Latin American Trade Liberalization

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In recent years, Latin American countries significantly reformed their trade policies. Several Latin American countries became members of the General Agreement on Tariffs and Trade. In addition, there was an increase in the number and quality of regional trade agreements. In December 1994, at the Summit of the Americas in Miami, thirty-four nations met to discuss a future Free Trade Area of the Americas. These trade reforms are part of a larger economic liberalization that includes changes in the internal macroeconomic policies of Latin American nations. The trade reforms reinforce the internal changes and, to some extent, prevent Latin American governments from pursuing internal policy reversals. However, the current trade reforms will not successfully complete the overall economic liberalization of Latin America without help from additional measures.

This Article discusses Latin American economic liberalization, from the integration agreements of the early 1960s through the trade liberalization policies beginning in the 1980s. Part I traces the evolution of Latin American trade policy during this period. Part II focuses on Latin American tariff barriers, while Part III focuses on non-tariff measures. Part IV examines the future of Latin American trade policy with regard to the Uruguay Round agreements, particularly with respect to regional integration. This Article concludes that efforts are needed to refine the policies of privatization, government procurement, and competition in order to increase the contestability of Latin American markets. The proposed Free Trade Area of the Americas will not address these issues, but can deeply contribute to the credibility of the trade reforms.

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I. EVOLUTION OF LATIN AMERICAN TRADE POLICY

Until the early 1980s, when these countries undertook macroeconomic reforms and trade reforms in response to a debt crisis, Latin American countries generally followed import-substitution industrialization policies. Such policies were heavily dependent upon the widespread use of non-tariff measures (NTMs). Regional agreements, like the Latin American Free-Trade Area (LAFTA),[1] the Central American Common Market (CACM),[2] and the Andean Group,[3] extended these policies to the regional level through a complex web of limited preferences and production-sharing agreements. Latin American countries joined the General Agreement on Tariffs and Trade (GATT)[4] primarily with hopes of improved access to foreign markets, including by means of "special and differential treatment" under GATT.[5]

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1. Treaty Establishing a Free Trade Area and Instituting the Latin American Free Trade Association (Montevideo Treaty), Feb. 18, 1960, INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, INSTRUMENTS RELATING TO THE ECONOMIC INTEGRATION OF LATIN AMERICA 207 (1968) [hereinafter LAFTA]. Signatories to LAFTA included Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. *Id.*

2. General Treaty of Central American Economic Integration, Dec. 13, 1960, El Sal.-Guat.-Hond.-Nicar., 455 U.N.T.S. 3 (entered into force June 4, 1961) [hereinafter CACM]. Costa Rica later acceded to the CACM. GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, INTER-AMERICAN TREATIES AND CONVENTIONS 417 (1985) (effective Nov. 9, 1963).

3. Agreement on Andean Subregional Integration, May 26, 1969, Bol.-Colom.-Chile-Ecuador-Peru, 8 I.L.M. 910. Venezuela later acceded to the Agreement. GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, *supra* note 2, at 360 (effective Jan. 1, 1974). Chile later denounced the Agreement. *Id.* (effective Oct. 30, 1976).

4. General Agreement on Tariffs and Trade, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 21, GATT Sales No. 1994-4 (1994) [hereinafter GATT 1994]. The Final Act of the Uruguay Round and the Marrakesh Agreement Establishing the World Trade Organization (the WTO Agreement) were signed at the Marrakesh Ministerial Meeting in April 1994. The WTO Agreement includes the original GATT 1947 as amended.

5. GATT 1994, *supra* note 4, art. XXXVI:8 ("The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties"). In 1965, the contracting parties enacted Part IV to the GATT, embodying the concept of special and differential treatment. In 1979, as part of the Tokyo Round, the contracting parties agreed on the Generalized System of Preferences (GSP). *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, GATT Doc. L/4903 (Nov. 28, 1979), *reprinted in* GENERAL AGREEMENT ON TARIFFS AND TRADE, 26th Supp. BISD 203 (1980). For a further explanation, see ROBERT E.

Populism led to overly expansive macroeconomic policies that relied upon deficit financing and generalized controls while disregarding basic economic equilibria.[6] Policymakers rejected monetarist orthodoxy, and were instead influenced by structuralist supply-side solutions. They believed that idle capacity would provide leeway for the economic expansion needed to improve living standards without running inflationary risks.[7] Policymakers would accomplish this supply-side solution through deficit financing covered by foreign borrowing. When bottlenecks arose, usually from a lack of foreign exchange, policymakers rejected devaluation as an option because of the likely adverse consequences for inflation and living standards.

Some also argued that devaluation would not work because of institutional rigidities. For example, under existing systems of land tenure, it was difficult to increase agricultural production in response to price incentives. If agricultural production did increase, gains would be offset by a decline in the terms of trade. Lacking equivalent domestically produced goods, imports would not fall. Thus, some argued that devaluation would not improve the trade balance, but would lower real incomes and accelerate inflation. Nevertheless, each time the economic situation deteriorated, governments were usually forced to resort to price realignments, devaluation, exchange controls, and import restrictions. In the end, the population was worse off than before the pursuit of these supply-side solutions.

Past policies that favored import-competing manufacturing industry were largely influenced by Raúl Prebisch's work on the secular decline in the terms of trade for agricultural commodities[8] and by the perception that only manufacturing could provide stability and jobs. Countries used import restrictions to assist the rapid development of the new manufacturing sector, under the infant-industry or infant-economy protection argument. Occasionally, however, the policy mix was so complex that it became partly self-defeating. If an industry complained

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HUDEC, DEVELOPING COUNTRIES IN THE GATT SYSTEM (Thames Essay No. 50 for the Trade Policy Research Centre, 1987).

6. *See* THE MACROECONOMICS OF POPULISM IN LATIN AMERICA (Rudiger Dornbusch & Sebastian Edwards eds., 1991).

7. For a discussion of the "monetarist" versus "structuralist" debate, see Roberto de Oliveira Campos, *Economic Development and Inflation with Special Reference to Latin America*, *in* ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, STUDIES IN DEVELOPMENT NO. 1, DEVELOPMENT PLANS AND PROGRAMMES 127-47 (1964).

8. RAÚL PREBISCH, CHANGE AND DEVELOPMENT—LATIN AMERICA'S GREAT TASK (1971).

about the high costs of steel or capital goods (protected under a development plan), then exemptions or tax breaks for investment would be granted to offset the high costs. This scenario could repeat itself throughout the economy, creating layers of protection or insulation not only from imports but from the effects of other policies, such that it became difficult to ascertain the net effect of the combination of policies. Clearly, for many Latin American countries with a comparative advantage in agriculture, the agricultural sector bore the brunt of such policies. The agricultural sector suffered from explicit and implicit taxes, including burdens imposed by multiple exchange rates,[9] thus exacerbating rural poverty and encouraging the drift to urban areas.

While episodes of trade liberalization occurred before the 1980s, most eventually failed because they lacked coordination in the application of different policies. These failures stimulated extensive research on the timing and sequencing of reforms and led to wide agreement that macroeconomic reforms must precede trade reforms.[10] There are several successful counter-examples suggesting that it is possible, and perhaps even desirable, to initiate trade policy reforms with macroeconomic reforms, if for no other reason than to give credibility to the policy reorientation.[11]

The Latin American reforms of the 1980s involved comprehensive macro and microeconomic packages, replacing widespread NTMs with moderate tariffs.[12] Latin American countries initiated these reform programs over short periods, thus intuitively lessening the risk of miscalculation on the timing and sequencing of reforms. The reforms derived credibility from the fact that they were home-grown, introduced by several U.S. trained economists, and supported by the international lending institutions. Change was possible because of disillusionment

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9. Anne O. Krueger et al., *Agricultural Incentives in Developing Countries: Measuring the Effect of Sectoral and Economywide Policies*, 2 WORLD BANK ECON. REV. 255, 266-67 (1988).

10. For a comprehensive description and analysis of previous liberalization episodes, see LIBERALIZING FOREIGN TRADE (Demetris Papageorgiou et al. eds., 1991). *See also* VINOD THOMAS ET AL., BEST PRACTICES IN TRADE POLICY REFORM (1991); STANLEY FISCHER & VINOD THOMAS, POLICIES FOR ECONOMIC DEVELOPMENT (The World Bank, Policy, Research, and External Affairs WPS 459, 1990).

11. DANI RODRICK, TRADE AND INDUSTRIAL POLICY REFORM IN DEVELOPING COUNTRIES: A REVIEW OF RECENT THEORY AND EVIDENCE 47 (National Bureau of Economic Research Working Paper No. 4417, 1993).

12. *See infra* part II (describing the shift toward lower tariffs and away from NTMs).

with the old order, along with popular recognition of the need for drastic measures to counter the debt crisis, hyperinflation, falling real incomes, and rising unemployment in overcrowded cities. These new measures followed the fundamentals of economic orthodoxy: fiscal and monetary constraints with initially fixed exchange rates. However, economically heterodox measures included price and income controls as key supporting measures under the Mexican system of consensus-building pacts (*Pactos de Solidaridad*), and floating exchange rates as a feature of recent reforms in Peru and Bolivia. Demonstrated success from early reforms in Chile, and later reforms in Mexico and Bolivia, eased the spread of the reform process.

The Mexican financial crisis of December 1994 does not appear to require any modification of these fundamentals.[13] A currency depreciation was generally expected in the period before the 1994 Mexican presidential election. Large amounts of money began leaving the country even before the Chiapas uprising in January 1994[14] and the later assassination of PRI candidate Luis Donaldo Colosio.[15] Even by late 1993 reserves began to fall. The managed float of the currency did not proceed at a sufficient rate to counter the decline in reserves. A greater rate of depreciation in the pre-election period would have required tighter fiscal and monetary measures, with a negative effect on real incomes. Presently, another government pact with organized labor, promises of democratic reforms, and the U.S. backed rescue effort seem sufficient to help in the recovery of confidence.[16] The already growing Mexican exports should receive a

13. One commentator argued that despite Mexico's financial crisis, failing to proceed with Chile's NAFTA membership in a timely fashion would damage the prospects for the gradual development of a hemispheric free-trade community. Shirley Christian, *Don't Let Mexico's Woes Spoil Our Commitments to Chile*, WALL ST. J., Feb. 3, 1995, at A13. U.S. Trade Representative Mickey Kantor downplayed any negative impact of Mexico's financial crisis on plans to expand NAFTA, stating that Latin America "is where we are going to find our greatest growth over the next number of years." Helene Cooper, *Administration Says Mexico's Crisis Won't Affect Nafta Expansion Push*, WALL. ST. J., Feb. 10, 1995, at A2.

14. *See* Gregory Katz, *Death Toll Tops 100 in Mexican Uprising*, DALLAS MORNING NEWS, Jan. 4, 1994, at A1.

15. *See* Damian Fraser & Stephen Fidler, *Mexico in Crisis After Killing*, FIN. TIMES, Mar. 25, 1994, at 1.

16. *See* Tim Carrington et al., *Quick Fix: Clinton Hastily Drops Mexico Rescue Plan, Gives New Aid Instead*, WALL ST. J., Feb. 1, 1995, at A1 (outlining the aid plan to Mexico); Paul B. Carroll & Dianne Solis, *Mexican Stocks, Peso Post Sharp Gains Amid Relief Over New Rescue Package*, WALL ST. J., Feb. 1, 1995, at A6 (noting that Mexican stocks soared to their biggest one-day gain

boost, although U.S. inputs into Mexican production will be more costly. Due to its obligations under the North American Free Trade Agreement (NAFTA),[17] Mexico is unlikely to resort to trade measures as a knee-jerk reaction to the financial crisis, as it did after the 1982 debt crisis and earlier economic crises. By not resorting to a solution dependent on trade measures, Mexico is using macroeconomic tools to solve macroeconomic problems.

The active role of Latin American countries in the Uruguay Round also lends credibility to the trade policy reforms. Since the Uruguay Round began in 1986, many Latin American countries acceded to the GATT: Bolivia, Costa Rica, Dominica, El Salvador, Guatemala, Honduras, Mexico, Paraguay and Venezuela. Usually, accession involved the binding of all most-favored-nation (MFN) tariffs at ceiling levels ranging from 20% to 50% and, occasionally, the binding of commitments on NTMs as well. In the Uruguay Round, all Latin American contracting parties made comprehensive binding ceiling commitments and substantial commitments in other areas including services and intellectual property. While these changes do not always lead to immediate increases in market access, they reaffirm the seriousness of the reforms of the last decade.

With regard to sub-regional agreements, memberships in NAFTA and the Organization for Economic Cooperation and Development (OECD) give Mexico's reforms considerable credibility. Credibility may be more important than improved access to the U.S. market, where Mexico already received favorable treatment, especially under the U.S. value-added tariff (VAT) provisions.[18] Other sub-regional agreements, while appearing much

since 1988 and the peso regained over 10% of its value against the U.S. dollar as news of the rescue package spread throughout Mexico's financial markets).

17. North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 289 and 32 I.L.M. 605.

18. Under these provisions, imports which contain U.S. materials are subject to the duty only on the value added abroad. For example, if U.S. textiles were made into garments in Mexico, then the value of the U.S. textile would be deducted on computing the value for duty on the garment exported from Mexico to the United States. One of the reasons for establishing large in-bond production facilities (*maquiladoras*) in Mexico was to help Mexican companies take advantage of these provisions through special investment incentives and streamlined customs facilities. These provisions cover U.S. imports under Harmonized Tariff Schedule (HTS) subheadings 9802.00.60 (metal of U.S. origin processed in a foreign location and returned for further U.S. processing) and 9802.00.80 (goods containing U.S.-made components), formerly imports under items 806.30 and 807.00 of the Tariff Schedules of the United States (TSUS).

stronger than earlier efforts,[19] do not contribute to the credibility of Mexican reforms because they have yet to show they can stand the test of time.

The most important recent development is the announcement of plans for a Free Trade Area of the Americas (FTAA).[20] Thirty-four countries met at the Summit of the Americas in Miami on December 9-11, 1994. The year 2005 was set as the deadline for completing negotiations, and the countries agreed that there will be "concrete progress" before the end of the century. As with NAFTA, U.S. participation in the FTAA lends considerable credibility to the accord and pushes liberalization further than currently planned in many Latin American countries.

II. THE SHIFT TOWARD LOWER TARIFFS

Before the 1980s, Latin American tariffs were generally high, unbound, and set in tiers that escalated tariffs according to the level of processing. Preferences were granted to ranges of goods defined in bilateral arrangements under LAFTA, which became the Latin American Integration Association (LAIA) in 1980.[21] The published tariffs often bore little resemblance to the duties collected because of the many exemptions. In Argentina, for example, the average nominal tariff was reduced from 98% to 49% during the Martinez de Hoz period (1976-81).[22] In 1988, the average nominal tariff stood at over 30%, but the ratio of duty collected to total imports was approximately 2% between 1970 and 1988.[23] Tariffs thus were largely irrelevant for protective purposes primarily because of the prevalence of NTMs.

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19. *See infra* text accompanying notes 61-65.

20. *Americas Summit Leaders Back Historic Trade Declaration*, 11 Int'l Trade Rep. (BNA) No. 49, at 1915 (Dec. 14, 1994).

21. In 1980, the Treaty of Montevideo superseded LAFTA. *See* Treaty of Montevideo (1980) Establishing the Latin American Integration Association (LAIA), Aug. 12, 1980, GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, *supra* note 2, at 353 (entered into force Mar. 18, 1981).

22. GENERAL AGREEMENT ON TARIFFS AND TRADE, TRADE POLICY REVIEW OF ARGENTINA 1992, vol. I, at 86 (May 1992) (citing JULIO NOGUÉS, PROTECCIÓN COMERCIAL Y CAMBIARA: UNA INTERPRETACIÓN DE LA EXPERIENCIA ARGENTINA DURANTE 1976-77 (Banco Central del la República Argentina, Serie de Estudios Tecnicos No. 52, 1983)).

23. *Id.* The existence of preferential arrangements is one reason for the difference between average nominal rates and duty collected. However, there were also many waivers, including waivers for state-owned enterprises, and inefficiencies in collection.

There has been a recent shift toward tariffs and away from wide-ranging NTMs as the primary form of protection. This shift represents an important increase in the transparency of trade protection. Greater security of market access is due to the recent accessions of Latin American countries to the GATT and because Uruguay Round negotiations bound almost all tariffs at ceiling rates of 35%.[24] Market access improved because the applied MFN rates are now substantially lower than the bound rates: applied tariff averages (unweighted) were reduced to between 10% and 12%.[25] Although the lower MFN rates allow some room for a tariff increase, the ceiling bindings ensure that they cannot return to the earlier high levels.

The rationalization of the structure of applied tariffs increased the transparency in trade protection. In a few cases, moderate uniform tariffs have been introduced; in other cases, there are fewer broad bands of tariffs in which a less pronounced tariff escalation has been maintained. This tariff structure, with higher tariffs at later stages of processing, provides the manufacturing sector with higher levels of effective protection for its value added than is evident from the nominal rates on the finished goods. In addition, many exemptions have been eliminated so that current nominal tariffs more closely reflect the amount collected.

Table 1 shows recent average tariffs for a range of Latin American countries. Bolivia (10%) and Chile (11%) have adopted very moderate uniform tariffs and thus have effective tariff protection at the same level. Most developing countries in the region have adopted a tiered structure of escalating rates but with moderate total averages, such as Argentina (12%), Colombia (11%), Brazil (14%), and Uruguay (20%).[26] There is a tendency to avoid zero minimum rates, and most maximum

24. Peru bound its entire tariff at a ceiling rate of 30%. GENERAL AGREEMENT ON TARIFFS AND TRADE, TRADE POLICY REVIEW OF PERU 1994, vol. I, at 65 (June 1994). Costa Rica reduced its ceiling binding from 55% to 45%. WORLD TRADE ORGANIZATION, TRADE POLICY REVIEW OF COSTA RICA 1995 (forthcoming 1995).

25. OECD unweighted averages are typically between 5% and 10%, although New Zealand's 1987 average was 17.6%. Import weighted averages are much lower, ranging from 3.5% to 5%. For further information, see GATT TRADE POLICY REVIEWS 1989-94 of the individual OECD countries.

26. Since January 1, 1995, Argentina, Brazil and Uruguay have adopted the common external tariff of MERCOSUR, with some important exceptions in each case. Argentina-Brazil-Paraguay-Uruguay: Treaty Establishing a Common Market, Mar. 26, 1991, 30 I.L.M. 1044 [hereinafter MERCOSUR]. It is expected that the average for these countries will now be between 12% and 14%.

Table 1. Summary of Tariff Regimes of Selected Latin American Countries

	Tariffs	
Country	Simple Average (%)	Comments
Argentina	12.2 (1992)	Specific rates are 5, 13 and 22%. Few exceptions are allowed. Frequent revisions in recent years reduced the average from 30% in 1989. The average fell from 98% to 49% in 1976-77.
Bolivia	10.0 (1992)	Rates are generally uniform. The average decreased from 20% in 1990, except 5% on capital goods. The pre-1985 average was 12.1%.
Brazil	14.2 (1993)	Specific rates are 0, 5, 10-15, 20 and 30-35%. Recent reforms reduced the average from 51% in 1988. Pronounced escalation exists.
Chile	11.0 (1992)	Rates are generally uniform, except certain rates in agriculture. The average fluctuated from over 90% (1973) to 10% (1979) to 35% (1984) to 20% (1985) to 15% (1988) and to 11% (1992). Dispersion and escalation were largely eliminated by the early 1970s.
Colombia	11.0 (1992)	Rates range from 0-20% in 5 categories. In 1987, the average was 31% and there were 21 categories.
Mexico	12.5 (1993)	Specific rates are 0, 5, 10, 15 and 20%. The average was 27% in 1982 and 22.6% in 1986. There is some escalation. Dispersion was reduced.
Uruguay	21.5 (1992)	Specific rates are 0, 10, 17 and 24%, with a few exceptions at 40%. The average was simplified under 11 reforms and reduced from over 700% in 1968.
Venezuela	10.0 (1991)	The average is understated due to trade weighting. The maximum rate is 40%. The average fell from 35% in 1988. Dispersion exists.

NOTE: The introduction of the MERCOSUR common external tariffs, with certain exceptions for each country, is not expected to greatly affect the above averages for MERCOSUR countries, although tariff structures may be affected.

SOURCES: GENERAL AGREEMENT ON TARIFFS AND TRADE, TRADE POLICY REVIEWS 1989-93 (data on Colombia and Venezuela); GENERAL AGREEMENT ON TARIFFS AND TRADE, *Council Overview of Developments in International Trade and the Trading System: Annual Report by the Director General*, GATT Doc. No. C/RM/OV/3/Rev.1 (May 1, 1992) (data on Columbia and Venezuela).

rates are set between 30% and 40%. With tariffs structured in this way, foodstuffs and basic commodities attract the lower rates. Intermediate products such as producer goods receive the mid-range rates. Finally, finished goods such as automobiles benefit from the higher rates and, of course, from effective rates that are even higher than the nominal rates.[27]

In the past, tariffs used by developing countries would often protect industries in which other developing countries were becoming significant exporters.[28] Presently, tariff protection by Latin American countries is primarily directed at the exports of industrial countries. Although protection can operate against their own exports,[29] Latin American countries can counter this to a certain extent with greater use of duty-drawback schemes and rebates of domestic taxes such as the VAT. Thus some of their more highly protected industries, such as the automobile industry, may also be important export industries, as in Brazil and Mexico.

Although tariff preferences were widespread throughout the region, it is difficult to describe precisely their importance in diverting trade. Each preference was established bilaterally or among groups of countries under the LAIA umbrella with different product coverage and degrees of preference.[30] The importance of these preferences may increase as countries sign more comprehensive and meaningful agreements.

Transparency could be improved by using a consistent value on which duties are applied. Most Latin American countries

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27. For example, one study showed that 1994 Brazilian tariffs on automobiles would move to an average of 34.2%, while the effective rates would be 62.5%. Honorario Kume & Guida Piani, The Politics of Protection in Brazil 7-8 (1991) (unpublished manuscript on file with the *Minnesota Journal of Global Trade*).

28. *See generally* J. Michael Finger & Sam Laird, *Protection in Developed and Developing Countries—An Overview*, 21 J. WORLD TRADE L. No. 6, at 9 (1987).

29. KENNETH W. CLEMENTS & LARRY A. SJAASTAD, HOW PROTECTION TAXES EXPORTERS 49 (Thames Essay No. 39 for the Trade Policy Research Centre, 1984).

30. A description of LAIA preferences is contained in a series of biennial reports to the GATT. *See, e.g., Latin American Integration Association (LAIA): Report on Activities 1989-1990*, GATT Doc. L/6946 (Dec. 20, 1991); GATT Doc. L/6985 (Mar. 5, 1992). LAIA preferences are also discussed in GATT TRADE POLICY REVIEWS. As an example, Bolivia, as a least developed country, benefits from this association by receiving bilateral preferences for certain products, sub-regional preferences and expanded preferences on an LAIA-wide basis. GENERAL AGREEMENT ON TARIFFS AND TRADE, TRADE POLICY REVIEW OF BOLIVIA 1993, vol. I, at 62 (July 1993).

continue to apply the Brussels Definition of Value under the Customs Cooperation Council rather than the GATT definition under the Customs Valuation Code.[31] The Brussels definition is more flexible in deciding the value for duty and need not conform to the transaction value, whereas the GATT Code places a greater emphasis on the transaction value as the value for duty. This means that the ad valorem rate as stated in customs tariffs may be substantially lower than the ad valorem equivalent of the rate collected concerning the transaction value.[32] Under the Single Undertaking of the Uruguay Round, however, members of the new World Trade Organization (WTO) will be obliged to apply the customs valuation rules of that organization as derived from the GATT system. Reference prices similarly increase the ad valorem equivalent of collected duties and have been very important in some countries.[33] Variable levies, which have similar effects, are less important in Latin America and will be phased out under the Uruguay Round commitments on agriculture.[34]

III. THE DECLINE OF NON-TARIFF MEASURES

In the past, non-tariff measures (NTMs) were typically broad-based licensing systems, affecting all imports, and supported by strict foreign-exchange controls. Almost all imports needed a prior license from the authorities who used the license applications to check on the expected level of imports. The authorities refused license applications if the expected level of imports exceeded a predetermined quota. As often as not, authorities would not decide the permitted level of imports in

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31. The General Agreement on Tariffs and Trade: Implementation of Article VII—Customs Valuation, Apr. 12, 1979, art. VII, 34 U.S.T. 1151-1, 1151-3 to -13, 1235 U.N.T.S. 126 (entered into force Jan. 1, 1981).

32. For example, if the export price or declared transaction value for an item is $100 and the customs duty is 15%, the duty is $15. However, if Customs determines that the value for duty is $200, then the duty is $30, or 30% of the actual transaction value. Most customs services have confidential reference manuals which they use to check the declared value against what they believe to be the export price in the country of origin. These are used to counter fraud, whether by under-declaration (to avoid customs duties) or over-declaration (to move money out of the country). In some cases, these may be more or less formal reference prices intended to provide protection to domestic production against price fluctuations, whether from exchange rate movements or otherwise, or to counter dumping.

33. *See infra* note 40 and accompanying text.

34. Agreement on Agriculture, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS at 39, GATT Sales No. 1994-4 (1994).

advance; instead, they would modify the level during the year according to the availability of foreign exchange.[35] Licensing systems thus provided comprehensive administrative controls so imports could be quickly curtailed, when required, for balance-of-payments purposes.[36]

Table 2 shows that for selected Latin American countries the current share of trade covered by NTMs is 10.8%. This share is lower than that for major OECD countries, and agricultural "tariffication"[37] in the Uruguay Round implementation will further reduce this share. (The new, higher tariffs on agricultural items, however, will also have the effect of increasing total tariff averages). Latin American countries thus have moved away from volume-control measures and toward greater use of price control and monitoring measures. However, customs valuation methods and government procurement procedures remain important measures that are now coming under greater international disciplines. Foreign exchange allocations have generally been liberalized, exchange rates have been unified and, even where parallel markets still exist, premiums over the official rate are small or have disappeared completely.[38]

In Table 2, Brazil and Mexico stand out due to the continued presence of state monopolies and non-automatic licensing, which includes local content regulations and export-performance requirements in the UNCTAD classification. Measures against imports not covered in Table 2 include reference prices, customs valuation procedures, supplementary and even discriminatory charges on imports, technical barriers, and government procurement procedures. Previously, developing countries usu-

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35. For this reason, many central banks in Latin America had, and often still have, an important influence on trade policy and its application.

36. The broad-based use of licensing systems contrasted with the situation in industrial countries where measures were used to protect specific sectors subject to rapidly shifting comparative advantage. *See* U.N. CONFERENCE ON TRADE & DEVELOPMENT, PROTECTIONISM AND STRUCTURAL ADJUSTMENT IN THE WORLD ECONOMY: REPORT BY THE UNCTAD SECRETARIAT at 6, U.N. Doc. TD/B/888/Rev.1, U.N. Sales No. E.82.II.D.14 (1982); *see also* SAM LAIRD & ALEXANDER YEATS, QUANTITATIVE METHODS FOR TRADE-BARRIER ANALYSIS 98-120 (1990).

37. "Tariffication" refers to the replacement of agricultural NTMs, such as import quotas or variable levies, with tariffs or tariff rate quotas that provide an equivalent level of import protection. In general, this requires increasing the existing nominal tariffs in the agricultural sector.

38. Nominal exchange rates, however, are subject to different policies such as pegging to the U.S. dollar (Argentina), crawling pegs (sometimes preannounced as with Mexico until the 1994 currency crisis), or managed floats (Brazil). INTERNATIONAL MONETARY FUND, EXCHANGE ARRANGEMENTS AND EXCHANGE RESTRICTIONS: 1994 ANNUAL REPORT 588, 591 (1994).

Table 2. Types of Non-Tariff Measures Imposed by Individual Latin American Countries Against the World (1991)

Country	Total Imports 1988 US$ million	Trade covered by non-tariff measures (%)						
		Total	Para-tariff	AD/CV	Var. Levies	Non-auto. lic.	Quotas Prohib.	State Monop.
Argentina	4,122.5	0.3	0	0.1	0	0.2	0	0
Brazil	20,859.9	20.9	0.5	0	0	20.4	0	20.2
Chile	7,285.2	1.9	0	0.2	1.7	0	0	0
Colombia	6,367.7	1.6	0	0	0	1.6	0	0
Mexico	22,767.6	12.9	0	1.4	0	8.6	1.0	6.2
Venezuela	8,845.3	0	0	0	0	0	0	0
Total	70,248.3	10.8	0.2	0.5	0.2	9.0	0.3	8.0

NOTE: In the "Total" row, the percentage of trade covered by different types of NTMs is a trade weighted average of the percentages for the individual countries.

SOURCE: UNCTAD Data Base on Trade Measures.

ally applied NTMs without discriminating against specific groups of trading partners,[39] though the production-sharing and economic-complementarity agreements under the LAIA favored trade with other Latin American countries. Latin American countries rarely used discriminatory NTMs, like voluntary export restraints (VERs) or multilateral financing agencies (MFAs), or antidumping actions against trading partners. The blanketing effect of import licensing reduced the need for discriminatory NTMs. In addition, where import licenses were unavailable, reference prices and other means limited imports in an administrative manner. The current shift away from quantitative restrictions makes NTM preferences much less significant.

Previously, reference price systems or special customs valuation procedures were often used to protect domestic industries against sudden price decreases, which were perhaps due to "dumping" but more likely were associated with abrupt changes in bilateral exchange rates. These price systems were not included in the UNCTAD database shown in Table 2. Uruguay is one country that made great use of reference or minimum export prices.[40] Uruguay's experience shows that such price systems cause major distortions in consumption and production by encouraging foreign firms to sell more expensive products to that country's importers, inducing domestic producers to shift to lower quality goods, and encouraging domestic consumers to buy more expensive goods.

Though reference prices are largely disappearing, they sometimes appear because of antidumping actions—actions becoming more common as Latin American countries follow the example of the United States. Regarding the United States, J. Michael Finger and Tracy Murray note that "unfair trade cases are where the action is because they are broad enough to handle all the action."[41] Antidumping is considered a "respectable" and legitimate way under the GATT[42] of coping with import surges

39. Finger & Laird, *supra* note 28, at 18-22.

40. *See* FEDERICO CHANGANAQUÍ & PATRICK MESSERLIN, THE ECONOMIC EFFECTS OF MINIMUM IMPORT PRICES (WITH AN APPLICATION TO URUGUAY) 13 (The World Bank, Policy Research WPS No. 903, 1992).

41. J. MICHAEL FINGER & TRACY MURRAY, POLICING UNFAIR IMPORTS—THE U.S. EXAMPLE 20 (The World Bank, Policy, Research, and External Affairs WPS No. 401, 1990).

42. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, pmbl., GENERAL AGREEMENT ON TARIFFS AND TRADE, 26th Supp. BISD 171 (1980) (entered into force Jan. 1, 1980) (agreeing that "anti-

in a country-specific manner while avoiding the MFN application of GATT Article XIX safeguard actions.[43] (Avoidance of exchange-rate devaluation may be preferred because of possible adverse effects on domestic inflation). According to the rhetoric, antidumping measures are intended to counter the "unfair trade practices" of other countries.[44] Some developing countries, such as Argentina, Brazil, Chile and Mexico, include sunset clauses in their antidumping legislation. These clauses and other increased disciplines may limit the use of antidumping measures because of some tightening of the provisions of the Antidumping Code in the Uruguay Round.[45] The comprehensive membership required by the Single Undertaking may help to further limit antidumping measures through increased reporting and international scrutiny of the use (or abuse) of these measures. Prior to the end of the Uruguay Round, only Argentina, Brazil and Mexico had accepted the Antidumping Code.

Most countries use constructed customs values as the basis for assessing customs duties. Pre-shipment inspection agencies often provide the relevant information for calculating such values. Once established, often at levels much higher than currently prevail in world trade, customs values can remain constant and operate similarly to reference prices by isolating a domestic industry from price variations, including secular decline, in international trade. New disciplines emerging from the application of the Uruguay Round agreements will provide for important changes in working procedures and the level of protection.

There are a variety of reasons why import prices are often unduly high. First, many additional charges, ad valorem or specific, are applied to imports. These additional charges include:

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dumping practices should not constitute an unjustifiable impediment to international trade").

43. GATT 1947, *supra* note 4. Article XIX does not explicitly state that safeguards must be applied on an MFN basis, although this has been the practice.

44. *See* Robert E. Hudec, *"Mirror, Mirror, on the Wall": The Concept of Fairness in United States Trade Policy*, *in* PROCEEDINGS OF THE 1990 CONFERENCE OF THE CANADIAN COUNCIL ON INTERNATIONAL LAW 88, 90 (1990). Hudec indicates that unfairness claims are rhetorical devices used by both proponents and opponents of antidumping duties. In truth, Hudec states, fairness has little to do with either position, as trade goals motivate antidumping and other measures. *Id.*

45. Agreement on Subsidies and Countervailing Measures, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS at 264, GATT Sales No. 1994-4 (1994).

consular charges; port charges often unrelated to port costs; stamp taxes that sometimes barely, if at all, cover the labor costs of physically sticking stamps to the backs of checks; statistical taxes that do not always produce timely statistics; and freight taxes levied on the freight cost of imports. Not all of these taxes are genuine fees related to the provision of a service; some were introduced by cash-strapped governments to extract revenues. The charges do not appear to have been challenged under GATT Article VIII. (In principle, charges, other than for specific services, are intended to be consolidated into the Uruguay Round bound tariffs, and this may lead to the elimination of some of these charges). Second, in some countries the application to imports of a charge equivalent to the domestic VAT is not uniform, as required by GATT Article III. Finally, there are examples of higher internal freight charges for imports than for exports over the same route.

Often the ad valorem incidence of supplementary charges exceeds the ad valorem incidence of the tariff itself. In Brazil, for example, the tax incidence of the Industrialized Products Tax (IPI) and the Merchandise Circulation Tax (ICMS) amounts to 100% on an automobile while the customs duty is currently 50%. The supplementary charges relate to the following: (1) port services, 50% of the cost of services; (2) the port improvement tax, 3% of the c.i.f. value; (3) the merchant marine renewal tax, 25% of the c.i.f. value on the first landing and 20% on subsequent landings; (4) an import license fee, 1.8% of the f.o.b. value; (5) a syndicate fee, 2.2% of the c.i.f. value; (6) a brokerage fee, 1% of the c.i.f. value; (7) a fee for printing forms, a flat US$17; (8) an administration commission, 1.5% of the c.i.f. value; (9) a 5% airport tax; (10) a fee for handling charges, currently US$20; and (11) a social benefits contribution, 10% of warehouse charges.[46] Brazil is not alone in having such a broad range of charges.

Technical barriers to trade, like health and safety regulations, have been relatively less important obstacles to importing into developing countries. There are signs, however, that many countries are increasing the use of these regulations. While there are some indications that these regulations are used for protective purposes, there is also a legitimate concern that substandard or out-of-date articles are sold to developing countries when they can no longer be sold by the exporters of industrialized countries in their home markets.

46. GENERAL AGREEMENT ON TARIFFS AND TRADE, TRADE POLICY REVIEW OF BRAZIL 1992, vol. I, at 124-26 (1993).

Government and para-statal procurement practices in several Latin American countries are of particular concern due to the size of the public sector in national production. In some smaller countries, like Bolivia and Uruguay, public enterprises account for more than half of national production. Such extensive government participation in production is a relic of a time when statism was all-pervasive in the region. Governments and para-statals typically grant a margin of preference to domestically produced goods (which is also allowed for projects financed by UNDP and the World Bank). A project design or purchasing specification may be prepared so that only local suppliers can meet the requirements, thus introducing an additional bias. Undoubtedly favoritism and corruption sometimes occur in the award of contracts. These problems are countered by using independent companies, such as Crown Agents and C3D, as well as the UNDP Overseas Procurement Office, to manage procurement through the evaluation and award of tenders. Because the Uruguay Round Agreement on Government Procurement[47] is a plurilateral agreement not covered by the Single Undertaking, adherence is optional. Currently none of the Latin American countries are signatories to this agreement.

To some extent, concerns about government procurement practices will decrease as privatization of state-owned enterprises proceeds. Privatization, however, faces strong opposition in many countries, and recently faced setbacks through political and legal challenges in Brazil, Bolivia and Uruguay. Governments cannot currently privatize some sectors, especially the hydrocarbons sector, because of constitutional constraints.[48] Nevertheless, there appears to be a reduced interest in privatization, a sign of uncertainties in the industrialized world and alternate opportunities in other regions where reforms are taking place (i.e., Eastern Europe, the former Soviet Union, and India).

47. Agreement on Government Procurement, GENERAL AGREEMENT ON TARIFFS AND TRADE, 26th Supp. BISD 33 (1980) (entered into force Jan. 1, 1981) [hereinafter Government Procurement Code]. This Agreement was adopted as part of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS at 438, GATT Sales No. 1994-4 (1994). A revised text, expected to enter into force on January 1, 1996, is contained in document GPR/Spec/77 (Dec. 15, 1993).

48. *See, e.g.*, MEX. CONST. art. 27.

Domestic competition policies could come under scrutiny, though they are not yet major issues throughout the hemisphere. The monopolistic character of Latin American industry may cause distribution problems for foreign countries trying to penetrate Latin American markets. Typically, antitrust laws in Latin American countries do not exist or are not applied.[49] Much of industry, whether state-owned or tolerated monopolies and oligopolies, charges what the market will bear. Foreign competition will likely reduce this problem of monopoly rents. However, for governments embarking on policies of trade liberalization, market imperfections will not be easily countered, especially in the short run. In October 1991, Argentina was forced to deregulate its economy because the benefits of its trade liberalization were not being passed on to consumers. Peru recently began to vigorously carry out its antitrust laws to help ensure competition within the domestic economy.

Table 3 shows an overview of the sectoral breakdown of trade measures imposed by the Latin American countries covered in Table 2. Non-automatic licensing and state monopolies affect the importation of food and live animals, and the importation of fuels and automobiles. Few measures affect the importation of manufactured goods, except in the automotive sector where local content plans and export-balancing requirements still exist to reinforce the performance requirements of investment laws. Several countries continue to protect their automotive assemblers through a combination of quotas, local-content provisions, and export-performance—including trade-balancing—requirements. Generally, the restriction on imports of assembled vehicles drives up the domestic price of finished vehicles. While this encourages domestic production, the local-content requirements and export-balancing requirements increase the cost of production for the manufacturers.[50] In addition, several countries ban the importation of used cars. Automobiles are often four times the domestic price prevailing in the U.S. market. Although most domestic companies are subsidiaries of European or U.S. manufacturers, the parent companies seem to favor these rules as protecting their local

49. Some countries in the region have adopted UNCTAD's proposed "model law" on restrictive business practices, but there is little indication of serious application.

50. For a review of protective regimes in Latin America, see THE POLITICAL ECONOMY OF THE LATIN AMERICAN MOTOR VEHICLE INDUSTRY (Rich Kronish & Kenneth S. Mericle eds., 1984).

Table 3. Sectoral Coverage of Non-Tariff Measures Imposed by Selected Latin American Countries Against the World (1991)

Product	Total Imports 1989 US$ million	Trade covered by non-tariff measures (%)						
		Total	Para-tariff	AD/CV	Var. Levies	Non-auto. lic.	Quotas Prohib.	State Monop.
All food items	7,885.7	24.4	1.3	0	1.5	14.4	2.7	11.8
- Foods and live animals	6,224.6	30.0	1.7	0	1.3	18.0	3.4	14.9
- Beverages and tobacco	279.3	3.5	0	0	0	3.5	0	3.4
- Animal, vegetable oils	785.3	0	0	0	4.9	1.2	0	0
Agric. raw materials	2,636.7	1.6	0	1.4	0	0.2	0	0
Ores and metals	6,359.8	3.0	0	3.0	0	0	0	0
- Iron & steel	2,924.1	6.5	0	6.5	0	0	0	0
Fuels	7,862.2	63.2	0	0	0	62.3	0	59.5
Chemicals	11,593.2	1.2	0	0.3	0	0.9	0	0
Manufactures	33,511.1	0.9	0	0.3	0	0.6	0.1	0
- Textile yarn & fabrics	1,278.9	0.4	0	0.4	0	0	0	0
- Automobiles	735.7	11.3	0	0	0	11.3	0	0
All except fuels	62,303.5	4.2	0.2	0.6	0.2	2.3	0.4	1.5
Total	70,248.3	10.8	0.2	0.5	0.2	9.0	0.3	8.0

SOURCE: UNCTAD Data Base on Trade Measures.

investments.[51] Such measures also provide a subtle form of protection against Japanese manufacturers. To some extent, however, this protection is undercut by the apparent consolidation of the Southern Common Market (MERCOSUR)[52] as a precursor to a more open market in the Cono Sur.

Direct export or production subsidies (i.e., financial grants), used to varying degrees, were typically less important than other subsidy elements that encouraged domestic export-oriented investment, including tax rebates and export finance schemes. In addition, state-owned manufacturing enterprises operated under less than full cost recovery, and occasionally still do, such as the iron and steel sectors. Most developing countries are currently eliminating or reducing the deficits in central government or consolidated public accounts, and thus can no longer afford direct government payment schemes. The emphasis has shifted to the precise rebate of domestic taxes (partly to avoid countervailing action), temporary admission schemes, and the improvement of infrastructure facilities by privatizing ports, railways, shipping, and service industries such as banking and telecommunications that provide inputs to the manufacturing sector.

Countries still using direct or indirect export subsidies include Colombia, Costa Rica and Venezuela. On the other hand, several countries apply export taxes. Argentina continues to apply a 6% tax on oilseeds exports, in addition to a 10% statistical tax (also on imports), and a 1.5% tax on all agricultural exports to support the National Institute for Agricultural Technology (INTA).[53] Costa Rica taxes exports of bananas and coffee.[54]

Export restrictions or taxes on agricultural products were used for a variety of reasons: to capture "monopoly rents" where a large exporter influenced world prices (i.e., exporters of oilseeds and various metals); to ensure lowcost supplies of raw materials for domestic processing industries (i.e., hides and skins); and to keep down domestic prices of foodstuffs (i.e., wheat and beef prices). Argentina continues to ban exports of raw hides and skins and tax exports of some vegetable oilseeds. Other countries have similar policies. While these practices al-

51. Some "investments" appear to be plants required to produce models previously scrapped in the developed country markets. These types of investments give the impression that the region has traveled 20 years back in time.

52. MERCOSUR, *supra* note 26.

53. TRADE POLICY REVIEW OF ARGENTINA 1992, *supra* note 22, vol. I, at 117-19.

54. TRADE POLICY REVIEW OF COSTA RICA 1995, *supra* note 24.

low the availability of items to domestic processors at prices below world levels, the practices are not considered subsidies under the GATT. Nevertheless, the practices still provoke protests among processors in industrial countries, including processors in the United States and the European Community.

IV. FUTURE DIRECTIONS

The recent commitment by the Clinton Administration to begin negotiating a Free Trade Area of the Americas (FTAA) resolved any doubts about the Administration's intention to pursue the Enterprise for the Americas Initiative. Similarly, the invitation to Chile to enter formal negotiations for accession to NAFTA quelled speculation that this agreement might be a nonstarter.[55] Doubts had previously emerged regarding U.S. commitment to further trade liberalization on a regional basis. The difficult congressional passage of NAFTA and the debate on ratification of the Uruguay Round agreements reinforced this uncertainty. It is expected that the Administration will seek a fast-track authority from the now Republican-dominated Congress before beginning serious FTAA negotiations.

Enthusiasm for an FTAA is not uniform among the developing countries of the region. Caribbean countries feel disadvantaged by NAFTA and could view the FTAA as a way of redressing the imbalance; however, they currently have stronger protectionist policies than exist elsewhere in Latin America. Brazilian officials argued that joining NAFTA would cause Latin American countries to "lose their capacity for adopting autonomous policies in sensitive areas such as investment, services and intellectual property."[56] Brazil also sees MERCOSUR, with future free trade partners in South America, as a rival to NAFTA. An FTAA would extend trade liberalization beyond that currently agreed to under the MERCOSUR common external tariff (implemented with some exceptions on January 1, 1995). Import-competing sectors, such as the capital goods sector, the automobile sector, and even the agricultural goods sector, would come under greater adjustment pressures. Finally, some countries see an FTAA as an opportunity to gain access to the U.S.

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55. *NAFTA 'Amigos' Invite Chile to Begin Accession Talks*, 11 Int'l Trade Rep. (BNA) No. 49, at 1914 (Dec. 14, 1994).

56. Stephen Fidler & George Graham, *Bonds that Bind a Hemisphere: Latin America and the U.S. Are Agreed on the Importance of Regional Trade*, FIN. TIMES, Dec. 8, 1994, at 25 (quoting Rubens Barbosa, Brazil's Ambassador to London).

market, similar to Mexico's access. Apart from the Declaration of Principles, which goes far beyond trade issues, the countries at the Miami Summit agreed on a Plan of Action.[57] The Plan calls for comprehensive agreements on tariff and non-tariff barriers to trade, agriculture, subsidies, investment, intellectual property, rules of origin, antidumping duties, sanitary standards, dispute settlement, and competition policy. The Plan asks the Organization of American States and the Inter-American Development Bank to lead future discussions, and schedules meetings of trade ministers to work on the FTAA in June 1995 and March 1996.

Prior NAFTA negotiations suggest the potential content of the FTAA.[58] The NAFTA experience and the FTAA Plan of Action are evidence that negotiations might be as comprehensive as the recent Uruguay Round negotiations. Certain issues would likely be given even more weight in the FTAA than in the Uruguay Round. While adherence to the Government Procurement Code[59] may remain optional under the WTO, the United States wants to see additional Latin American advances. The United States favors improved investment opportunities in countries where investment is subject to restrictions. Similarly, although discriminatory internal taxes have not become an issue under GATT, they would likely receive scrutiny in the FTAA negotiations.[60] Several countries thus may need to contemplate the elimination of the discriminatory application of internal taxes.

During the 1960s, Latin American countries established several regional arrangements with little success. The main efforts were the LAFTA, the Andean Pact (a subgroup of LAFTA), and the CACM. Jaime de Melo and Sumana Dhar offer several

57. Summit of the Americas, Plan of Action, Dec. 9-11, 1994 (on file with the *Minnesota Journal of Global Trade*).

58. For a discussion of the NAFTA negotiations, see FREE TRADE AREAS AND U.S. TRADE POLICY (Jeffrey J. Schott ed., 1989).

59. Government Procurement Code, *supra* note 47.

60. GATT permits the application of internal charges to imports. GATT 1947, *supra* note 4, art. III:1. Such charges, however, should not be applied to imported or domestic products so as to afford protection to domestic production. *Id.* This implies that internal charges on imported products should not be in excess of charges applied to domestic products. *Id.* art. III:2. Fees charged to cover the costs of entry procedures are permitted. *Id.* art. II:2(c). These fees, however, are not meant to provide indirect protection to domestic producers or taxation of imports or exports for fiscal purposes. *Id.* art. VIII:1(a).

reasons why these regional arrangements failed.[61] First, trade-barrier reductions were not across-the-board but on a product-by-product basis, resulting in many exceptions.[62] Second, high rates of protection were maintained against outside countries.[63] Third, there was little scope for efficiency gains, because of the inability to exploit economies of scale through product limitations, and the fact that all producers were high-cost by international standards.[64] Therefore, the early regional arrangements were essentially designed for trade diversion and resulted in a decrease, rather than an increase, in welfare. Rolf Langhammer and Ulrich Hiemenz reviewed studies of the trade effects of the arrangements and confirmed that the main result was trade diversion rather than trade creation.[65]

Before the Miami Summit, there was a resurgence of interest in regionalism extending not only to trade in goods but also encompassing trade in services and mutual investment opportunities and guarantees. Attempts are now being made to revive the Andean Group and the CACM, though some individual member states currently have lower tariffs than the external tariff: Peru and Bolivia for the Andean Group and Costa Rica for the CACM. Mexico alone has signed free trade agreements with Chile, Colombia and Venezuela, the CACM, and Bolivia. Colombia and Venezuela have signed a free trade agreement. The CACM has signed a free trade agreement with Colombia and Venezuela.

The most ambitious of these new regional arrangements is MERCOSUR, which entered into force on November 29, 1991. The treaty provided for the establishment of a common market with the free circulation of goods, services, capital and labor, beginning January 1, 1995.[66] Article 5 states that the liberalization program will consist of "progressive, linear and automatic tariff reductions accompanied by the elimination of non-tariff restrictions or equivalent measures . . . with a view to arriving at a zero tariff and no non-tariff restrictions for the entire tariff area

61. *See* JAIME DE MELO & SUMANA DHAR, LESSONS OF TRADE LIBERALIZATION IN LATIN AMERICA FOR ECONOMIES IN TRANSITION 34 (The World Bank, Policy Research WPS 1040, 1992).

62. *Id.*

63. *Id.*

64. *Id.*

65. *See* ROLF J. LANGHAMMER & ULRICH HIEMENZ, REGIONAL INTEGRATION AMONG DEVELOPING COUNTRIES: OPPORTUNITIES, OBSTACLES AND OPTIONS 22-33 (1990).

66. MERCOSUR, *supra* note 26, art. 1.

by 31 December 1994."[67] After five years, the treaty will open to new members.[68] Although each member established a few exceptions from the general liberalization, these exceptions are to be generally eliminated by the time the customs union is completed. Member countries had different perceptions about common trade and industrial policy; it took until August 1994 to establish a compromise on the level and nature of the common external tariff, effective January 1995 for 85% of trade.

Since the start of MERCOSUR, the increased level of trade exceeded expectations. The arrangement's success piqued other countries' interest in joining or forming some kind of closer association. Chile and Bolivia have now signaled an interest in joining. Brazil, in particular, views MERCOSUR as the core of a wider South American free trade area.[69] Members will negotiate with the European Union on a possible free trade agreement,[70] and there has been mention of an association with the Asian-Pacific Economic Cooperation forum (APEC).[71]

Despite previous failures,[72] there are several reasons to believe that the renewed interest in regionalism, culminating in negotiations for the FTAA, will lead to more successful results in the future. As previously discussed, countries in the region have undertaken considerable trade liberalization on an autonomous basis. The new arrangements have much less scope for trade diversion and will no longer look inward. Moreover, under the liberalization programs, the restructuring of regional industries should allow the industries to approximate world levels of efficiency. The new intra-regional trade will offer real opportunities for economies of scale and specialization. Finally, the new arrangements have greater political credibility as they are viewed as a consolidation of the unilateral reforms.

The principal challenge lies in ensuring that exceptions are kept to a strict minimum and phased out within a predetermined period according to a fixed timetable. Local-content pro-

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67. *Id.* art. 5.

68. *Id.* art. 20.

69. *See Chile Intends to Seek Membership in MERCOSUR, Foreign Minister Says*, 11 Int'l Trade Rep. (BNA) No. 23, at 911 (June 8, 1994) (noting the proposal of Brazilian President Itamar Franco for the establishment of a South American Free Trade Area to include all the countries of South America).

70. Fidler & Graham, *supra* note 56, at 25.

71. Alain Boebion, *Derniers préparatifs pour le Mercosur* [Final Preparations for Mercosur], LE FIGARO, Dec. 15, 1994, at XIII.

72. Apart from earlier unsatisfactory sub-regional arrangements, a free trade agreement in the Americas by 1985 was an ambition of the previous regional summit held in Punta del Este, Uruguay, in 1967.

visions and export-balancing requirements will probably remain for some period in the main manufacturing sector, with potential exceptions for intra-regional trade. Eventually such requirements will be limited by the Uruguay Round Agreement on Trade-Related Investment Measures (TRIMS),[73] due to be implemented within five years by developing countries. Moreover, non-adherence to the plurilateral Uruguay Round Agreement on Government Procurement[74] will remain a concern as long as important sectors (such as the iron and steel, chemicals and petrochemicals industries) continue to have high levels of state ownership. Perceived subsidization, already an international problem, could easily sour economic relations in regional agreements, because the products of these industries are homogeneous in nature and small price variations can cause large-scale switching of supplies. Problems might also arise with local preferences in government procurement, especially in countries with extensive state ownership.

Inevitably, charges and taxes levied at the frontier, other than tariffs, will become a large-scale issue. This issue first surfaced when Argentina increased the statistical tax from 3% to 10%, even against other MERCOSUR members.[75] While technically permissible under MERCOSUR, this increase was so unexpected that Paraguay announced its intention to boycott meetings under the arrangement. There is still a wide range of trade-related taxes and charges throughout the region, including some domestic taxes applied discriminately against imports.[76]

CONCLUSION

The most striking developments in Latin America in recent years are twofold. First, the extent and speed of unilateral liberalization reforms; second, the drive to consolidate those reforms through trade agreements with other countries, culminating in the FTAA proposal. Nine Latin American countries recently acceded to the multilateral system of the GATT, thereby binding some of their reforms. In the Uruguay Round, these countries

73. Agreement on Trade-Related Investment Measures, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS at 163, GATT Sales No. 1994-4 (1994).

74. *See* Government Procurement Code, *supra* note 47.

75. *What Kind of Ties Within Mercosul?* LATIN AMERICAN REGIONAL REPORTS—BRAZIL, Nov. 25, 1993, at 6.

76. *See supra* text accompanying note 46.

and other Latin American contracting parties to the GATT committed themselves to several changes in the application of antidumping measures (not all for the better) and customs valuation procedures that will ensure that the reform process moves forward. However, markets remain less contestable than desired because of the continued dominance of certain state-owned enterprises, weak government procurement procedures, and the lack of a strong competition policy. There is also a need for greater scrutiny of import charges unrelated to the cost of services and other anti-trade taxes.

The Uruguay Round brought moderate improvements in market access and greater security and protection for developing countries under the new rules and disciplines. The Enterprise for the Americas Initiative opened the enticing prospect of improved access to the U.S. market, and the FTAA Declaration and Plan of Action resolved any doubts about the intentions of the Clinton Administration. Prior doubts about U.S. intentions increased the attractiveness of regional agreements that could modestly help consolidate domestic reforms. Such agreements, including an FTAA, have their limitations, and there is a danger of disillusionment from expecting too much from them. First, there are still many trade measures that could prevent the realization of expected trade gains. Second, there is the potential abuse of escape clause provisions, like the abuse of antidumping actions to harass successful exporters. Third, recent experiences in Argentina and Brazil show that movements in relative exchange and interest rates can cause major fluctuations in trade and financial flows, producing political tensions and new trade measures, even by reform-minded governments.[77] Indeed, MERCOSUR makes explicit provisions for consultations on economic policies, although it is far from clear how coordination can be made more effective.

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77. Argentina has a fixed exchange rate anchored to the U.S. dollar, while Brazil had a floating exchange rate until the 1994 introduction of the *real*, which is also fixed to the U.S. dollar. Between 1991 and 1994, the Argentine currency thus appreciated against the Brazilian currency, making exporting to Brazil more difficult. This was partly overcome by Brazilian "special efforts" to buy more from Argentina (e.g., through state-owned enterprises). Corrective Argentinean import measures, such as an increase in the statistical tax on imports and controls on paper imports, caused severe strains within MERCOSUR. *Trouble Ahead: Mood Changes*, LATIN AM. ECON. & BUS., Apr. 1994, at 4; *Worries About Imports: IMF Targets Missed*, LATIN AM. ECON. & BUS., Oct. 1993, at 10. Since the change in Brazilian exchange rate policy, trade has become more balanced.

If implementation of the FTAA succeeds, the agreement will overtake and remove many concerns about complex, overlapping, and exception-filled arrangements within the region. Developing countries in the region will need to move further and faster than previously anticipated, particularly if accords are also reached with the European Union and APEC. A wider liberalization reduces the risks of trade diversion, although it will be more challenging than the easy seduction of sub-regional agreements. It is important to recall that these reforms were not undertaken for mercantilist goals of improved market access in trade negotiations, but rather to support macroeconomic stabilization, improved resource allocation, and reduced anti-export biases. Extensive trade agreements across the hemisphere and beyond can contribute to these goals, which can subsequently be locked in place under future WTO negotiations.