trade Arrangements in the Western Hemisphere*, 8 AM. U. J. INT'L L. & POL'Y 683, 712-14 (1993).

15. INTER AM. DEV. BANK, ECONOMIC INTEGRATION IN THE AMERICAS 2 (1995).

16. *Id.*

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percent of gross domestic product.¹⁷ Since 1986, exports have generated approximately forty percent of U.S. economic growth.¹⁸ The movement towards an FTAA would intensify the impetus to trade expansion as subregional agreements give way to a single hemispheric free trade area.

B. *Promote Liberalization*

Regionalism can push trade liberalization beyond the level reached by multilateral arrangements like the World Trade Organization (WTO);¹⁹ however, regionalism is sub-optimal compared to global free trade. Regional groups can promote both hemispheric and world trade by removing national barriers to trade among members, thereby contributing to the overall reduction in trade barriers. In some cases, regional agreements enhance multilateral disciplines. For example, NAFTA went beyond the Uruguay Round, breaking new ground in several traditional areas and incorporating issues which previously had not been included in multilateral trade arrangements.²⁰

C. *Avoid Trade Diversion from Non-Member States*

Regional trade agreements increase intra-regional trade but discriminate against non-members.²¹ In some instances, intra-regional trade expands in part because of trade diversion from non-members. For example, the exports of Caribbean and Central American countries to the United States have been adversely affected by NAFTA. Because such a significant proportion of the subregion's trade takes place with the United States, NAFTA has stymied economic growth in the subregion. This is particularly the case for the countries that are beneficiaries of the Caribbean Basin Initiative (CBI). The World Bank has estimated that approximately thirty-six percent of Caribbean exports to the United States will be subject to potential NAFTA displacement.²² The

17. Michael Kantor, *Letter from Secretary Kantor*, in TRADE PROMOTION COORDINATING COMMITTEE, 4TH ANNUAL REPORT TO THE U.S. CONGRESS 6, 8 (1996).

18. DEP'T OF COMMERCE, NORTH AMERICAN FREE TRADE AGREEMENT: GENERATING JOBS FOR AMERICANS 3 (1991).

19. See William DiBenedetto, *Ex-GATT Chief: Regional Trading Blocs Are Helpful*, J. COM., June 8, 1995, at 5A.

20. See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, H.R. DOC. NO. 103-159, at 1 (1993); GARY C. HUFBAUER & JEFFREY J. SCHOTT, NAFTA: AN ASSESSMENT 2-3 (1993).

21. See Jagdish Bhagwati, *The High Cost of Free Trade Areas*, FIN. TIMES, May 31, 1995, at 19.

22. WORLD BANK, CARIBBEAN DIVISION, REPORT NO. 12821 LAC, COPING WITH CHANGES IN THE EXTERNAL ENVIRONMENT 115 (June 1994).

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estimate is as high as seventy-nine percent for St. Lucia exports.²³

The elimination of quotas and phase-out of tariffs on Mexican products could remove or at least reduce the advantage enjoyed by CBI exports to the United States. This could cause a diversion of U.S. demand from suppliers in CBI countries to firms in Mexico, thus reducing CBI exports. Under NAFTA, Mexican textiles and apparel will benefit from a progressive tariff reduction over a six-year period.²⁴ This puts CBI-produced garments made from U.S. textiles at a price disadvantage against Mexican-assembled and Mexican-produced apparel. In 1993, exports of apparel from Mexico and the CBI to the United States grew at the same rate, 21.8%, but in 1994, Mexican exports expanded at a 50.2% rate compared to 15.7% for the CBI.²⁵ Between January and August 1995, Mexican apparel exports to the United States jumped by 71.6%, while CBI exports increased by only 26.2%.²⁶

As trade prospects and advantages in non-member countries become relatively less attractive compared to Mexico, investors will begin to redirect their funds to Mexico. This diversion is already evident from investment patterns throughout the region.

IV. ALTERNATIVE PATHS TO THE FTAA

A number of viable alternative paths to the FTAA can be conceived. The five discussed below are distinct possibilities.

A. NAFTA as the Core

The Enterprise for the Americas Initiative (EAI), launched in June 1990 by President Bush, consisted of three interrelated components: trade liberalization, debt relief, and investment promotion measures.²⁷ The trade liberalization objective was the creation of a hemispheric free trade area stretching from Anchorage, Alaska, to Tierra del Fuego, Argentina. Free trade would be established by a series of free trade

23. *Id.*

24. *The Caribbean Basin Trade Security Act: Hearings on H.R. 553 Before the Subcomm. on Trade of the House Comm. on Ways and Means, 104th Cong. 97 (1995)* (statement of Carlos Moore, Executive Vice President, American Textile Manufacturers Institute).

25. U.S. INT'L TRADE COMM'N, PUB. NO. 2884, U.S. IMPORTS OF TEXTILES AND APPAREL UNDER THE MULTIFIBRE ARRANGEMENT: ANNUAL REPORT OF 1994 (1995).

26. Canute James, *Caribbean Nations Raise Exports of Apparel, Seek More U.S. Access*, J. COM., Dec. 4, 1995, at 3C.

27. Ron Scherer, *Latin Plan Launches New Partnership*, CHRISTIAN SCI. MONITOR, July 3, 1990, at 4.

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agreements, beginning with NAFTA.²⁸ This view of NAFTA as the core of a hemispheric FTA is shared by Canada. During a recent visit to Chile and the MERCOSUR countries, Canadian Prime Minister Jean Chretien reiterated: "We see NAFTA as the foundation for eventual free trade throughout the Americas."²⁹ Even regardless of this shared conception, NAFTA undoubtedly will have substantial pull because it includes the largest, most powerful country in the hemisphere, the United States, and accounts for seventy-five percent of hemispheric trade.³⁰

Upon taking office, President Clinton reiterated the United States' vision of NAFTA as a core agreement that would be expanded to encompass all the countries in the hemisphere that will undertake the commitment to free trade. In mid-1994, the Clinton Administration indicated that Chile was the only country it regarded as ready to assume the discipline required by NAFTA.³¹ At the Summit of the Americas in December 1994, the NAFTA partners announced that Chile would be the first country to be allowed to accede to NAFTA and negotiations would start in early 1995.³² Negotiations with Chile for accession to NAFTA—which former U.S. Trade Representative Mickey Kantor called the first step towards building a FTAA³³—have not yet commenced in earnest.

The accession provision in NAFTA is a single vague sentence, which sets out neither eligibility criteria for new members nor application procedures for interested countries. Article 2204 of NAFTA merely provides that any country or group of countries may accede to the NAFTA "subject to such terms and conditions" as may be agreed to between those countries and the NAFTA Free Trade Commission, comprised of cabinet-level officials from Mexico, Canada, and the United States.³⁴

Although NAFTA itself fails to describe the conditions for accession, the NAFTA implementing legislation lays out a process for determining

28. RAYMOND J. AHEARN, *TRADE AND THE AMERICAS* 2 (CRS Issue Brief No. LIB95012, July 31, 1995).

29. Peter Morton, *Chretien Racks Up Deals on Latin American Tour*, J. COM., Jan. 27, 1995, at 3A.

30. Richard Lawrence, *Ministers to Meet June 30 to Discuss Hemisphere Trade*, J. COM., Feb. 10, 1995, at 3A.

31. See Nancy Dunne, *World Trade News: Trinidad and Chile "Top List for U.S. Links"*, FIN. TIMES, July 7, 1994, at 7.

32. See George Graham & Stephen Fidler, *Chile Invited to Join Trade Zone with U.S., Canada and Mexico*, FIN. TIMES, Dec. 12, 1994, at 18.

33. See *U.S. Moving Apace with Chile NAFTA Accession*, WASH. TRADE DAILY, Feb. 10, 1995, at 1.

34. NAFTA, *supra* note 10, art. 2204, 32 I.L.M. at 702.

the eligible countries. Section 108 of the NAFTA Implementing Act establishes a two-part accession process.³⁵ First, the President must identify to the Congress by May 1, 1997, those countries that currently provide fair and equitable market access for U.S. exports or that have made significant progress in opening their markets to U.S. exports.³⁶ On the basis of this information, the President will determine with which foreign countries, if any, the United States should seek to negotiate an FTA.³⁷ Second, the President is required to submit a report listing the countries with which the United States would begin free trade negotiations.³⁸ The report submitted in July 1994 indicated that the administration would not be in a position to name specific countries until after the Summit of the Americas in December 1994.³⁹ After the summit, with the consent of its NAFTA partners, the administration identified Chile as the next country with which to negotiate accession to NAFTA.⁴⁰

Section 108 does not authorize fast track procedures for NAFTA accession negotiations.⁴¹ This major obstacle to NAFTA accession remains because the U.S. Congress has not renewed fast track authority. The outlook is uncertain. Strong opposition can be expected from unionized labor, protectionists, NAFTA opponents, and environmental organizations. Until fast track authority is renewed, it is doubtful that countries will consider it worthwhile to commence negotiations on joining NAFTA. This effectively freezes negotiations for NAFTA entry until early 1997.

The United States is attempting to respond to the concerns of the small developing countries of Central America and the Caribbean, which have preferential access to the U.S. market under the CBI. The Clinton Administration and CBI supporters in Congress have decided to seek congressional approval for a unilateral extension of most NAFTA benefits to products currently excluded from CBI duty-free treatment.⁴² The proposal, known as parity, will address the diversion

35. North American Free Trade Agreement Implementation Act § 108, 19 U.S.C. § 3317(b) (1994).

36. 19 U.S.C. § 3317(b)(2)(A).

37. 19 U.S.C. § 3317(b)(3).

38. 19 U.S.C. § 3317(b)(4)(A).

39. REPORT TO THE CONGRESS ON RECOMMENDATIONS ON FUTURE FREE TRADE AREA NEGOTIATIONS 1 (1994).

40. See Graham & Fidler, *supra* note 32, at 18.

41. 19 U.S.C. § 3317.

42. OFFICE OF THE U.S. TRADE REPRESENTATIVE, SECOND REPORT TO THE CONGRESS ON THE OPERATION OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT 53 (1996).

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of trade and investment that is resulting from NAFTA.⁴³ It would provide enhanced access to the U.S. market in the form of NAFTA-like tariff and quota treatment for particular categories of apparel. Supporters had hoped that the parity program would be included in the NAFTA implementing legislation or in the Uruguay Round implementing legislation. However, it was not included in either bill. As a result, current efforts are focusing on finding a suitable bill to which the parity proposal can be attached.⁴⁴

B. MERCOSUR as a Pole

Brazil has proposed to extend MERCOSUR to create a South American Free Trade Area, which would eventually be in a position to amalgamate with NAFTA.⁴⁵ The idea of an FTA encompassing all the countries of South America is not new. It was raised at the First International Conference of the American States in 1889.⁴⁶ Mexico and the South American countries joined together in 1960 to form the Latin American Free Trade Association, which was replaced in 1980 by the Latin American Integration Association (ALADI).⁴⁷

Support is growing for the concept of a SAFTA. In early December 1995, Bolivia signed an accord with MERCOSUR that aims to eliminate trade barriers in ten years.⁴⁸ The Chile-MERCOSUR negotiations were extended to March 1996 to resolve outstanding issues, such as rules of origin and agriculture.⁴⁹ After these countries have negotiated a more formal arrangement, Ecuador, Peru, and Colombia would be likely candidates.⁵⁰ The creation of SAFTA could lead to a bi-polar hemisphere, split between NAFTA and SAFTA.

As mentioned above, the attraction of making MERCOSUR the core of a SAFTA or one of two poles for hemispheric free trade derives in part from MERCOSUR's size in relation to Latin America.⁵¹ While

43. *The Caribbean Basin Free Trade Agreements Act: Hearing on H.R. 1403 Before the Subcomm. on Trade and the Subcomm. on Oversight of the House Comm. on Ways and Means*, 103d Cong. 69-71 (1993) (statement of Dr. Richard L. Bernal, Ambassador of Jamaica to the United States).

44. John Maggs, *Caribbean Parity Bill Still Shaky*, J. COM., Dec. 4, 1995, at 3C.

45. See Foster, *supra* note 11.

46. THE INTERNATIONAL CONFERENCES OF AMERICAN STATES, 1889-1928, at 33-34 (James Brown Scott ed., 1931).

47. See generally JEFFREY J. SCHOTT & GARY C. HUFBAUER, REGIONAL INTEGRATION IN THE WESTERN HEMISPHERE (1994).

48. See Kevin G. Hall, *Chile, Mercosur Extend Trade Talks 90 Days*, J. COM., Dec. 8, 1995, at 1A.

49. See *id.*; Imogen Mark, *Chile Hits Snags in Pacts Quest*, FIN. TIMES, Dec. 8, 1995, at 7.

50. David Pilling, *The GATT-Plus Principle*, FIN. TIMES, Jan. 25, 1995, at 13.

51. SMITH, *supra* note 12, at 8-9.

MERCOSUR is still much smaller than NAFTA and will not displace U.S. dominance or leadership, it does have momentum in its favor. MERCOSUR's willingness to expand its membership and network of trade accords at a time when the United States is immobilized by the lack of fast track authority makes MERCOSUR a more feasible option for many countries. Countries that are ready to join NAFTA are turning in frustration to links with MERCOSUR.⁵²

C. *Bi-Polar Amalgamation*

Brazil is pushing its partners in MERCOSUR to negotiate as a bloc with NAFTA. In October 1995, U.S. Trade Representative Mickey Kantor and Brazil Foreign Trade Minister Luiz Felipe Lampreia agreed to "explore with the other parties to our respective subregional trade arrangements the possibility, which we strongly endorse, of holding an initial meeting between NAFTA and MERCOSUR by July 1996."⁵³ In November 1995, with the acquiescence of Canada and Mexico, the United States agreed to hold the first NAFTA-MERCOSUR meeting prior to the meeting of Western Hemisphere Trade Ministers scheduled for March 1996 in Colombia.⁵⁴

However, the fact that the MERCOSUR countries did not attend the meeting of Vice Ministers of Trade held in Bogota, Colombia, in March 1995 is disconcerting news. A spokesman said that MERCOSUR felt that it was too early in the process to review the preparatory work and that the dates of the meeting were not convenient.⁵⁵ It is not clear if this indicates that NAFTA-MERCOSUR discussions are on a parallel track or supersede the FTAA process charted by the Summit of the Americas. There is also some question about how the interest of non-member countries will be taken into account in the negotiations.

D. *Convergence of Regional Trade Groups*

The five principal regional trade groupings—NAFTA, MERCOSUR, CARICOM, CACM, and the Andean Pact—could engage in a negotiated convergence or cooperation on a common integration goal. It

52. See Carlino, *supra* note 13.

53. *U.S.-Brazil Review Calls for NAFTA-MERCOSUR Summit, Bilateral Steps*, INSIDE NAFTA, Nov. 1, 1995, at 1, 16.

54. *U.S. Backs MERCOSUR Offer for Bloc-to-Bloc Talks Before Cartagena*, INSIDE NAFTA, Nov. 29, 1995, at 1, 12.

55. *Vice Ministers Meet on Free Trade Agreement in Bogota: MERCOSUR Absent*, INT'L TRADE DAILY, Dec. 13, 1995.

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may be easier and quicker to have these five groupings negotiate the FTAA rather than thirty-four individual countries. The disparities in economic size among the various regional groups would be a concern, since this could give the NAFTA countries leverage. The disparities are enormous. For example, NAFTA's population is 372 million, compared to CARICOM's 6.2 million,⁵⁶ and NAFTA's GDP is ten times larger than that of the next largest group, MERCOSUR.⁵⁷

E. Hemispheric Negotiations

Another way to proceed toward an FTAA is to forge agreement on trade liberalizing standards, towards which all countries in the hemisphere would move in accordance with a designated schedule. This must include a schedule for concerted effort to develop common standards for the regulation of hemispheric trade in goods and services and the movement of capital flows in ways that foster compatibility among the various trade blocs. This approach is similar to that being followed by the Asia-Pacific Economic Cooperation (APEC).

The trade component of the Summit of the Americas process embodies this strategy. Seven working groups have been established to discuss hemispheric norms.⁵⁸ Their work is overseen by Vice Ministers of Trade, who coordinate the activities of the working groups and prepare the agenda for the annual meeting of Trade Ministers. The Vice Ministers also prepared the actual text of the Declaration issued (without the amendments) at the first Trade Ministers meeting held in Denver in June 1995.⁵⁹ The next meeting of the Trade Ministers is scheduled for mid-March 1996 in Cartagena. In preparation for this meeting, nine working groups have been meeting and will forward reports to the Vice Ministers meeting in December 1995. The final stage of this process will be a round of hemispheric negotiations to be completed by the year 2005.⁶⁰

56. *Comparative Statistics: The Summit Participants*, BUS. AM., Dec. 1994, at 14-15.

57. *Id.*

58. Final Joint Declaration, Summit of the Americas Trade Ministerial, Annex (June 30, 1995) (on file with *Law and Policy in International Business*); Joint Declaration, Summit of the Americas Second Ministerial Trade Meeting 4 (Mar. 21, 1996) (on file with *Law and Policy in International Business*).

59. *U.S. Curtails Labor, Green Language to Gain FTAA Consensus in Denver*, INSIDE NAFTA, June 14, 1995, at 1.

60. *Support Builds for Colombia to Host March 1996 FTAA Ministerial*, INSIDE NAFTA, June 14, 1995, at 16.

V. GUIDELINES FOR THE FUTURE

Whichever of these paths to the FTAA eventually prevails, there are four fundamental points that must be addressed. First, the proliferation of regional, subregional, and bilateral trade agreements must be addressed, because they may complicate the process of creating the FTAA. Second, economic reform, liberalization, and structural adjustment must continue if countries are going to be ready for free trade by the year 2005. Third, a range of forms of participation must be designed to take account of the wide variations in size, level of development, and extent of trade liberalization. Fourth, the process that has been set in place by the Summit of the Americas is likely to continue; it can support any of the alternative pathways and should therefore be strengthened.

A. *Problem: Avoiding Proliferation*

Regional trade agreements seek to liberalize trade and make conducting trade simpler, but the proliferation of agreements is in fact making conducting trade more complex. Exporters and importers are never sure under which regime they are operating. Overlapping of agreements inhibits rather than promotes trade. Simplification is needed and could come from a single hemispheric free trade area. The viability of regional groupings is also undermined by the proliferation of bilateral agreements, multiple membership in several trade agreements, and conflicting commitments. Regional arrangements' efficacy in promoting the expansion of trade is constrained by the confusion created by the plethora of agreements.

B. *Prerequisite: National Preparedness*

National preparedness to participate in and benefit from the FTAA varies widely among the countries of the hemisphere. The extent of trade liberalization reflects a variety of structural economic features, policy orientations, political perspectives, and psychological dispositions. All of this is compounded by differences in size and levels of development.

Further complications arise from the limited and tentative political support for economic reform and liberalization.⁶¹ This tentativeness is due in part to the fact that pursuit of free trade and economic reform

61. Moises Naim, *Toward Free Trade in the Americas: Building Blocks, Stumbling Blocks and Entry Fees*, in *INTEGRATING THE AMERICAS: SHAPING FUTURE TRADE POLICY* 57 (Sidney Weintraub ed., 1994).

have derived less from conviction than from frustration with import-substitution and protectionism during the profound economic crisis of the 1980s.⁶² The context within which the more complex stages of liberalization have to be implemented is made difficult by the more unequal distribution of income and the increased incidence of poverty that have accompanied economic reform and liberalization.⁶³ The recent experiences of Venezuela⁶⁴ and Mexico⁶⁵ serve as reminders of the complexity of the adjustment process. Economic reform, liberalization, and adjustment are all prerequisites for participation in the FTAA; trade liberalization is a necessary but not sufficient condition. Governments must seriously address the economic (macroeconomic and microeconomic), social, and political difficulties of adjustment if the goal of hemispheric free trade is to be realized.⁶⁶

Whether the Latin American and Caribbean economies are able to take advantage of access to the larger hemispheric market or to larger regional groupings to expand exports depends not only on government policies, but also on the readiness and ability of the private sector to compete effectively. Even in industry sectors where these economies have a comparative advantage, this advantage could, as in the past, be offset by locally-owned firms' lack of a competitive advantage.⁶⁷ Increasing exports will depend on a combination of comparative and competitive advantages.

C. *Participation: Coexistence of Alternative Forms*

The FTAA will have the unprecedented task of encompassing in a single trade agreement countries that differ widely in size, level of development, extent of industrialization, and degree of liberalization. All countries will not be able to move at the same pace or arrive at a single destination. Therefore, alternative forms of participation will have to coexist in a complementary way, whether the FTAA emerges

62. Dani Rodrik, *The Rush to Free Trade in the Developing World: Why So Late? Why Now? Will It Last?*, in *VOTING FOR REFORM: DEMOCRACY, POLITICAL LIBERALIZATION AND ECONOMIC ADJUSTMENT* 61-88 (Stephen Haggard & Steve B. Webb eds., 1994).

63. Oscar Altimir, *Income Distribution and Poverty Through Crisis and Adjustment*, in *LATIN AMERICA'S ECONOMIC FUTURE* 265-302 (Graham Bird & Ann Helwege eds., 1994).

64. See generally MOISES NAIM, *PAPER TIGERS AND MINOTAURS: THE POLITICS OF VENEZUELA'S ECONOMIC REFORM* (1993).

65. See generally JORGE G. CASTANEDA, *THE MEXICAN SHOCK: ITS MEANING FOR THE UNITED STATES* (1995).

66. Manuel Pastor Jr. & Carol Wise, *Western Hemispheric Integration: Free Trade Is Not Enough*, *SAIS REVIEW*, Summer-Fall 1995, at 1-16.

67. MICHAEL PORTER, *THE COMPETITIVE ADVANTAGE OF NATIONS* (1980).

through the expansion of NAFTA or MERCOSUR or through hemispheric negotiations. Three alternative models may be applied to ensure that all countries can participate.

1. Full Participation

Full participation involves the assumption of all of the objectives, disciplines, and schedules of the FTAA. Ideally, all countries should commence their membership at the same time. However, if this is not possible, there must be an orderly accession process. This can be achieved if the accession process is politically transparent. Orderly accession requires the establishment and enunciation of a clearly defined set of eligibility criteria, procedures for applying for membership, and a timetable for expansion. The absence of eligibility criteria, application procedures, and a workable timetable creates a situation in which various arbitrary, non-economic factors may disproportionately influence the selection and sequence of admission of new members.

2. Phased Participation

In any discussion of expanding NAFTA, there is concern about how quickly the smaller, less developed countries of the Caribbean region or Latin America could join. Many of these countries are not ready for immediate accession to NAFTA because they have not yet attained a level of development or liberalization commensurate with the far-reaching obligations of NAFTA, which are also likely to be a part of the FTAA. A suitable transitional arrangement must be designed for these countries that is orderly, politically transparent, and includes an asymmetric, phased assumption of obligations and disciplines. The same applies to future accession to or FTAs with MERCOSUR. Using World Bank classifications, twenty-six of the thirty-four countries at the Summit are "small countries" (a population of less than twelve million); seven of these are "very small" and twelve are "mini-states."⁶⁸ Many of these countries have not yet attained the level of liberalization necessary to assume the obligations entailed in accession to NAFTA or MERCOSUR or in FTAs with these groups.

Given the potential economic dislocation, a transitional arrangement must be created to facilitate trade liberalization in these countries prior to entry. This could be done, for example, by providing small and/or developing countries with full market access to the NAFTA

68. WORLD BANK, *WORLD ATLAS 1995* (1995).

countries, with reciprocity phased in over an extended period and tailored to the circumstances of individual countries. A suitable adjustment period will not only take into account the level of development, extent of liberalization, and undiversified structure of these economies, but would also allow time for completing the structural adjustment of the wider Latin American region.

This sort of transitional arrangement would enable these economies to complete their process of economic reform and structural adjustment, which would then put them in a position to move towards reciprocity. A premature attempt by these countries to provide full reciprocity could be detrimental to this adjustment process, since export-led growth is only possible with stable market access. How much time must pass before complete reciprocity can be provided would vary among economies depending on their size, level of development, and economic structure.

It is essential to recognize that reciprocity does not mean strict equivalence in tariff reduction or elimination of quantitative restrictions. Rather, it reflects the range of issues encompassed in international economic relations: trade in goods and services, investment, and intellectual property rights. The form, specifics, and pace of reciprocity should be worked out carefully.

3. Partial Participation

The FTAA and regional trade agreements such as NAFTA and MERCOSUR could design a form of associate membership⁶⁹ for countries that do not want full membership or that are precluded by commitments to subregional common markets or to trade arrangements with groups outside the hemisphere. Agreements with associate members would cover selected issues, sectors, and products on terms comparable to those existing in NAFTA. Bilateral agreements and WTO rules could govern other areas. This type of arrangement may require WTO waivers similar to the General Agreement on Tariffs and Trade waivers that were used to cover the U.S.-Canada Automotive Agreement.

Associate membership could be a viable alternative for the countries of CARICOM, which benefit from preferential trade arrangements in the form of the CBI and the Lome Convention with the European

69. The concept of associate membership outlined here was originally proposed by Peter Morici. See PETER MORICI, *FREE TRADE IN THE AMERICAS* 27-28 (1994).

Union (EU).⁷⁰ If countries that are members of the Lome Convention were to become full members of NAFTA, either through an accession clause or through a free trade agreement, then they would enjoy preferential, non-reciprocal treatment under Lome, and at the same time be involved in a reciprocal trade arrangement with NAFTA. But Article 174(2)(a) of the Lome Convention⁷¹ obliges these countries to provide no less favorable treatment to the EU than they provide to any developed country. Thus a dilemma arises: if Caribbean countries provide reciprocity to the United States and Canada by virtue of an FTA or NAFTA, then they would be obliged to provide reciprocity to the EU under the terms of Lome.⁷² Associate membership, on the other hand, would facilitate liberalization in a limited number of areas and obviate the need for across-the-board reciprocity to the EU. The EU might require reciprocity from the region, but only in specific and manageable areas of negotiations.

During the NAFTA negotiations, there was discussion about including provisions to permit associate membership, but nothing was included in the final text. Providing for associate membership would require modification of NAFTA. To date, member countries have indicated an unwillingness to modify the final agreement. However, if necessary, such a modification could be made.

D. Conclusion

A process for attaining the FTAA, emanating from the Summit of the Americas, has commenced and is developing some momentum. This momentum should be maintained, since the Summit process is currently the only one that enjoys the support and participation of all

70. The Lome Convention is an ongoing multilateral commercial agreement between the European Economic Community's (EEC) 12 West European members and over 60 African, Caribbean, and Pacific (ACP) countries. The first Lome Convention was signed in 1975 and permitted ACP commodities (mainly raw ores and raw agricultural products) to enter the EEC duty-free. The latest Lome Convention, signed in 1989, guarantees a significant financial commitment from the EEC: ECU 12 billion are to be allocated to debt relief, investment, and risk capital over the 10 year period of the convention agreement. See Ndiva Kofele-Kale, *Title V of the Second Lome Convention Between the EEC and ACP States: A Critical Assessment of the Industrial Cooperation Regime as It Relates to Africa*, 5 NW. J. INT'L L. & BUS. 352, 360-68 (1983); *EIB Finances Port Infrastructure in Namibia*, Reuter European Community Report, Oct. 21, 1996, available in LEXIS, World Library, Allnews File.

71. Fourth ACP-EEC Convention of Lome, Dec. 15, 1989, 29 I.L.M. 783.

72. See Richard L. Bernal, *The Compatibility of Caribbean Membership in LOME, NAFTA and GATT*, Soc. & ECON. STUD., June 1994, at 139-47.

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countries (except Cuba). In March 1996, the Trade Ministers of the thirty-four countries involved in the Summit process met in Colombia. FTAA working groups sought to complete the process of collecting, collating, and analyzing information and to agree on recommendations for the Ministers on appropriate objectives, process, and timing. The Ministers also established four new working groups—on competition policy, government procurement, intellectual property rights, and services—which they had agreed in Denver would be established at Cartagena. As the process develops, the Ministers may need to authorize new working groups or expand the scope of existing groups to address issues not yet included, such as a hemispheric process for compulsory or voluntary dispute settlement. This FTAA process has been ongoing and is expected to culminate in the Ministerial meeting in Belo Horizonte, Brazil, in May 1997. This meeting is expected to officially launch the negotiations for the FTAA. In light of this, the Ministers must do a number of things:

- (1) Begin to address ways to ensure that the different paths of regional integration are fully compatible with the completion of the FTAA within the time period identified.
- (2) Explore liberalization measures that can be taken before negotiations begin that would liberalize trade in goods and services and facilitate investment flows. These measures would create a positive atmosphere for progress in the negotiations, by, for example, widening and deepening already existing subregional agreements rather than increasing the number of new bilateral agreements.
- (3) Establish some form of regular consultations with the private sector on a national and on a hemispheric basis. Hemispheric consultations must be institutionalized and be representative of different sectors and subregions within the hemisphere.
- (4) Ensure that their own countries' internal macroeconomic policies ensure stability and continued liberalization, which are necessary complements to hemispheric liberalization and integration.
- (5) Decide if a small Secretarial function should be established in one of the existing hemispheric organizations to ensure some form of continuity as the chairmanship of the process moves from country to country.

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(6) Integrate the special needs of small developing countries in all their work rather than confine these concerns to a single working group.

V. POSTSCRIPT: AN UPDATE

In late 1995, Canada and Chile announced that they would begin bilateral negotiations to reach a free trade accord. Canadian Trade Minister Roy MacLaren explained: "This agreement will provide a bridge to a full NAFTA accession for Chile and will be folded into the NAFTA once the accession negotiations are eventually completed."⁷³ The bilateral talks were to begin in mid-January 1996.⁷⁴ As a result of U.S. domestic policies, however, bilateral talks between Chile and the NAFTA parties have stalled. Chile has since become an associate member of MERCOSUR, providing further evidence of South America's growing impatience with NAFTA's exclusivity and the desire of countries in the region to expand their FTAs.

73. Anne Swardson, *Canada, Chile Eye NAFTA-like Pact*, WASH. POST, Dec. 30, 1995, at A15.

74. *Id.*