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Bilateralism and Regionalism: Re-establishing the primacy of Multilateralism a Latin American and Caribbean Perspective

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Abstract

The slow advancement of the multilateral trading system has led to a wave of preferential trade agreements (PTAs) in Latin America and the Caribbean resulting in a web of bilateral and plurilateral PTAs, with countries both within and outside the region. More than 40 trade agreements now exist in the hemisphere, in addition to other arrangements that are now being negotiated or that will be negotiated before 2006. These agreements and their negotiation processes have generated centripetal and centrifugal forces that tend to unify and divide the regional integration process. While these agreements emerge as an opportunity for signatory countries, they also generate concerns in relation to such aspects as their consistency with multilateral commitments and the broadening and deepening of trade rules and disciplines beyond those being assumed in WTO. The disciplines contemplated in the areas of interest to industrialized countries tend to be "WTO-plus", while the issues that affect Latin American and Caribbean signatories are often remitted to the multilateral negotiating forum. Hence, the multilateral level of negotiations cannot be simply replaced by a mix of bilateral and plurilateral negotiations. There is a call for a strong, complementary, mutually reinforcing process among the three (lateral, regional and multilateral) routes to liberalization and regulation. Bilateral agreements between countries or sub-regions could serve as "building blocks" when and if the precedents they establish are consistent with a comprehensive, balanced WTO that takes due account of the smaller economies' vulnerabilities. This is also true in cases where the commitments made in certain disciplines included in bilateral and sub-regional agreements facilitate the adoption of multilateral rules in the

same disciplines. Otherwise, bilateral agreements could impede the construction of a development-oriented WTO, leaving the region with too extensive a web of hub-and-spoke agreements, with high associated costs of administration, transparency and efficiency.

Introduction

Recent experience in Latin America and the Caribbean shows that the growth of exports in goods and services is a necessary, albeit insufficient, condition for promoting economic growth with social equity (ECLAC 2002, 2001). Despite some success in diversifying trade by products and markets, the region's export competitiveness is still mostly based on price differentials rooted in static comparative advantages, with low value added and little technological or knowledge content.

Moreover, the foreign sector of the region has continued to be characterized by the vulnerability that arises from volatile capital markets, contracting demand in industrial countries and fluctuating commodity prices. This vulnerability has left Governments with a reduced capacity to introduce effective countercyclical policies and with huge balance-of-payments problems that ultimately compress imports and intraregional trade.

In the light of these circumstances, the Latin American and Caribbean region's trade agenda should not only be oriented towards enhanced market access to developed countries but should also focus on the supply-side constraints that impede diversification into, and the competitiveness of, technology-intensive goods and services sectors. This two-pronged approach, also consistent with the Doha Development Agenda, should in turn result in a multilateral and regional trading system that is more supportive of sustainable development, high-quality job creation and poverty reduction, while allowing the Latin American and Caribbean countries to manage policy and to build capable trade-related institutions.

The slow progress of the multilateral trading system has led to a wave of preferential trade agreements (PTAs) worldwide. The region continues to negotiate a web of bilateral and plurilateral PTAs, including the Free Trade Area of the Americas (FTAA),[1] with countries both within and outside the region. More than 40 trade agreements now exist in the hemisphere, in addition to other arrangements that are now being negotiated or that will be negotiated before 2006.[2] These agreements and their negotiation processes have generated centripetal and centrifugal forces that tend to unify and divide the regional integration process.

These agreements emerge as an opportunity for signatory countries, but they also generate concerns in relation to such aspects as their consistency with multilateral commitments and the broadening and deepening of free trade agreement (FTA) concessions beyond those being assumed in WTO (i.e., WTO-plus disciplines). The disciplines contemplated in the areas of interest to industrialized countries tend to be "WTO-plus", while the issues that affect Latin American and Caribbean signatories are often remitted to the multilateral negotiating forum. Hence, the multilateral level of negotiations cannot be simply replaced by a mix of bilateral and plurilateral negotiations. There is a call for a strong, complementary, mutually reinforcing process among the three (lateral, regional and multilateral) routes to liberalization and regulation.

In order for these sub-regional, plurilateral and hemispheric agreements to become more compatible with the multilateral trading system, the multilateral system itself should become more supportive of development, taking into account structural and emerging asymmetries between developed and developing countries and among the latter countries as well. The rules should fully accommodate the "developmental, financial and trade needs" of developing countries and provide them with sufficient policy scope (UNCTAD 2003b, p.19). At the same time, the countries of the region should maintain a certain margin of flexibility within the WTO, sub-regional and FTAA disciplines to adopt active policies for productive development in order to increase their systemic competitiveness.

Open-trade policies can foster growth through greater productivity in investment and import competition, which can lead to a better allocation of resources and greater foreign investment flows aimed at capitalizing upon new trade opportunities. Nevertheless, it has to be complemented not only with better institutional environments and macroeconomic policies but also with public policies oriented towards a deep form of productive development (ECLAC 2004a). This is the essence of "Open Regionalism" that ECLAC has been endorsing over a decade.[3]

[1] With a population of 800 million people and a GDP of almost $ 11 trillion dollars, FTAA is one of the most ambitious projects ever proposed by the Latin American and Caribbean countries (excepting Cuba), along with Canada and the United States. If it is created, it will become the world's largest free trade area.

[2] This number does not include non-reciprocal trade agreements, of which there are five in the Americas: the Caribbean Basin Initiative, the Andean Trade Preferences Act, CARIBCAN and the agreements between CARICOM and Venezuela and CARICOM and Colombia. The "partial scope" agreements negotiated under the Latin American Integration Association (ALADI) are not included either.

[3] Ten years ago, ECLAC first introduced the concept of open regionalism as an effective "process of growing economic interdependence at the regional level, promoted both by preferential integration agreements and by other policies in a context of liberalization and deregulation, geared towards enhancing the competitiveness of the countries of the region and, in so far as possible, constituting the building blocks for a more open and transparent international economy" (ECLAC 1994, p.8).

I. Regional Perspectives on the Multilateral Trading System and Doha Development Agenda

A. Multilateralism vs. Regionalism: the latter as a "Building Block" or "Stumbling Block" for the former

As acknowledged in the recently published WTO Report of the Consultative Board to the Director General (WTO 2004), nearly five decades after the founding of the GATT, the principle of non-discrimination characterized by the Most Favored Nation (MFN) clause ceased to be the rule of international trading system. While much trade between the major economies still takes place on an MFN basis,[4] the proliferation of PTAs involving customs unions, regional and bilateral FTAs (RTAs and BTAs respectively) and other arrangements, has made MFN treatment an exception rather than the rule. "Certainly the term might now be better defined as LFN, Least-Favoured-Nation treatment" (p.19). In fact, by the time of WTO creation, "the principle of non-discrimination had been badly dented" by many countries that grant concessional market access under either Article XXIV, the Enabling Clause, Generalized System of Preferences (GSP) schemes, or other trade arrangements. As a piece of

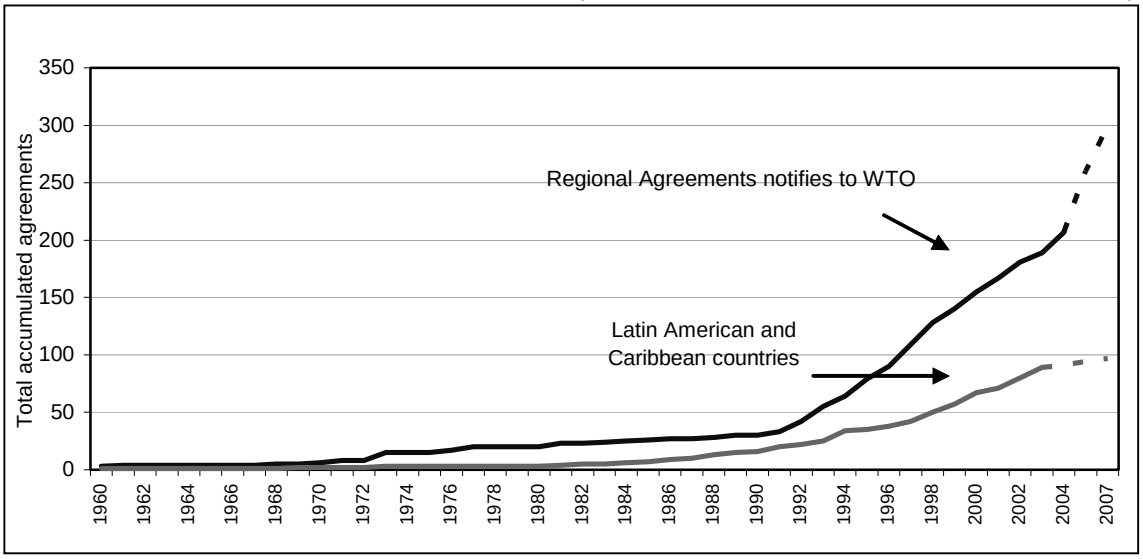
[4] The extent to which these arrangements have been used can be illustrated by the fact that the European Union now has its MFN tariffs fully applicable to only nine trading partners (Australia, Canada, Taiwan Province of China, Hong Kong, China, Japan, Republic of Korea, New Zealand, Singapore and the United States. All other EU trading partners are covered by some types of PTAs.

evidence, the number of PTAs was on a steady rise even before the creation of WTO in 1995, and it has mushroomed since then. Latin America and the Caribbean has been an active participant in this process (see figure 1).[5] According to World Bank calculations, nearly all countries belong to at least one RTA, and some are party to numerous agreements. On average, each country belongs to six RTAs, most active being those of Eastern Europe, Northern Africa, and Latin America. Not only the number of PTAs is on a rise but also the configuration of RTAs/BTAs is quite diverse and becoming increasingly complex with overlapping PTAs and networks of RTAs spanning within and across continents at the regional and sub-regional levels. One interesting aspect is the emergence of PTAs among key developing countries, which may be a piece of evidence of strengthened of South-South trade, specially in Asia, where the Republic of Korea, China, Indonesia, Singapore, Thailand, and lately India are very active (Arashiro, Marin and Chacoff, 2005).

Figure 1

RTAS REPORTED TO THE WTO, 1960-2004 AND PROJECTED FOR THE END OF 2007

(World Total and Latin American and Caribbean countries[a])



Source: ECLAC, Division of International Trade and Integration, based on WTO

a Include GATT, Art. XXIV (trade in goods); GATS, Art. V (trade in services), and the Enabling Clause (regional integration between developing countries)

In parallel to the above process, over the years the multilateral trade agenda has undergone significant changes, progressively shifting from negotiations on reciprocal tariff reductions to the inclusion of "behind-the-border" measures and substantially increasing the need for, and changing the nature of, special and differential treatment (SDT) and development policy flexibility. These changes have increasingly encroached upon countries' domestic rules, legislation and institutions, leaving little scope for national autonomy. In the above process, the "single undertaking", which was one of the most important innovations in the Uruguay Round and which was also applied to the FTAA process until very recently, has become a negotiation norm. This differs substantially from the "code reciprocity" approach adopted in previous rounds of multilateral trade negotiations,

[5] As of January 2005, 312 RTAs/PTAs have been notified to the GATT/WTO, 196 of which were notified after January 1995. Of these, 170 are currently in force and additional 65 are estimated to be operational, though not notified. By the end of 2007, if all PTAs reportedly planned or already under negotiation are concluded, the total number of PTAs in force could reach 300 (WTO 2004; Crawford and Fiorentino. 2005).

whereby countries could choose which of the various agreements (or "codes") they would sign and implement. While the major GATT principle of non-discrimination is being increasingly dishonored, the practice of leveling the playing field based on the principle of reciprocity has gained strength. At the same time, the granting of "national treatment" and the multiplicity of reciprocity-based FTAs among different levels of development has become the general rule.

The proliferation of RTAs/BTAs has in a sense reflected frustration of many governments with the multilateral system and its approach. Proponents of PTAs have justified these agreements on the ground that groups of countries, smaller than the full membership the WTO, may reduce the complexity of full multilateral negotiations and thus make progress more feasible and even desire to develop trade relationships that are "broader" and "deeper" than what are achievable on a global scale. In the view of many, this approach, along the line of "Open Regionalism", can provide the needed push to the slow-moving multilateral system. They also consider that the reverse of the "WTO-plus" effect can also take place, in the sense that resolutions made at the WTO level, such as the reduction of the bound tariff rate at the Uruguay Round, can become starting points for tariff-reduction programs in RTAs/BTAs. These agreements might give spillover effects on other FTAs, resulting in increasing liberalization commitments, as happened in the case of the Chile-Canada FTA, which raised the bar for the rapidly aging Chile-Mexico agreement, thus leading to its upgrade in 1998 from an Economic Complementation Agreement (ECA) to an FTA.

Critics of PTAs, on the other hand, have based their arguments basically on three accounts: a) complexity; b) trade-offs between PTAs as "building blocks" or "stumbling blocks; and c) concerns on the "behind-the-border" issues (WTO 2004; Crawford and Fiorentino 2005):

1. Complexity

This criticism is related to the complexity of administrating different PTAs (the so-called "Spaghetti bowl" phenomenon). Multiple preferential rates are being applied to multiple trading partners, with different tariff elimination schedules to reach effective zero tariffs or low-duty preferential rates. Each country that is Member of a particular RTA/BTA maintains its own tariff structure vis-à-vis third parties. The administration of preferential rules of origin is also complex and in many cases inconsistent; in the absence of harmonized rules of origin, "local value-added" or "transformation" test criteria are being established arbitrarily. These complexities and administrative costs involved are particularly burdensome for small- and medium-sized firms and small traders, particularly of those in developing countries.

It should be reminded that the costs of having a myriad of agreements derive from the problems not only in achieving coherence and convergence among agreements, but also in coordinating negotiators efforts, and in monitoring the negotiation and implementation processes, as well as using effectively the dispute settlement mechanisms. There also exists a problem that decision makers of the private sector must reach consensus on a complex, and often conflictive, business prospect that results from various negotiations. At the same time, the multiplicity of negotiation areas requires the availability of highly capable professionals in distinct areas on different geographical fronts. Also, the incorporation in this process of interrelated, multiple negotiation areas calls for participation of government officials from various ministries and departments and articulation of their coordinated efforts with other economic agents, particularly of the private sector (Jara 2001, Kuwayama 2003). The costs involved in the diversion of skilled and experienced negotiation resources into PTAs, especially for developing countries, are usually too great to permit adequate focus on the multilateral stage.

2. “Building blocks ” or “stumbling blocks”

The second issue is the question of PTAs being “building blocks ” or “stumbling blocks” in achieving greater market access at the multilateral level. The possibility for the former is greater when open-membership to the group is assured, but this is not the case in most situations. One important ingredient of this argument is “competitive liberalization”,[6] which essentially suggests that PTAs with the so-called "can-do" countries will stoke a desire for additional deals and create the building blocks for a more liberalized global trade network, and that participation in PTAs encourages liberalization on multiple fronts and contributes to innovative policies in areas such as investment rules and market regulation. According to this strategy, “PTAs would continue to expand and to merge until one single PTA encompassing the whole world is left. Basically, the fear of being excluded from narrower deals can induce non-member countries to join the group or/and to accept a broader agreement.” (Andriamananjara 2003, p.5). In the context of the western hemisphere, for instance, NAFTA preferences among its three member countries would encourage other countries in the hemisphere to become part of the FTAA, as the FTAA itself would stimulate a multilateral round of trade liberalization.

The Consultative Board to the WTO Director General (WTO 2004a) is of the opinion that while there may be some truth to this proposition, the unregulated proliferation of PTAs tends to create vested interests that make it more difficult to attain meaningful multilateral liberalization. Also, the last generation of PTAs tends to divert attention from the still core-issues for developing countries of market access to trade in goods and services. These agreements are creating complex networks of trade regimes potentially undermining transparency and predictability in international trade relations. Therefore, “while the so-called “WTO-plus” PTAs may act as testing grounds for new multilateral trade policy disciplines and regulations, the discretion enjoyed by PTA parties in designing such regulatory regimes can strike a serious WTO minus note for the multilateral trading system.” (p.23).

3. “Behind-the-border” issues

Another related concern is that the injection of “behind-the-border” issues (intellectual property rights, labor and environmental issues in particular) into PTAs might serve as “prototypes” for future PTAs and act as forerunners of new demands in the WTO. As an increasing number of countries concede non-trade provisions in their PTAs, these WTO member countries become less hesitant to stand against demands for their eventual inclusion into the multilateral rules and disciplines. In the western hemisphere, many FTAs mimicking the NAFTA are a good example of this “template” phenomenon. If such rules and disciplines “cannot be justified at the front door of the WTO, they probably should not be encouraged to enter through the side door” (WTO 2004a p.23) of the RTAs/PTAs.

The above discussion is a good illustration of the magnitude of WTO’s difficulties in advancing toward the goal that its rules create trade among RTAs members without discrimination against third parties.[7] This goal has been addressed in the Doha Round negotiations through the consultations on RTA disciplines and procedures as well as under the “development dimension” umbrella.

The above-mentioned report (WTO 2004a) also casts doubt on the effectiveness of SDT. Although SDT is part of the WTO obligations and remains a valid concept, it also recognizes that its administration has not been free of problems. The report is emphatic in saying that empirical

[6] The term “competitive liberalization” was coined by Fred Bersgten (1996).

[7] WTO provisions that rule the compatibility of RTAs and other PTAs with the multilateral system are Article XXIV of the GATT, the Enabling Clause, and Article V of GATS (WTO, 1995).

studies of the impact of GSP schemes suggest little benefit accruing to developing countries via such preferences, and that in the more rapidly growing countries such as the Republic of Korea, Taiwan Province of China, and others, there is little evidence that SDT has played much of a role in their trade performance (p.25). In practice, the GSP recipient countries have been burdened with obligations unrelated to trade, which are often expressed as conditions to receiving such preferences. In short, by accepting discriminating preferences, the GSP-eligible countries may be called upon to accept what are principally developed countries' "behind-the-border" agendas and other conditions. In addition, the interests of grantor, rather than grantee, countries have tended to determine the product coverage and the GSP preference margins. Many areas of potential comparative advantage of developing countries have been subject to tight tariff quotas and strict rules of origin, apart of modest preference margins. In addition, GSP beneficiaries tend to be trapped to become dependent on preferences at the cost of industrial and agricultural diversification (p.26).

The foregoing comments are part of the debate on the development dimension in the Doha Round that involves basically two areas: i) implementation of the Uruguay Round Agreements (URAs); and ii) special and differential treatment (SDT). Regarding the first, a Doha decision established several specific tasks in negotiation and studies on matters corresponding to several URAs. With respect to the second, debates have been focused on how to reinforce the existing provisions in order to make them more precise, effective and operative.[8] Both tasks have been complemented by work programs on the areas of great interest to developing countries. —small economies; trade, debt and finances; and transfer of technology—, as well as the provisions to reinforce technical assistance, capacity building and special measures for the Least-Developed Countries (LDCs). Admittedly, all these tasks have made little progress since the Cancun Ministerial: the negotiation agenda has been focused mainly on market access —in agriculture and others—, and some new normative matters. Also, little progress has been made on the issue of classification of developing countries, a topic on which developed countries have been quite vocal. The lack of convergence in all these areas has resulted in successive prorogations of the established negotiation schedules for areas that are high priorities for developing countries.[9]

As the WTO report concludes, governments should be conscious of the damage being done to, and serious ramifications for, the multilateral trading system before they embark on new discriminatory initiatives. If the motivation is to promote "behind-the-border" agendas or simply to wish to "catch up" with others or follow suit, they should show restraint in pursuing PTAs (p.26). On the other hand, PTAs are a today's reality and are here to stay; existing PTAs cannot be eliminated or scale-downed and new ones cannot be prohibited. In this sense, it is important that stipulations regarding Article XXIV be clarified and a better–organized means of administering the provisions on PTAs be put in place. Nonetheless, a much more effective remedy is to attack the adverse effects of discriminatory preferences through meaningful reduction and/or total elimination of MFN tariffs and non-tariff barriers in multilateral trade negotiations, principally by developed countries.

B. The multilateral negotiation agenda of the Latin American and Caribbean countries

Governments in the region perceive a serious imbalance between the rights and obligations and between the costs and benefits for the different groups of countries of fulfilling their

[8] Those areas refer basically to the provisions on providing greater trade opportunities, safeguarding the interests of developing countries, and conceding greater flexibility and timetables to comply with the commitments by these countries.

[9] This issue has been debated in the Committee on Trade and Development (see WTO document: TN/CTD).

commitments under the URAs. The export sectors of interest to them are not only slow to open, but they often do so in conjunction with the introduction of measures that undermine earlier obligations. This is particularly true of the agricultural sector, but it is also the case for contingency protection mechanisms and even the resurrection of "voluntary export restraints" in sectors where the countries of the region have been successful in conquering the markets of industrialized countries. While Haiti is the only country in the region that is classified as a least developed country, all the countries of the region are working to achieve a more competitive form of integration into the world economy, and to do so, they need time, resources and a supportive environment for creating employment and promoting growth in their economies.

Numerous studies that evaluate the welfare impacts of the URAs and potential benefits and costs of the Doha Round outcomes conclude that the most significant impact will be attributed to agricultural liberalization and the largest welfare gains will be in market access liberalization of this sector. However, this sector is characterized by marked heterogeneity even among the countries of the region; some are major exporters at the global level while others are net importers of these products and some developing countries still maintain high levels of protection in agriculture. Estimates on gains from trade facilitation also vary significantly. In addition to the problem of market access, there is a concern among developing countries on the costs of and difficulties in implementing their commitments, especially of a normative nature. In recognition of Finger and Schuler (1999) study on possible implementation costs of URAs,[10] there has been increasing awareness among the countries in the region that this task would require large human and financial resources because implementing the commitments already made and those are in negotiation would involve far-reaching reforms in their institutional systems.

For the countries in the region, the Uruguay Round commitments may have fallen basically upon the wide-ranging reforms of the 1980s. This might mean that, in general terms, they did not entail high adjustment costs for these countries, except in some specific areas such as intellectual property rights or specific subsidies (Lengyel and Ventura, 2004). This generally accepted view is now complemented by more recent studies, which show that adjustment costs highly depend on the area of policy reform, the initial capacity with which the country starts, as well as the degree of adjustment required relative to political priorities and needs of the country in question. The study on Argentina, for example, illustrates that the implementation processes were very institution-intensive and costly, and called for complementary policies as well as a broader and more active engagement of the private sector (Lengyel, 2005). It concludes that the WTO framework usually has a bias toward a particular institutional arrangement, and that policy space to address their development needs is often curtailed. For these reasons as well, the capability of WTO to construct solid trade rues is now being challenged, not only by its own limited accomplishments so far, but also its lack of vision on what an appropriate global trade architecture should consist of and how to construct it.

The Doha Declaration placed the Latin American and Caribbean region's needs and interests at the heart of the work programme. These included, *inter alia*, the outstanding implementation-related issues[11] and the need to ensure full implementation of the SDT provisions; the importance of correcting and preventing restrictions and distortions in world agricultural markets; the reduction or elimination of tariff peaks, high tariffs, tariff escalation, and non-tariff barriers to export products of interest to developing countries; and the implementation and interpretation of the TRIPS Agreement in a manner supportive of public health. In addition, WTO members decided to address issues relating to: (i) the fuller integration of small, vulnerable economies into the

[10] The study evaluates the implementation costs of the following URAs: customs valuation, sanitary and phytosanitary standards, and intellectual property rights.

[11] Developing countries call for an accurate definition and an effective implementation of several topics of the Uruguay Round (UNCTAD 2003b, p.7).

multilateral trading system; (ii) the relationship among trade, debt and finance; and (iii) the relationship between trade and technology transfer. The Latin American and Caribbean countries were convinced that these topics should receive the same consideration as the formulation of new disciplines in areas of interest to industrial countries, such as the relationship between trade and the so-called Singapore issues. The countries of the region also saw an urgent need to address the multiple issues that operate in the interface of trade, development and globalization, such as poverty, the environment, culture, gender, migration, food security and rural development, competition, enterprise development, employment and public interest.[12]

The new round of multilateral trade negotiations initiated in Doha at the end of 2001 led to expectations in Latin America and the Caribbean that it would constitute a "Development Round". However, the two years of preparatory work and the subsequent deliberations at the Fifth WTO Ministerial Conference, held in Cancun, Mexico, in September 2003, were unsuccessful in building consensus on such major issues as agriculture, non-agricultural market access (NAMA), SDT, implementation-related questions and the Singapore issues. The Cancun conference saw the emergence of new dynamics in multilateral trade negotiations, such as issue-based coalitions of developing countries. The cementing of developing countries into issue-based coalitions led to concerns regarding their empowerment in the multilateral trading system, on the one hand, and the possible emergence of a new North-South divide in multilateral trade negotiations, on the other.[13] The Cancún setback was seen by many to undermine commitments to multilateralism and fuel the vigorous pursuit of bilateralism and regionalism.

The debates that arose in the wake of the Doha conference and, in particular, after the Fifth Ministerial Conference in Cancun, have pushed back the conclusion of this round beyond its original deadline. Very divergent positions that continued to exist in the aftermath of Cancun, together with the unlikelihood of these gaps being closed shortly, raised serious doubts on the final outcome of Doha Round. The main stumbling blocks to progress in these talks were encountered in the work on agricultural reform and the debates on the development dimension (including SDT and implementation-related issues). The Cancun Ministerial inherited this climate of discord, which was exacerbated by the controversy over the so-called "Singapore issues", which the developing countries staunchly resisted. The disagreements that had arisen after the Cancun conference were broadly resolved by a decision taken on 1 August 2004, known as the "July package".

Be that as it may, the July package did change the climate of the post-Cancun talks and steered the process in a new direction by determining a number of important matters: (i) the start of negotiations on trade facilitation, which was the only Singapore issue on which consensus was reached; (ii) an agreement to eliminate subsidies on agricultural exports, reduce and discipline subsidy-equivalent measures, secure a substantial reduction in trade-distorting domestic support and incorporate negotiations on cotton; (iii) guidelines for the liberalization of industrial goods based on bound tariffs, without admitting new sub-categories of developing countries but reaffirming the flexibility and corresponding technical assistance required by those countries; and (iv) the establishment of new deadlines for certain tasks, including dispute settlement, development issues and services offers (WTO, 2004b). This new orientation in turn called for new technical work to be carried out and negotiation to be made in the following months.

[12] Some of these issues are already addressed in the Doha Ministerial Declaration.

[13] At Cancun, the configuration of the various groupings and clusters, which included the G-20, attested to the conditions and active participation of the developing countries. After that conference, however, new alliances have formed that cut across the pre-existing ones. One such cluster involves a handful of WTO members, most of which are large economies from the developed and developing worlds, who have differing positions on a given issue. Other group forums are also playing an increasingly important role. These groups, which take the form of "mini-ministerial meetings" and sessions held within the framework of conferences convened by other international bodies, are helping to coordinate different parties' interests and help to move the negotiating process forward.

In the area of agriculture, it still remains very difficult to specify modalities for the three pillars of agricultural reform, since there are major differences in the countries' underlying structures, be they tariff- or subsidy-based. In addition, exporting countries are not in favor of the proposals that have been tabled for increasing the flexibility and diversification of instruments or for establishing differentiated deadlines for developing countries (which is also an aspect of modality definition), and wish to see a limit on such concessions. Lastly, the possibility of agreeing to a standstill commitment until the round is completed is another key issue. Although some progress has been made in 2005, a consensus does not yet exist regarding even a preliminary approach to the establishment of modalities in this connection. On top of this, developed economies have been challenged in various controversies to revise their policies on sensitive sectors such as agricultural domestic support.

Up to November 2005, the work on market access for non-agricultural goods had focused on modalities and technical questions such as conversion to *ad valorem* equivalents, the treatment of unbound tariffs and sectoral liberalization. Issues of particular concern to developing countries include the proposed degree of tariff binding and a cap on unbound tariffs. Along with agricultural issues, much of the work has centered on defining a tariff reduction formula and determining what flexibilities are to be extended to developing countries. These are all issues about which developed and developing countries have strongly disagreed. The last sessions of the Negotiating Group on NAMA revealed a continued lack of convergence in Members approaches. Discussions on industrial tariff reduction have hardly moved in months due to Members awaiting signals from the agriculture negotiations (Bridges, Year 9 No. 9, page 6). The pace of negotiations on services has picked up in recent months, but progress on the requests-and-offers process and in the discussions on rules and cross-cutting issues has been so slow that the talks on these matters may be reaching a crisis point.

Trade facilitation is an important area that has been brought into the negotiations on trade rules and has received many proposals from a large number of countries, North and South alike, but little progress has been made towards specific rules on antidumping and subsidies. Deadlines for the Agreement on Trade-Related Aspects on Intellectual Property Rights (TRIPs) linked with public health have been reviewed, but the proposals made by developing countries regarding the distribution of benefits do not appear to have been taken up. These issues clearly have an impact on competitiveness, and although the developing countries are in need of such regulations, they are reluctant to move forward in these areas because of the costs involved.

With regard to cross-cutting institutional matters, some headway has been achieved on development issues with the incorporation of the cotton initiative, but less progress has been made in other areas of work; the talks on the constraints affecting developing countries, particularly in regard to implementation-related issues are far behind schedule. More specific guidelines or signals are expected for the Dispute Settlement Body, though not part of the single undertaking. This WTO mechanism operates reasonably well and could help to carry the negotiations forward. The work on regional trade agreements has made headway on transparency, and as its pace picks up, it may help to spur the talks on other topics.

Although no new date has been set for the completion of the Doha Round, it is tentatively expected to conclude in 2006. This will depend, however, on the outcome of the forthcoming Sixth Ministerial Conference, to be held in the Hong Kong Special Administrative Region of China in December 2005. The recent meeting of the General Council of WTO, held on 29 July 2005, which was expected to be a landmark event in this process, failed to give any sign of a convergence of the countries' positions. As in other stages, greater difficulties were encountered in agriculture, despite the proposals made in October by the major countries. The United States proposed that by the end of a five-year implementation period, developed country tariffs should be cut by 55 to 90 %.

Developing countries would be subject to "slightly lesser reduction commitments and longer phase-in periods to be determined when base parameters for developed countries commitments are established". The European Union demands more flexibility within the tiers, compensated by steeper cuts on other tariff lines. It proposed a 20% cut in the lowest of the four tiers and a 50% reduction in the highest (above 90%) tier. In addition, the G-20 group of developing countries tabled a revised tariff proposal, which showed a marked difference in cuts suggested for developed and developing countries. On the other hand, the G-10 group of net food-importing countries,[14] who tend to have notoriously high tariff peaks on a number of products, is being increasingly isolated in its adamant opposition to tariff caps (see Table 1). In summary, there are many proposals, but little convergence. This reality and the recent evolution have led the new WTO General Director, Mr. Pascal Lamy, to solicit the members to reduce the expectation on the forthcoming Ministerial in Hong Kong. Obviously, the lack of concrete results in this conference would jeopardize the successful conclusion of Doha Round in 2006.

Table 1

TARIFF REDUCTION PROPOSALS IN AGRICULTURE NEGOTIATIONS, AS OF OCTOBER 2005

A.- G-20				B.- United States			
Developed countries		**Developing countries**		**Developed countries**		**Developing countries**	
Tiers	Cuts	Tiers	Cuts	Tiers	Cuts	Tiers	Cuts
0-20%	45%	0-30%	25%	0-20%	55-65%	Same tiers, slightly smaller cuts, to be decided after parameters are agreed for developed countries	
20-50%	55%	30-80%	30%	20- 40%	65-75%		
50-75%	65%	80-130%	35%	40-60%	75-85%		
>75%	75%	>130%	40%	>60%	85-90%		
Cap: 100%		Cap: 150%		Cap: 75%		Cap: 100%	

C.- European Union				D.- G-10			
Developed countries		**Developing countries**		**Developed countries**		**Developing countries**	
Tiers	Cuts	Tiers	Cuts	Tiers	Cuts[a]	Tiers	Cuts[b]
Lowest Tier	20%	No specific proposal		0-20%	27%	0-30%	...
...	...			20-50%	31%	30 - 70%	...
...	...			50-70%	37%	70-100%	...
> 90%	50%			>70%	45%	> 100%	...
Cap: 100%		Cap: 150%		Cap: none		Cap: none	

Source: Bridges, Year 9 No.9 September – October 2005, page 7

[a] The G-10 specified that the percentages for cuts in its proposal were only illustrative.

[b] The G-10 did not offer potential values for developing country reductions.

The role that the WTO rules play in providing stability and predictability to the global trade and investment environment is well known and can be considered as an international "public good". However, in order to enable its Member countries to reap full benefits of this public good, the WTO must provide them with momentous support for institution-building purposes. This is important especially from the viewpoint of Latin America and the Caribbean, where the impact of trade liberalization on growth and export expansion has not been as favorable as desired, and its effects on improvement in supply-side capacities has been even less propitious. Arguably, a strengthened trade controversy mechanism at the WTO has allowed developing countries to defend more effectively the cases before market distortions imposed by developed countries, particularly in agriculture (for example, in the recent cases of sugar and cotton). In this respect, it is noteworthy that some countries of the region have played a protagonist role in these claims.

[14] The G-10 comprises Bulgaria, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway, Switzerland and Taiwan.

C. Participation of Latin America and the Caribbean in the Doha Agenda

Virtually all the Latin American and Caribbean countries belong to WTO and have joined other developing countries in formulating, endorsing and advancing the Doha agenda. In more recent years, the Latin American and Caribbean countries have participated in different interest groups configurations and have played an increasing role in formulating technical proposals, especially since the Seattle meeting. The countries of the region have shown a special interest in continued reform in agriculture, either individually or in coalitions, and in protecting their often divergent interests at every stage of the technical work and negotiations (ECLAC 2003b). Their strong interest in agriculture is understandable, not only because the region is probably the most efficient agricultural and agro-industrial producer, but also because of the worldwide economic gains made possible by multilateral liberalization. According to estimates by the World Bank (2002), the income gains to be derived from agricultural liberalization account for more than three quarters of the gains to be achieved from free trade in all goods, and the Latin American and Caribbean countries, particularly those of MERCOSUR, would be the largest beneficiaries of a meaningful form of multilateral agricultural liberalization (Nogués 2004). Of course, there are large differences among the countries in the region, in terms of the agricultural role in trade specialization, and also inside the sector in each country. For this reason, even on this subject that raises strong interest of the countries and participation in negotiations, it is difficult to talk of a "unified" regional vision or front on the subject matter.

The region has also become more proactive on the issue of market access in industrial goods, which can be partly explained by the increasing share of manufactures in their export basket.[15] For some countries manufactures provide bright potential to expand South-South trade. In addition, the proposals made on NAMA take into account the interest of developing countries to preserve existing policy space, for example, through possible application of "bound" rather than "applied" effective tariff rates. This proactive posture has been also present in other areas such as antidumping or intellectual property. With respect to the former, the region has been affected by its arbitrary application in market access to developed economy markets and it intends to reduce the arbitrariness in its use. In fact, five countries in the region form part of the Group to promote better practices on the use of antidumping. Regarding the latter; several countries in the region have shown determined interest in bringing about a better distribution of benefits associated with it.[16] By contrast, some countries of the region were relatively reticent on several Singapore issues, a subject matter that was "resolved" in the July Package of 2004. In many proposals, the countries of the region try to preserve policy space for development, which includes the issue of SDT operability and improvement of their implementation.

Regarding trade facilitation in which the region participates actively in its negotiation group (see Table 2), at least two areas of interests can be identified for the countries in the region. On the one hand, an important number of countries in the region are actively participating in a proposal on trade facilitation from a developing country perspective;[17] and on the other, Bolivia and Paraguay have been active participants in negotiation from the standpoint of "land-locked" countries.

[15] See, for example, the proposals by Chile, Colombia and Mexico, on the one hand, and the Argentina, Brazil and India proposals, on the other, in WTO documents (WTO: TN/MA/W/50 and 54). The proposals allow developing countries to strike a balance among the extent of tariff reduction required by the formula through the use of different coefficients, leaving tariff lines unbound, the ability to exempt some products from the tariff reduction formula, and the implementation period for tariff cuts (Bridges Year 9 No. 2-3, page 11).

[16] In addition, the region played an important role in the debate on TRIPs and public health.

[17] The communication of 13 Latin American countries (WTO: TN/TF/W/41), was also signed byfour more countries.

Table 2

PARTICIPATION OF LAC'S IN ALLIANCE GROUPS IN THE MULTILATERAL SYSTEM[a]

(Distinct development processes)

Period of formation	Created or existing in preparations for Doha, 2001		Created around Cancún, 2003, on agriculture[b]			Created around other thematic interests current in 2005[c]			
GROUP	Cairns	Common interests	G-20	AU-ACP-LDC	G-33	Friends of Anti-dumping Negotiations	Intellectual Property and Convention on Biological Diversity[d]	Friends of Fish	Colorado
COMPOSITION	17 countries	12 developing countries	20 developing countries	Broad group of developing countries	33 developing countries	18 countries	8 developing countries	9 countries	15 countries
INTEREST	Agriculture liberalization	Developing countries and special and differential treatment	Equitable agricultural liberalization	Balanced agricultural framework	Framework for special products and Special Safeguard Mechanism,	Negotiations on anti-dumping	Distribution of benefits of intellectual property	Disciplining fishing subsidies	Negotiations on trade facilitation
Argentina	✓		✓					✓	
Bolivia	✓		✓				✓		
Brazil	✓		✓			✓	✓		
Chile	✓		✓			✓		✓	✓
Colombia	✓					✓	✓		✓
Costa Rica	✓					✓			✓
Cuba		✓	✓		✓				
Ecuador							✓	✓	
El Salvador									
Haiti				✓	✓				
Guatemala	✓		✓						
Honduras		✓			✓				
Mexico			✓			✓			
Nicaragua					✓				
Panama					✓				
Paraguay	✓		✓						✓
Peru					✓		✓	✓	
Dominican Republic		✓		✓	✓		✓		
Uruguay	✓		✓						
Venezuela (Bolivarian Rep. of)			✓		✓				
Caribbean countries (of ACP[e] countries)				✓ (13)	✓ (11)				

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of official information.

a This table is not exhaustive and should be used as a reference only.

b Changes have been made in the composition of all these groups since Cancún; this table shows the current situation. G-22 is now known as G-20 (see http://www.g-20.mre.gov.br). The African Union/African, Caribbean and Pacific States/Least-Developed Countries (AU/ACP/LDC) are made up of 61 members, of which 15 are in this region. This group also opposed the "Singapore issues". G-33 currently consists of 42 countries, 19 of which are in this region (WTO, 2004d).

c In addition to this group, the following groups have made proposals that have been coordinated with the agricultural negotiations: CARICOM – and a subgroup participating in the "Small Developing Island States" —"Central American Group", MERCOSUR— and in coordination with others, and a "Developing Countries Group", made up of 15 countries, in which Cuba, the Dominican Republic, El Salvador, Haiti, Honduras and Nicaragua are participating (WTO, 2004d). See also the preceding note.

d Although they do not constitute a group, several countries in the region mentioned here have been involved in supporting related proposals (WTO, 2005a).

e Africa, the Caribbean and The Pacific countries.

With respect to trade in services, developed countries have sought to improve market access in those sectors where they have comparative advantages, including financial services, telecommunications, energy production and distribution, gas production and distribution, and others. Meanwhile, the Latin American and Caribbean countries have primarily been concerned with ensuring compliance with provisions of particular interest to developing countries.[18] They have also stressed the need for a more suitable classification, a matter that was included in many of the sectoral proposals (ECLAC 2003b). The Latin American and Caribbean countries have placed a high priority on addressing the issue of constraints on the movement of natural persons across borders to supply services (Mode 4) under the GATS, especially with respect to the recognition of professional titles and licenses and to residency and nationality requirements. Despite the importance that negotiations on Mode 4 have for developing countries,[19] no progress has been made in the multilateral negotiations in this area.

With respect to the issue of trade as it relates to debt and finance, the Latin American and Caribbean countries have showed a special interest in the vulnerability of commodity-dependent countries, market access to finance foreign debt, exchange rate instability and international policy coherence. Technology transfer, especially in TRIPS, has also been of major concern.[20] Caribbean countries, for their part, presented an integral regional perspective on the vulnerability of small economies, while Bolivia and Paraguay were among the land-locked countries who issued a communiqué on the work program on small economies. These countries, together with several from Central America, have been most proactive in this area.[21]

In the post-Cancún negotiations, practically all the Latin American and Caribbean countries are represented in one of the three groups constituted by different developing countries, especially around agricultural negotiation. Brazil has actively participated in the G20 and played a leadership role in this group (see Table 2).[22] Similarly, the Cairns Group, which calls for a deeper liberalization of the sector, has a wide participation of the countries of the region. The CARICOM countries agreed with African and Pacific countries on a series of proposals, looking at SDT and the institutional issues of WTO such as transparency.[23] In groups created in conjunction with other thematic interests, the countries of the region has been very active, especially in antidumping, intellectual property rights, disciplines on fishery subsidies, and trade facilitation.

However, the negotiation dynamics since 2004 has added new organizational forms, initially in works in agriculture, grouping major players with diverse interests. This is the case of NG-5 (FIP-Five interested parties), formed by the United States, European Union, Brazil, India and Australia, which has provided certain operability to the one of the most complex issues and with extreme tensions within the negotiation group.

In the formation of country groupings based on common negotiating stances, the Latin American and Caribbean region has come to play an important and, to some extent, leadership role

[18] These countries were clearly concerned with ensuring compliance with articles IV and XIX(2). The effective implementation of Article IV of the GATS includes access for developing countries to technology, improvement in their access to distribution channels and information networks, and liberalization of market access in sectors and modes of supply of services. Article XIX2 allows flexibility for developing countries to liberalize fewer sectors and attach access conditions to foreign service suppliers. Twenty-two Latin America and Caribbean countries have tabled proposals for negotiations either individually and jointly with other countries.

[19] Under the assumpltion that developed countries fill a quota of temporary workers equivalent to 3% of their labour force, the gains to the world economy are on the order of US$150 billion (Winters et al. 2003).

[20] With regard to debt, see WTO (WT/WGTDF/W); with respect to technology transfer, see WTO (WT/WGTTT).

[21] CARICOM countries have emphasized a compounded nature of difficulties that the small and vulnerable economies face —limited human, financial and natural resources, as well as the small market size that limits the number and scope of business actors, the scale of production and development options—. These countries have requested, therefore, a holistic approach to marginalization, and at the same time, have opposed the creation of new categories of WTO members (WT/COMTD/SE/W/14, 10.10.05) (See also Stewart, 2005a).

[22] After the Cancún Conference, several countries that were negotiating or about to begin negotiating an FTA with the United States withdrew from the group.

[23] For further information, see Venezuela and CARICOM (WTO documents WT/MIN(03)/ST/48 and 6).

among the developing countries (ECLAC, 2005). Structural and policy-based differences that exist, however, make it difficult to arrive at a consensus position on all the issues under consideration. Given the countries' differing economic sizes, production and commercial structures, trade policies and development strategies, unified action in all the areas under negotiation is a highly complex undertaking. This hinders efforts to formulate a "regional" proposal for Doha, on the one hand, and, on the other, encourages the formation of shifting alliances among countries of the region. The challenge here is to build upon those areas where the countries' views do converge while providing scope for subtly differing stances on the rest without undercutting the cohesiveness of the countries' positions on the main issues, especially agriculture and the development dimension. Under these circumstances, it is all the more important to devise strategies for positioning the countries within the development process. The countries of the region are also increasingly aware of the need to complement trade agreements with domestic policies (forming what has come to be known as the "domestic agenda") in such areas as competitiveness, infrastructure, technological innovation and the modernization of small and medium-sized enterprises (SMEs).

II. Regionalism, Bilateralism and Hemispheric Integration

Over the last two decades, the Latin American and Caribbean region has been a showcase of trade liberalization and economic reforms for the entire world. Both the region's exports and imports showed great strength. The physical volume of exports grew at an unprecedented rate between 1991 and 2000 (9.3% annually) —above the world average and exceeded only by China and India. The problems in the international economy in 2001-2002 interrupted this growth, which recovered, however, in 2003 and 2004. The majority of the countries in the region experienced strong growth in exports —in the neighborhood of 8% annually (ECLAC 2004a). The high export orientation of the region's countries, combined with the protectionist practices of the developed countries, in turn, has made the issue of market access more imperative.

The opening-up policy of these countries has been implemented via three (unilateral, regional and multilateral) routes towards liberalization. Between the mid-1980s and 1990s, the region unilaterally reduced its average external tariff from over 40% to 11%.[24] The region also actively participated in the Uruguay Round and made substantial commitments to dismantle import barriers by binding practically all tariff lines. In more recent years, however, the governments of the region have been particularly active in reaching

[24] The average maximum tariffs in the region were lowered from more than 80% to 40%, and only two countries now apply maximum tariffs of up to 100% on a small number of products. Tariff dispersion, on average, has declined from 30% in the mid-1980s to a low of 9% today. Both the highest average rate and the highest dispersion rate, as measured by the standard deviation, are currently under 15% (for details, see IDB 2000, table 15).

bilateral and plurilateral, as well as intra- and extra-regional preferential agreements. The rationale for this is that unilateral liberalization does not guarantee the openness of target markets; in an economy that is undergoing globalization and regionalization simultaneously, countries seek strategies for positioning themselves in major import markets in ways that will give their products greater and more reliable access to those markets.

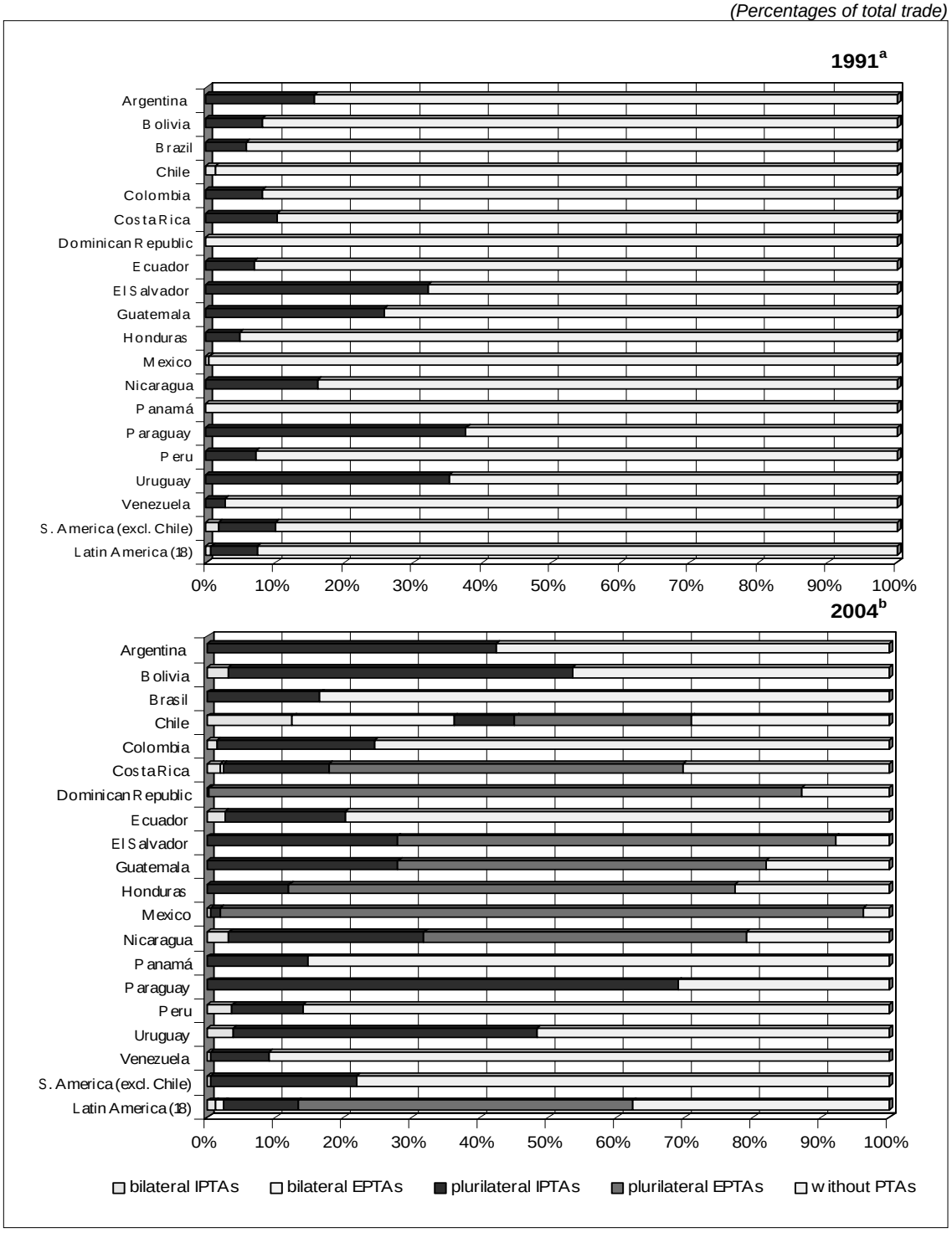
In fact, in 1991, sub-regional preferential agreements were practically the only ones in force. They were associated with the region's four imperfect customs unions. These customs unions represented roughly 6% of total exports of the region, while the rest of the region's exports took place outside of the framework of preferential agreements. This situation changed dramatically in the 1990s. Considering the export structure by destinations for the period of 2001-2002 and current PTAs, 62.4% of the region's exports seem to have occurred within the framework of various types of preferential agreements in 2004, including intra-regional and extra-regional bilateral agreements (1.2% and 1.3%, respectively), as well as intra-regional and extra-regional plurilateral agreements (10.7% and 49.2%). The most notable cases are Mexico, 95.6% of whose exports fall within extra-regional agreements; the Central American countries, for which three quarters of exports are within the framework of intra- and extra-regional plurilateral agreements; and Chile, more than 70% of whose exports take place under various PTAs. In short, between 1991 and 2004, the percentage of Latin American and Caribbean exports enjoying tariff preferences rose from 6.1% to 62.4%, with evidence of a greater openness towards extra-regional PTAs than intra-regional ones (see Figure 2 and Table 3).

It should be pointed out that PTAs should cover 72% of total exports of the entire region in 2007 once MERCOSUR countries and the Andean Community conclude negotiations with the European Union and the United States, respectively. Under this scenario, extra-regional PTAs would account for 55% of its total exports, and almost 45% for the four Custom Unions (Andean Community, MERCOSUR, CACM and CARICOM) combined (see Figure 3).

Figure 2

LATIN AMERICA (18): EXPORT FLOWS BY PREFERENTIAL TRADE AGREEMENTS,1991 AND 2004

(Percentages of total trade)



Source: Author's calculation on the basis of trade information from the United Nations COMTRADE database.

[a] For estimates of 1991, the two year 1990-1991 were taken into account;

[b] For the estimate of 2004, the two year average 2001-2002 of exports of each country was used to determine the trade composition, and the PTAs as of December 31, (including those PTAs negotiations of which have been concluded) where taken into account.

Table 3

LATIN AMERICA (SELECTED COUNTRIES): PREFERENTIAL TRADE AGREEMENTS, BY TYPES OF AGREEMENTS (1991, 1995 AND 2004)

(As percentages of total exports of each country)

Countries/ Agreements/ Years	PTAs Intrarregional						PTAs Extrarregional						PTAs Total					
	1991[a]		1995		2004[b]		1991[a]		1995		2004[b]		1991[a]		1995		2004[b]	
	Bilat	Pluril	Bilat	Pluril	Bilat	Pluril	Bilat	Pluril	Bilat	Pluril	Bilat	Pluril	Bilat	Pluril	Bilat	Pluril	Bilat	Pluril
Latin America (19 countries)	**0.2**	**5.9**	**1.0**	**10.1**	1.2	**10.7**	**0.0**	**0.0**	**0.0**	**31.6**	**1.3**	**49.2**	**0.2**	**5.9**	**1.0**	**41.7**	**2.5**	**59.9**
Latin America (excluding Chile and Mexico)	**0.0**	**8.4**	**0.6**	**17.3**	**0.6**	**20.9**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**4.3**	**0.0**	**8.4**	**0.6**	**17.3**	**0.6**	**25.2**
Argentina	0.0	15.7	0.0	32.3	0.0	42.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	15.7	0.0	32.3	0.0	42.5
Bolivia	0.0	8.2	2.3	18.8	3.1	50.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	8.2	2.3	18.8	3.1	50.4
Brazil	0.0	5.8	0.0	13.2	0.0	16.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.8	0.0	13.2	0.0	16.6
Chile	**1.4**	**0.0**	**4.9**	**0.0**	**12.5**	**8.9**	**0.0**	**0.0**	**0.0**	**0.0**	**23.7**	**25.8**	**1.4**	**0.0**	**4.9**	**0.0**	**36.2**	**34.7**
Colombia	0.0	8.2	1.4	21.0	1.4	23.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	8.2	1.4	21.0	1.4	23.2
Costa Rica	0.0	10.3	0.6	12.9	1.9	15.4	0.0	0.0	0.0	0.0	0.6	51.8	0.0	10.3	0.6	12.9	2.5	67.2
Cuba	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.0
Dominican Republic	0.0	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.0	0.0	86.7	0.0	0.0	0.0	0.0	0.0	87.2
Ecuador	0.0	7.0	4.5	8.2	2.7	17.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	7.0	4.5	8.2	2.7	17.6
El Salvador	0.0	32.2	0.0	42.2	0.0	27.9	0.0	0.0	0.0	0.0	0.0	64.2	0.0	32.2	0.0	42.2	0.0	92.1
Guatemala	0.0	25.9	0.0	29.2	0.0	28.0	0.0	0.0	0.0	0.0	0.0	53.9	0.0	25.9	0.0	29.2	0.0	81.9
Honduras	0.0	4.8	0.0	5.6	0.0	12.0	0.0	0.0	0.0	0.0	0.0	65.2	0.0	4.8	0.0	5.6	0.0	77.3
Mexico	**0.5**	**0.0**	**0.9**	**1.0**	**0.6**	**1.3**	**0.0**	**0.0**	**0.0**	**85.9**	**0.0**	**94.3**	**0.5**	**0.0**	**0.9**	**86.9**	**0.6**	**95.6**
Nicaragua	0.0	16.2	0.0	16.3	3.3	28.6	0.0	0.0	0.0	0.0	0.0	47.3	0.0	16.2	0.0	16.3	3.3	75.8
Panama	0.0	0.0	0.0	0.0	0.0	14.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	14.9
Paraguay	0.0	37.7	0.0	57.4	0.0	69.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	37.7	0.0	57.4	0.0	69.0
Peru	0.0	7.3	0.0	7.4	3.8	10.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	7.3	0.0	7.4	3.8	10.3
Uruguay	0.0	35.1	0.7	47.1	3.8	44.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	35.1	0.7	47.1	3.8	44.6
Venezuela	0.0	2.8	1.7	9.9	0.5	8.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.8	1.7	9.9	0.5	8.7

Source: ECLAC , International Trade and Integration Division.

[a] For the estimates of 1991, the two year (1990-1991) average of exports of each country was used to determine the trade composition and the PTAs existing or signed before December 31 of 1991 were taken into account;

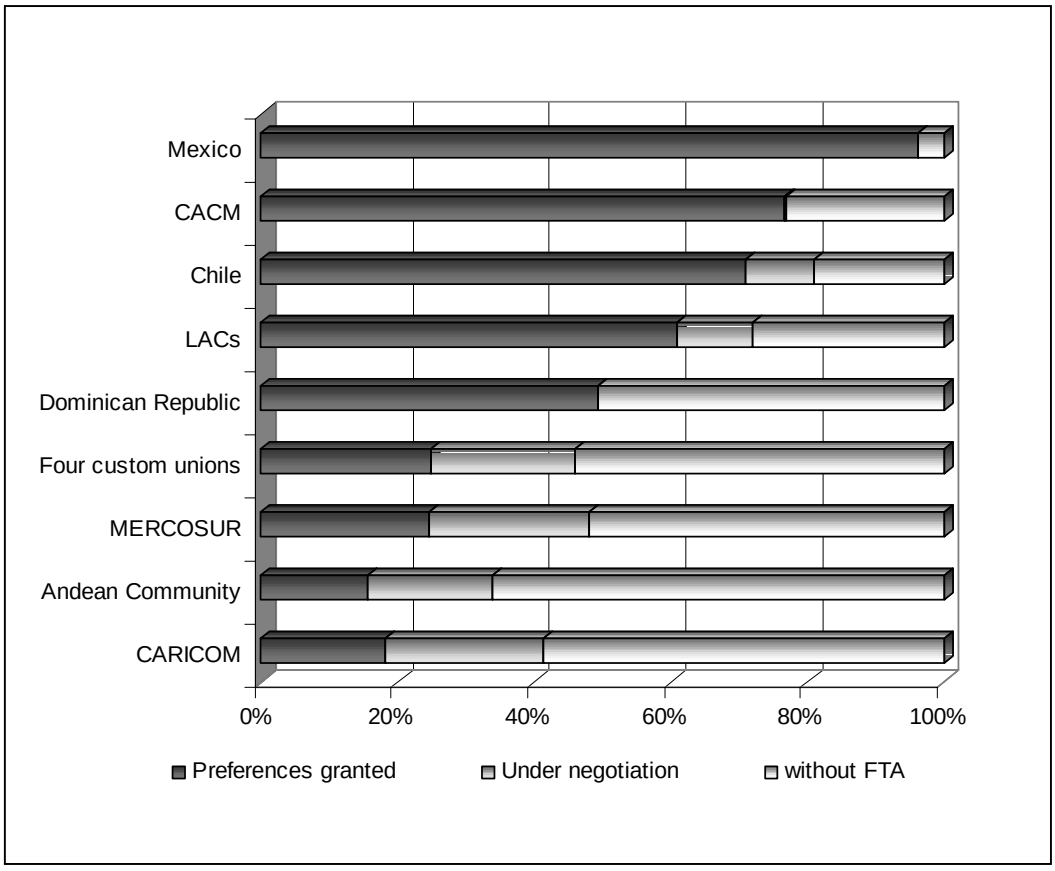
[b] For the estimate of 2004, the two year (2001-2002) average of exports of each country was used to determine the trade composition, and the PTAs as of December 31, (including those PTAs negotiations of which have been concluded) were taken into account.

Bilateral South-North agreements (such as the FTA among the Dominican Republic, Central America and the United States (the expanded CAFTA), —which has just been ratified by the United States, the Dominican Republic, and Nicaragua in the second semester of 2005—; the agreement between the United States and three countries of the Andean Community (Colombia, Ecuador and Peru) that is now being negotiated, and the efforts being made to arrive at an association agreement between MERCOSUR and the European Union put added pressure on the region's integration schemes. This is because these FTAs include commitments on wider and more far-reaching issues than those addressed by the integration schemes themselves. In practice, South-North agreements are different in scope and content from those prevailing in the integration schemes, and as a consequence new types of disciplines and regulations are likely to take precedence over intra-regional laws and standards in certain areas. With respect to investment disputes, for example, arbitration under the auspices of the International Centre for Settlements of Investment Disputes (ICSID) will be required. Cross-border trade in services, financial services and telecommunications will be governed by the new FTA regulations. The same is true for the chapter on intellectual property and other areas.

Figure 3

LATIN AMERICA AND THE CARIBBEAN: TARIFF PREFERENCES AS OF NOVEMBER 2005

(Percentages of total exports)



Source: Authors' estimates based on official data.

Admittedly, the result of unilateral liberalization for Latin America and the Caribbean as a whole has been mixed, with no clear evidence of an acceleration in per capita income growth. The industrial countries' successful experience with multilateralism in the period following the Second

World War has not been replicated in developing countries, and the benefits of multilateral trade negotiations have not been as substantial as expected for Latin America and the Caribbean, probably as a consequence of the fact that the liberalization process has focused on manufactured goods (Nogués 2004). Latin America has missed promising trading opportunities due to the lack of active participation in the early GATT rounds and the unfavorable outcome of the Uruguay Round in terms of agricultural products. The new multi-task scenario described above points to a difficult task to preserve the core objectives of integration by rapidly realigning these norms without being overtaken by the commitments made in various FTAs. This is a formidable challenge, as the agenda must now be configured to tackle the discrepancies that are reflected in more demanding commitments made with Northern partners and less rigorous ones with sub-regional group members.

A. An Overview of existing and emerging FTAs in the region

The hallmark of the region's trade performance in the 1990s, especially up to 1997, was an impressive expansion both in trade within each of the four customs unions and in imports from the rest of the world;[25] this has led some analysts (Salazar 2002) to argue that there is little evidence of trade diversion. This may indeed be the case, especially under circumstances where a simultaneous reduction of internal and external barriers based on preferential liberalization measures has been accompanied by aggressive unilateral trade reform (one of the main features of the new regionalism of Latin America as highlighted by Ethier (1998)), all of which reduces the possibilities for trade diversion. It is worth mentioning that the four customs unions have been progressively deepened since the 1990s with the inclusion of non-border measures, but they still have a long way to go in order to reach a stage of "deep integration"(Crawley 2004, Kuwayama 2005).

Among the three routes towards trade liberalization mentioned above, bilateral and plurilateral FTAs have predominanted over customs unions since the mid-1990s. Moreover, Latin American and Caribbean Governments have been working actively to put together a web of these arrangements with countries both within and outside the region, while proceeding with the negotiations on the creation of FTAA. Mexico and Chile have concluded FTAs with a number of countries and regions that are not geographically contiguous, such as the European Union. as well as with the European Free Trade Association (EFTA). Chile has signed an FTA with the United States, and other FTAs have been implemented with Canada, the European Union, EFTA and several other parties. Central American countries have negotiated an FTA with the United States. MERCOSUR is building up an interregional association with the European Union, and there are initiatives to cover India and China, among others.

As mentioned earlier, approximately 62% of Latin American and Caribbean exports in the first quarter of 2004 were covered by PTAs (i.e., bilaterals as well as plutilaterals) in one way or another and that this coefficient has increased especially sharply since the mid-1990s and continuing on into the present decade.[26] During this period, the most marked progress has been seen in the conclusion of FTAs with countries outside the Latin American and Caribbean region proper (see Table 4). In the course of this process, Chile and Mexico have become true "semi-hubs" for FTAs in the hemisphere.

[25] This was followed by declines in intra-subregional trade and imports from the rest of the world up to 2002 and a strong recovery in 2003 and 2004 (ECLAC 2003a and 2005).

[26] This includes the Central America Free Trade Agreement (CAFTA), which has already been signed, and the FTA between the Republic of Korea and Chile, which has already entered into force.

Table 4

LATIN AMERICA AND THE CARIBBEAN (SELECTED COUNTRIES): RTAS AND PTAS IN FORCE AND NEGOTIATION

(PTAs concluded and in negotiation, as of 30 November 2005)

Countries	Intrarregional PTAs	Extrarregional PTAs	N° Agreements[c]	N° Countries[c]
Argentina	MERCOSUR (3) + Andean Community (5) + Chile (1) = 9	MERCOSUR – European Union[a]	3	9
Bolivia	Andean Community (4) + MERCOSUR (4) + Chile (1) + Mexico (1) = 10	No agreements	4	10
Brazil	MERCOSUR (3) + Andean Community (5) + Chile (1) = 9	MERCOSUR – European Union[a]	3	9
Chile	MERCOSUR (4) + Andean Community (5) + CACM (5) + Cuba (1) + Mexico (1) = 16	EU (25) + EFTA (4) + United States (1) + Canada (1) + Korea (1) + New Zealand (1), Singapore (1) + Brunei Darussalam (1) + China (1) = 36. Negotiating FTA with: India	16	52
Colombia	Andean Community (4) + MERCOSUR (4) + CARICOM (15) + Chile (1) + Mexico (1) = 25	Andean Community (3) are negotiating a FTA with United States[b]	5	25
Costa Rica	CACM (4) + Chile (1) + Mexico (1) + Dominican Republic (1) + Panama (1) + Trinidad & Tabago (1) = 9	United States (CAFTA) (1) + Canada (1) = 2	8	11
Cuba	ALADI (11) + CARICOM (15) = 26	No agreements	26	11
Ecuador	Andean Community (4) + MERCOSUR (4) + Cuba (1)	Andean Community (3) are negotiating a FTA with United States[b]	3	9
El Salvador	CACM (4) + Dominican Republic (1) + Panama (1) + Mexico (1) + Chile (1) = 8	United States (CAFTA) (1)	6	9
Guatemala	CACM (4) + Dominican Republic (1) + Panama (1) + Mexico (1) + Chile (1) = 8	United States (CAFTA) (1)	6	9
Honduras	CACM (4) + Dominican Republic (1) + Panama (1) + Mexico (1) + Chile (1) = 8	United States (CAFTA) (1)	6	9
México	North Triangle (3) + Costa Rica (1) + Nicaragua (1) + Chile (1) + Bolivia (1) + Uruguay (1) + G3 (2) = 10	European Union (25)+EFTA (4) + NAFTA (2) + Israel (1) + Japan (1) =33	12	43
Nicaragua	CACM (4) + Dominican Republic (1) + Panama (1) + Mexico (1) + Chile (1) = 8	United States (CAFTA) (1)	6	9
Panama	CACM (5)	Taiwan, Rep. China (1)	2	6
Paraguay	MERCOSUR (3) + Andean Community (5) + Chile (1) = 9	MERCOSUR – European Union[a]	3	9
Peru	Andean Community (4) + MERCOSUR (4) + Chile (1) = 9	Andean Community (3) are negotiating a FTA with United States[b] Also negotiating with Thailand and Singapore	3	9
Dominican Republic	CACM (5) + CARICOM (14) = 19	United States (CAFTA) (1)	3	20
Uruguay	MERCOSUR (3) + Andean Community (5) + Chile (1) + Mexico (1) = 10	MERCOSUR – European Union[a]	4	10
Venezuela	Andean Community (4) + MERCOSUR (4) + Chile (1) + Mexico (1) + CARICOM (15)= 25	No agreements	5	25
CARICOM	Colombia + Venezuela + Dom. Republic + Costa Rica + Cuba = (5)	negotiating with Canada and European Union	**5**	**5**
Latin America and the Caribbean (19)	Andean Community (5) + MERCOSUR (4) + CACM (5) + CARICOM (15) + Chile, Mexico, Panama, Cuba and Dominican Republic) **= 34**	EU (25) + EFTA (4) + United States (1) + Canada (1) + Korea (1) + Israel (1) + Taiwan, Rep. China (1) + Japan(1) + New Zealand (1), Singapore (1) + Brunei Darussalam (1) + China (1) **= 39**	**41**	**73**

Source: Authors, based on legal instruments signed by the countries of the region and sub regions: MERCOSUR (South American Common Market) —Argentina, Brazil, Uruguay and Paraguay—. Andean Community —Bolivia, Colombia, Ecuador, Peru and Venezuela—, CACM (Central American Common Market) —Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua—, Caribbean Community (CARICOM) —Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago—, Group of Three (G3), and Latin American Integration Association (LAIA).

a Since 1999, MERCOSUR has been negotiating an Interregional Cooperation Agreement with the European Union.

b Colombia, Ecuador and Peru are negotiating a FTA with the United States.

c Include only agreements and countries with concluded negotiations .

One of the main features of most of the new trade agreements in the region is that they contain front-loaded tariff phase-out programs based on predetermined schedules, which are relatively quick, automatic and nearly universal. This contrasts sharply with the detailed step-by-step development of positive lists that characterized the first-generation trade agreements (Devlin and Estevadeordal 2001). In most agreements, the base rates for the liberalization program coincide with the MFN applied rates. Most liberalization program in the Latin American and Caribbean countries will eliminate tariffs for almost all products by 2005, and most bilateral trade activity conducted under these agreements will become fully liberalized, at least in terms of tariffs, within a 10-year time horizon (Estevadeordal 2002). In this sense, it might be argued that "the trade agreements in the region have shown a capacity to liberalize faster than at the multilateral level and to include nearly universal coverage of trade liberalization in industrial goods." (Salazar 2002, p.12).

However, Estevadeordal (2002) points out that although most program will eliminate internal tariffs for almost all products by 2005, the internal dynamics of the phase-out schedules varies substantially across agreements. For some agreements, more than 50% of the products become free of tariffs immediately after entry into effect, while for others, those percentages will not be reached until the fifth year or later.[27]

As a result, the "spaghetti bowl" of trade agreements diverts trade and creates administrative and transparency problems because of these agreements' varying tariff reduction schedules, rules of origin, and technical and procedural systems, along with rather detailed lists of exceptions for agriculture and other sectors reflecting the particular sensitivities of each participating country. In addition, the liberalization programs that start with the MFN applied rates, rather than the MFN bound rates, may leave little development policy maneuvering room.

Another group of bilateral and plurilateral agreements of relative importance for the region are the Economic Complementation Agreements (ECAs), that were very popular during the nineties, and whose coverage of commitments have subsequently been widened. The analysis of 12 areas of trade disciplines covered by the ECAs found that six areas were of greater interest to the countries: non-tariff barriers (covered by all the ECAs, 100%), trade remedies —antidumping, compensatory rights and safeguards— (89%), dispute settlements disciplines (68%), and sanitary and phytosanitary measures (60%) (See Figure 4 and Tables 5a) In the case of the other eight disciplines considered in Figure 4, the proportion is not greater than 30%, with the exception of cooperation clauses that cover almost 48% and 46% of total ECAs. These figures suggest that this type of agreement recognizes increasingly the importance of new rules and disciplines and aspire toward a more deep intra-regional integration. But in practice, these ECAs still remain as a sort of "shallow" agreements, because of the "soft" commitments in the areas different to tariff reduction. This explains in part the rapid emergence of FTAs in recent years eagerly sought by many countries as a more effective means of trade opening, which adopt a "WTO plus" orientation.

That is to say, most of the FTAs signed in the 1990s and during the present decade follow the NAFTA model in terms of thematic coverage. These second-generation FTAs are more comprehensive in scope, not only because they are "broad" in terms of the geographic coverage of countries and regions and the number of sectors negotiated and incorporated, but also because of

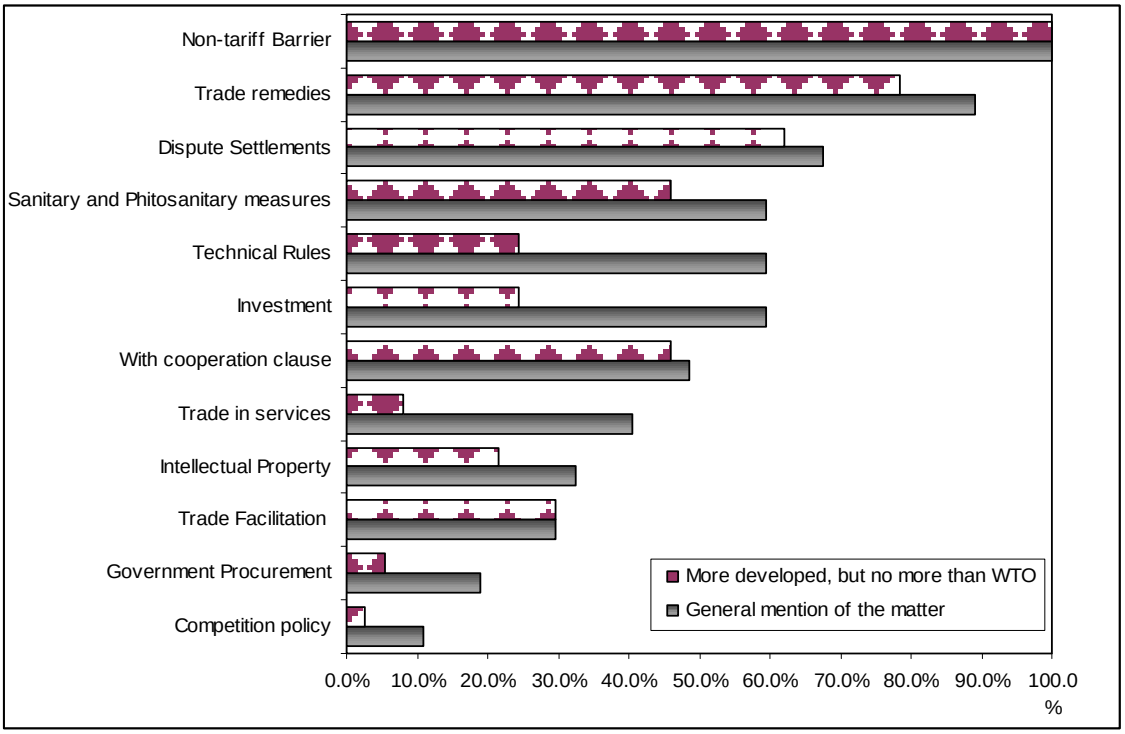
[27] Meanwhile, the current average levels and distributions of bilateral preferential rates among Latin American countries vis-à-vis the multilateral tariff rates also vary significantly across countries but fall into three basic categories. The first is marked not only by higher MFN tariffs, but also by a wider distribution of tariffs (Argentina, Brazil and Mexico). A second group has less overall dispersion and lower tariffs than the first group (Colombia, Ecuador, Paraguay, Uruguay and Venezuela). A final group of countries (Bolivia, Chile and Peru) has, for the most part, uniform tariff structures. Estevadeordal (2002) indicates that, in a sense, the first grouping (which is "the most protectionist") is at the same time the one that offers the highest margins of preference to the rest. The second group gives notable preferences to their internal trading partners, though not to the same extent. The preferential tariff structure of the last group preserves the uniformity principle in terms of lower dispersion with significant margins of preference as well.

the "depth" of the commitments they entail based on a "WTO-plus" focus in those sectors (see Table 5a). This is especially true for services, investment and intellectual property (Blanco and Zabludovsky 2003). These FTAs are, of course, not identical to NAFTA and take into consideration the specific interests of the relevant trading partner(s), thereby establishing a realistic agenda for the parties involved. However, it is important to point out that not only do all these FTAs share the philosophy and format of NAFTA but that some texts in certain disciplines are almost identical to those of NAFTA (Blanco and Zabludovsky 2003).[28] These FTAs also introduce new approaches to older issues such as rules of origin, contingent measures for imports and dispute settlement.

Figure 4

COMPREHENSIVENESS OF RULES AND DISCIPLINES IN ECONOMIC COMPLEMENTATION AGREEMENTS (ECAS) SIGNED BY LAC COUNTRIES (AS OF FEBRUARY 2005)

(Disciplines rules as a proportion of total 37 agreements signed and in force)



Source: Authors' estimates based on ALADI (2005), and ECAs signed by the respective countries.

It is important to note that the FTAA negotiations cover three areas (i.e., investment, competition policy and government procurement) that are commonly included in the second-generation FTAs but are not integrated into multilateral negotiations. The areas that tend to be "WTO-plus" are precisely those sectors in which the countries of the region are generally weak in terms of institutional capacities or at an incipient stage in the formation and implementation of related regulations. In many cases, the countries are not quite ready to accept commitments whose economic and social impacts are not fully known or analyzed beforehand and that in many cases far outstrip their implementation capacities.

[28] Although this also happens in the competition chapters of some agreements, there are other agreements that are close to the European Union's model (2004).

Table 5a

LATIN AMERICA AND THE CARIBBEAN: ECONOMIC COMPLEMENTATION AGREEMENTS (ECA) SIGNED BY THE COUNTRIES OF THE REGION[a]

	Tariff reduction on positive list products	Non Tariff Barrier	With a cooperation clause	Trade in services	Investment	Sanitary and Phitosanitary measures	Government Procurement	Antidumping, Compensatory rights / Safeguards b	Competition policy	Trade Facilitation (Border Procedures and Border Valuation)	Technical Rules	Intellectual Property	Dispute Settlements
Brazil, Uruguay (ECA 2)	✓	✓*	...	...	...	...	...	✓*[b]	...	...	...	...	...
Argentina, Mexico (ECA 6)	✓	✓*	...	...	...	...	...	✓	...	...	...	...	✓*
Mexico, Peru (ECA 8)	✓	✓*	✓	...	...	...	...	✓	...	...	...	...	...
Argentina, Paraguay (ECA 13)	✓	✓*	✓	...	...	...	...	✓	...	...	...	...	...
Argentina, Brazil (ECA 14)	...	✓*	...	...	...	...	...	✓*[b]	...	...	...	...	✓
Argentina, Chile (ECA 16)	✓	✓*	✓	...	✓	✓*	...	✓*[c]	...	...	...	...	✓*
MERCOSUR (ECA 18)	✓	✓*	✓	...	...	✓*	...	✓*	...	...	✓*	...	✓*
Bolivia, Chile (ECA 22)	✓	✓*	✓	...	✓*	✓*	...	✓*	...	...	✓*	...	✓*
Chile, Venezuela (ECA 23)	...	✓*	...	...	✓*	...	✓	✓*	...	...	✓	...	✓*
Chile, Colombia (ECA 24)	✓	✓*	...	✓	✓*	✓*	✓	✓*	...	...	✓*	...	✓*
Ecuador, Uruguay (ECA 28)	✓	✓*	✓	...	✓	✓*	✓	✓	...	...	✓	...	✓*
Ecuador, Paraguay (ECA 30)	✓	✓*	✓	...	✓	...	...	✓*[c]	...	...		...	...
Bolivia, Mexico (ECA 31)	✓	✓*	✓	✓*[d]	✓*	✓*	✓*	✓*	...	✓*	✓*	✓*	✓*
Chile, Ecuador (ECA 32)	✓	✓*	✓	✓	✓*	✓*	✓	✓*	...	✓*[e]	✓*	...	✓*
G-3 Group (ECA 33)	✓	✓*	...	✓*[d]	✓*	✓*	✓*	✓*	✓*[g]	✓*	✓*	✓*	✓*
MERCOSUR - Chile (ECA 35)	✓	✓*	✓	✓	✓	✓*	...	✓*	✓	✓*[f]	✓*	✓*	✓*
MERCOSUR - Bolivia (ECA 36)	✓	✓*	✓	✓	✓	✓*	...	✓*	...	✓*[f]	✓*	...	✓*
Chile, Peru (ECA 38)	✓	✓*	✓	✓	✓*	✓*	✓	✓*	...	✓*[f]	✓*	✓	✓*
Brazil, Colombia, Ecuador, Peru, Venezuela (ECA 39)	✓	✓*	...	...	...	✓*	...	✓*	...	✓*[f]	✓	...	✓*
Cuba, Venezuela (ECA 40)	✓	✓*	✓	✓	✓	✓	...	✓*	...		✓	✓*	✓*
Chile, Mexico (ECA 41)	✓	✓*	...	✓*[d]	✓*	✓*	...	✓*	✓	✓*	✓*	✓*	✓*
Chile, Cuba (ECA 42**)	✓	✓*	✓	✓	✓	✓*	...	✓*	...	...	✓	✓*	✓
Brazil, Cuba (ECA 43)	✓	✓*	...	...	...	...	...	✓*[b]	...	...	...	...	...
Cuba, Uruguay (ECA 44)	✓	✓*	...	...	...	...	...	✓*[b]	...	...	...	...	...
Argentina, Cuba (ECA 45)	✓	✓*	...	...	...	...	...	✓*[b]	...	...	...	...	...
Cuba, Ecuador (ECA 46)	✓	✓*	✓	✓	✓	✓*	...	✓*	...	...	✓*	✓*	✓
Bolivia, Cuba (ECA 47)	✓	✓*	✓	✓	✓*	✓	...	✓*	...	...	✓	✓	✓*

.../...

Table 5a (conclusion)

	Tariff reduction on positive list products	Non Tariff Barrier	With a cooperation clause	Trade in services	Investment	Sanitary and Phitosanitary measures	Government Procurement	Antidumping, Compensatory rights / Safeguards b	Competition policy	Trade Facilitation (Border Procedures and Border Valuation)	Technical Rules	Intellectual Property	Dispute Settlements
Argentina, Colombia, Ecuador, Peru, Venezuela (ACE 48)	✓	✓*	…	…	…	✓*	…	✓*	…	✓*[f]		…	✓*
Colombia, Cuba (ECA 49)	✓	✓*	✓	✓	✓	✓	…	✓*	…	…	✓	✓*	✓
Cuba, Peru (ECA 50)	✓	✓*	✓	✓	✓	✓	…	✓*	…	…	✓	✓	…
Cuba, Mexico (ECA 51)	✓	✓*	…	…	…	…	…	✓*[b]	…	…		…	…
Cuba, Paraguay (ECA 52)	✓	✓*	…	✓	…	✓*	…	✓*	…	…	✓*	✓*	✓
Brazil, Mexico (ECA 53)	✓	✓*	…	…	✓	✓*	…	✓*	…	✓*	✓*	…	✓*
MERCOSUR - Mexico (ECA 54)	✓	✓*	…	…	✓	…	…	…	…	…	…	…	…
MERCOSUR - Mexico (ECA 55)	✓	✓*	…	…	…	…	…	…	…	…	✓	…	✓*
MERCOSUR - CAN (ECA 56)	✓	✓*	✓	…	✓	…	…	…	✓	…	…	…	…
Argentina, Uruguay (ECA 57)	✓	✓*	…	…	…	…	…	…	…	…	…	…	…
Mexico, Uruguay (ECA 60)	✓	✓*	…	✓	✓	✓	…	✓*	✓	✓*	✓	✓	✓*

Source: Authors' elaboration based on ALADI (2005), and ECA agreements signed by the respective countries.
Notes: ✓ indicates the presence of the discipline or rule in general terms; and ✓* is an indication of a more comprehensive discipline, but no more than the WTO disciplines, specially in trade disciplines;
a ECAs in general follow the GATT/WTO principles and have limited scope;
b Include only safeguards rules;
c Include only antidumping and compensatory rights;
d Include temporary entry of business persons and follow the positive list approach in line with GATS Agreement;
e Include only border procedures;
f Include only border valuation; g Include policies on state firms.

Table 5b

LATIN AMERICA AND THE CARIBBEAN: PRINCIPAL TOPICS OF FTAS SIGNED BY THE COUNTRIES OF THE REGION

	Elimination of tariff escalation	Special treatment of the automotive sector	Rules of Origin	Trade in services	Temporary entry of business persons	Invest-ment	Dispute Settlement in Investment	TBT	Normali-zation	Government Procurement	Trade Remedies	Compe-tition policy	IPR	Dispute Settlements
SUBREGIONAL INTEGRACIÓN SCHEMES														
ANDEAN COMMUNITY	✓	✓	✓	✓[a]	✓	✓	✓[b]	✓	✓	…	✓	✓	✓	✓[b]
MERCOSUR	✓	✓	✓	✓[a,c]	✓	✓	✓	✓	✓	…	✓	✓	✓	✓
CACM	✓	…	…	✓[k]	…	✓[k]	✓	…	✓	✓[d]	✓	…	…	✓
CARICOM	✓	…	…	✓[a]	…	…	…	✓	✓	…	✓	✓	…	✓
FREE TRADE AGREEMENTS (BILATERALS AND PLURILATERALS)														
NAFTA[l]	✓	□	✓	✓[a]	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Bolivia-Mexico	✓	…	✓	✓[a]	✓	✓	✓	✓	✓	✓	✓	…	✓	✓
Chile–Canada	✓	…	✓	✓[a]	✓	✓	✓	…	…	…	✓[e]	✓	…	✓
Chile–USA	✓	…	✓	✓[a]	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Chile – Korea	✓	…	✓	✓[a]	✓	✓	✓	…	✓	✓	✓	✓	✓	✓
Chile–EU	✓	…	✓	✓[a,c]	…	…	…	✓	✓	✓	✓	✓	✓	✓
CARICOM–Dominican Rep.	✓	…	✓	✓[a]	✓	✓	…	✓	…	✓	…	✓[f]	✓	✓
Chile- Central America	✓	…	✓	✓[a]	✓	✓[g]	✓[g]	✓	✓	…	✓	✓	…	✓
Central Am.- Dominican Rep.	✓	…	✓	✓[a]	✓	✓	✓	✓	…	✓	✓	✓	✓	✓
Central Am. –Panama	✓	…	✓	✓[a]	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Central Am./Dom. Rep.–USA	✓	…	✓	✓[a]	…	✓	✓	✓	…	✓	✓	…	✓	✓
Chile-Mexico	✓	✓	✓	✓[a]	✓	✓	✓	✓	✓	F	F[e]	✓	✓	✓
Costa Rica – Mexico	✓	…	✓	✓[a]	✓	✓	✓	…	✓	✓	✓	…	✓	✓
Group of Three	✓	✓	✓	✓[a]	✓	✓	✓	✓	…	✓	✓	…	✓	✓
Mexico-Nicaragua	✓	…	✓	✓[a]	✓	✓	✓	✓	✓	✓	✓	…	✓	✓
Mexico—Northern Triangle	✓	…	✓	✓[a]	✓	✓	✓	…	✓	…	✓	…	…	✓
Mexico – European Union	✓	✓	✓	✓[a,c]	…	✓[h]	…	…	…	✓	✓	✓	✓	✓
Mexico – Japan	✓	…	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓[i]	✓
Chile–New Zeland, Singapur, Brunei Darusalam	✓	…	✓	✓	✓	…	…	✓	✓		✓	✓	✓	✓

Source: ECLAC, International Trade and Integration Division, based on legal instruments signed by the respective countries.

Notes: F = To be define in the future; a More detailed in table 5, b The Andean Court of Justice attend all type of Disputes, c Agreements follow the positive list approach in line with GATS Agreement; d With regional legislation pending to be ratified by Honduras; e The parties agreed to a reciprocal exemption from the application of antidumping; f Only applied in trade services; g All the IPPAs signed by Chile and CACM are included as annexes; h With very limited scope; i Follow GATT safeguards and antidumping measures. j With a cooperation clause; k With an Agreement only ratified by Honduras; l With separate chapter on agriculture.

B. FTAA and other initiatives

A comprehensive, balanced FTAA could improve market access, enhance the credibility of Latin America and the Caribbean and focus the attention of the United States more fully on the region, thereby boosting the countries' standing at home as well as in overseas financial and investment markets. Within the FTAA framework, securing market access to the North is a central, strategic line of action and is the main objective of the countries of the region. For Latin America and the Caribbean, "effective market access will depend on the dismantling of existing barriers in the industrialized markets of the North; the existence of, and respect for, rules that ensure a secure and predictable environment in the application of contingent protection measures; the establishment of an efficient procedure for settling disputes; and the existence of mechanisms to ensure balanced outcomes in the operation of an agreement with 34 heterogeneous countries, some of which have limited institutional capacities" (IDB 2002, p.12).

The WTO negotiations have had a strong influence on the FTAA process. Both of these negotiation processes are stuck on two major issues. The first is how far they will go in reducing government intervention in agricultural markets, and the second is the extent to which they will go beyond the traditional market-access issues and deal with such matters as "behind-the-border" issues. Regarding the first point, some countries of the hemisphere have argued that the FTAA negotiations should include discussions leading to the reduction of export subsidies in agricultural products, while others have countered that this subject should be left for the multilateral arena. More recently, MERCOSUR countries seem to have accepted this view and are trying to negotiate greater market access to the United States market and a closer agreement on the Singapore issues and on intellectual property. Some countries have maintained the original vision of the 34 countries in entering into the FTAA negotiations by eliminating most tariffs on goods and achieving deeper commitments on trade in services, while also including rules on new issues.[29] This course of action would be complemented by progress towards far-reaching agricultural objectives in the Doha Round. However, the development of post-Cancun negotiations and the recent trends in the FTAA negotiations raise serious questions as to the scope of these simultaneous talks, which in theory should have been concluded by January 2005.

It should be noted that the text of the 2003 FTAA Miami Ministerial Declaration was a sharp departure from the original plan of the San José Declaration, shifting from the ambition of a single undertaking across the nine negotiating areas to an agreement that allows for flexibility in the levels of commitment undertaken by each country in the various negotiating areas.[30] Exactly what "the common sets of rights and obligations" mean and what the contents of any plurilateral agreements will be are questions that will have to await the outcome of further negotiations.

In sum, differences on such issues as the dismantling of agricultural subsidies, services, investment and intellectual property rights led to a two-tiered approach (flexible geometry): a core agreement and more ambitious plurilateral agreements. These differences have played a part in the

[29] There has emerged a group of 13 countries that support the general orientation of the United States in this respect. They are: Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Peru.

[30] To translate the Miami agreement into a concrete mandate for the 9 FTAA negotiating groups, Blanco, Zabludovsky and Gómez (2004) argue that the major components of the "common set" for all 34 countries for each discipline must be specified, as well as the elements of the additional set of commitments that would be undertaken by countries that wish to do so. They stress that the success of a negotiation among two groups of countries with different levels of obligation depends strongly on finding a self-contained balance within each of the two groups, and that as a minimum condition, FTAA participants should be willing to liberalize trade in goods and consolidate current levels of openness in services and investment, with clear rules and transparency among the 34 Member countries.

present paralysis of FTAA negotiations. The so-called "core agreement" is yet to be defined and negotiated. This situation has contributed to the proliferation of BTAs.

On the other hand, for many countries in South America, Europe is as important a trading partner as the United States and Canada combined. A number of sub-regions would stand to benefit as much from trade and investment liberalization in the European Union as from FTAA (Monteaguado and Watanuki 2003). One of the reasons why Mexico pursued an agreement with the European Union despite its already strong dependence on the United States markets was precisely to minimize residual trade diversion, diversify its export markets, and attract European FDI and know-how. For Chile, the FTA with the European Union is meant to consolidate its market diversification process, in which the European Union represents roughly 25% of its total exports. The European Union's negotiations with MERCOSUR are highly dependent on the trade-offs between agricultural liberalization and improvements in market access for manufactures and services for European Union exporters. Meanwhile, intra-MERCOSUR trade may suffer some setbacks, especially in relation to several types of manufactured goods in which the European Union has a comparative advantage (ALADI 2003). Overall benefits for the Latin American and Caribbean countries are highly dependent on the extent of market access that these countries obtain in European agricultural markets. Progress in these talks and prospects for launching European Union-Central America and European Union-Andean Community negotiations would appear to hinge upon eventual Doha Round agreements. CARICOM may finalize an FTA with the European Union before 2008. Given a different product mix in exports to the European Union, Latin America and the Caribbean would not be competing directly with the 10 Central and Eastern European countries that recently joined the Union in these markets. However, the Latin American and Caribbean countries will mostly likely suffer significant trade diversion in agriculture as a result of their accession (Nogués 2004).

In addition to moving forward with negotiations for FTAA and with the European Union, it is equally important for the Latin American and Caribbean region to continue to strengthen trade and investment relations with Asia and the Pacific. At present, the Asian-Pacific markets are still underexploited, as they represent no more than about 10% of total Latin American and Caribbean trade, although they are already significant markets for Chile and Peru. Rapidly growing exports to China also represent a great potential for further growth for a number of countries in the region. Other FTAs that follow in the footsteps of the FTAs signed by Chile with the Republic of Korea and by Mexico with Japan may provide a means of reducing high tariffs, tariff escalation and non-trade barriers such as quotas, seasonal tariffs, technical barriers to trade, and sanitary and phytosanitary measures in Asian markets. Multilateral liberalization is still the most efficient way to reduce the high levels of protection found in the agricultural sectors of these Asian markets, however.

C. Subregional integration and bilateral agreements

By their very nature, RTAs divert trade by affording preferential treatment to member countries that is unavailable to non-members. The concurrent existence of an FTAA and sub-regional or bilateral agreements with countries in and outside the region will surely increase the complexity and reduce the transparency of the multilateral trading system. In addition, in some sectors that enjoy a high level of protection under sub-regional agreements, such as the automotive industry, protectionist barriers would be slow to be eliminated within the context of the multilateral trading system or FTAA. From this perspective, making the rules more compatible across sub-regional agreements and between these agreements and WTO might lessen the negative effects associated with having myriad FTAs of differing depths and scope. This takes quite some time to

accomplish, however, and a WTO-consistent FTAA that would convert sub-regional agreements into more open blocs seems rather remote at this juncture.

However, in some cases, FTA coordination facilitates convergence and promotes compatibility with regional and multilateral agreements. It may be possible to pursue a multi-track strategy of multilateral, regional and bilateral aspects that might lead to free and fair trade more quickly than would be possible using just one track. The proposed FTAA, regardless of the form that it might take, can benefit from using multilateral disciplines as a foundation for hemispheric trade. At the same time, the adoption of hemispheric agreements on areas not covered by multilateral rules and disciplines could help promote consensus-building on these issues at the multilateral level. Where adequate multilateral disciplines and mechanisms exist, they could be incorporated into FTAA, thereby avoiding duplication or renegotiations at the hemispheric level. Moreover, the Latin American and Caribbean countries should avoid focusing their negotiating energies on onerous "WTO-plus" policies rather than searching for less demanding basic commitments and commonalities at the multilateral level.[31]

Despite several potential drawbacks, regional integration can foster a diversification of exports towards output that is more connected to the overall competitiveness of the economies concerned and that therefore helps to create dynamic comparative advantages. In addition, integration serves to "lock-in" improved access to regional markets and thus fosters economies of scale. It can also enhance non-traditional exports, differentiated products and products involving more value added and more knowledge-intensity (ECLAC 2002, Devlin and Ffrench Davis 1998). In fact, the learning curve associated with experience in regional markets can give rise to a platform for new international markets. This is the principal idea underlying the ECLAC proposal regarding Open Regionalism (ECLAC 1994).

In this respect, much remains to be done if the Latin American and Caribbean region is to exploit the potential benefits of regional integration more fully. The countries in the region should continue to work to overcome the constraints affecting their regional integration process. These constraints include: (i) the persistence of non-tariff barriers; (ii) perforations of common external tariffs and failure to bring customs union arrangements to completion;[32] (iii) inadequate regional infrastructure; (iv) lack of effective sub-regional community institutions; (v) limited coordination of macroeconomic and sector policies, as well as tax systems that do not work properly in integrated markets and that fail to stimulate external trade and investment; vi) weak Dispute Settlement Mechanisms; and vii) insufficient mechanisms for promoting a form of socio-economic development that would compensate for asymmetries in the distribution of the benefits of integration (IDB 2003; ECLAC 2005). The modernization and simplification of customs procedures, the regionalization of rules of origin, sanitary and phytosanitary regulations, the strengthening of sub-regional dispute settlement mechanisms and the building of institutional and

[31] As Granados (1999) suggests, there are some areas that are prone to the generation of "cross-fertilization" effects between WTO and FTAA in terms of complementarity and convergence, while other areas will act more as an "interaction obstruction" force between the two processes. Of course, agriculture is the area that has the most "cross-fertilization" potential. In his view, there are some areas in which FTAA would lead the process in establishing the global norm, such as investment, services and government procurement, while the multilateral process could establish the general rule for dispute settlement mechanisms, for instance. Meanwhile, incorporating rules and disciplines in FTAA that go much further than the sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) of WTO is unlikely to occur, although there could be some "cross-fertilization" in relation to transparency, notifications, risk analysis and scientific evidence.

[32] In the event that FTAA ends up being a shallow, much less ambitious arrangement, subregional agreements could play a larger role in raising the level of economic and social well-being in the countries of the region. This is especially true if the goals of Latin American and Caribbean integration schemes regarding the establishment of customs unions and common markets are fully met. Moreover, within the context of a complete customs union, once agreement has been reached on the implementation of a common external tariff, the conclusion of bilateral deals with third parties by individual members of the union should be avoided. Regardless of the success and scope of FTAA, subregions with common market tariffs should continue to lower their external tariffs, which, while benefiting all members, will be of particular importance for the smaller countries that are more exposed to the unwanted effects of trade diversion (IDB, 2002, p.16).

human capacities in matters related to certification/verification, technical barriers and sanitary and phytosanitary measures would also be important elements of the relevant regional public goods (ECLAC 2002). The new agendas of MERCOSUR and the Andean Community (the 2006 Objective and the Quirama Declaration of 2003, respectively) take the majority of the above-mentioned issues into account and seek to remove existing obstacles to sub-regional trade and investment flows. In sum, regional integration should tackle several dimensions of "deep integration" in a context of "Open Regionalism" by addressing "behind-the-border" measures while also harmonizing regulatory regimes. In addition, this approach to integration requires the adoption of agreements that will contribute to macroeconomic stability and productive development in each country.

If principal economic actors such as exporters, importers and investors believe that one of the main weaknesses of integration schemes is legal uncertainty that surround them, it is of great importance to create a credible trade and investment environment. In this respect, it is important for the region to make efforts towards harmonization, and eventually unification, of the heterogeneous dispute solution systems that exist in the four sub-regional schemes, with the possibility of that those mechanisms of all the ECAs and BTAs signed by Chile and Mexico being gradually integrated into this single regional controversy-solution body. Moving towards a single dispute settlement mechanism, that should make its ruling more binding and facilitate the learning from the best practices of each sub-regional entity, would be conducive to a more credible and predictable legal system even at the national level. The same "regionalization" process can be envisaged for other rules and disciplines such as pytosanitary and sanitary, technical measures, and the rules of origin that would permit to "accumulate" value at the regional level.

A strong sub-regional agreement would provide enhanced negotiating power both at the level of WTO and in connection with the European Union and FTAA negotiations. Even with a full-fledged FTAA, a sub-region that has achieved a common market or beyond, with free movement of factors and other forms of economic cooperation, could combine national resources more effectively to compete within FTAA and in the global economy (IDB, 2002, p.14). Deeper sub-regional agreements would also promote other beneficial forms of cooperation, such as macroeconomic policy coordination, integration of infrastructure or the provision of regional public goods (ECLAC 2002, Kuwayama 2005). For instance, macroeconomic policy coordination is more likely to succeed in a regional setting than in the FTAA framework, although macroeconomic performance is one of the areas that cannot be solved through FTAs. Rather, the responsibility lies with domestic policy (Machinea 2003b).

Nevertheless, since the mid-1990s, instead of deepening regional agreements, the region has opted to pursue the bilateral route. This increased tendency to pursue BTAs parallel to the FTAA negotiations —as reflected, for example, in the recent interest shown by the United States in initiating and/or concluding bilateral FTAs with Chile, Central America, the Andean Community and others— poses potential risks for a comprehensive and balanced WTO agreement and FTAA.

The advance of hub-and-spoke regionalism in the western hemisphere has been rapid despite the recognition that preferences obtained through BTAs may be gradually perforated and diluted by other PTAs over time. The pursuit of an FTAA based on hub-and-spoke bilateral agreements poses new challenges: this approach "could be geared primarily to achieving the country's narrow commercial interests through sheer leverage in the bilateral negotiations —or through inclusion in some of them of issues that may not entail important concessions for the bilateral counterpart— and then using them as precedents to forge similar FTAA agreements. In this way, the agenda setter would obtain an agreement that is closer to meeting its own goals, without having to make many

concessions in return" (IDB 2002, p.13). These strategies could stifle the formation of a balanced FTAA and have a negative effect on economic and social welfare.[33]

It is important to take note of several aspects of these BTAs with industrialized countries. First, they tend to establish and consolidate the access that the Latin American and Caribbean countries already have through the GSP. Secondly, these FTAs include provisions in investment, competition policy, government procurement and trade facilitation that are of special interest to industrialized countries that have "WTO-plus" disciplines for which there are no multilateral rules in place (see the following section). Thirdly, issues that affect Latin American signatories, such as internal support measures in agriculture or anti-dumping legislation, are remitted to the multilateral negotiating forum.

In summing up, bilateral agreements improve market access, consolidate and expand trade preferences, establish mutual rights and obligations (dispute settlement mechanisms), lock-in liberalization efforts and may favor institutional modernization. Nevertheless, multiple bilateral agreements do have some costs: intraregional trade diversion, administrative costs (the "spaghetti bowl"), reduced bargaining power for smaller countries, the possibility that some countries will agree to certain demands in areas that go beyond commonly accepted trade issues, etc. They also reduce incentives for pushing the regional envelope and the willingness of the developed world to push multilateral negotiations. Furthermore, it should be kept in mind that FTAs (and FTAA) are an opportunity, but they are no more of a "panacea" than the structural reforms of the 1990s were.

A comprehensive FTAA could be a superior form of regionalism for Latin America and the Caribbean if it concentrates more on trade barriers and less on non-trade issues. Too strong an emphasis on "behind-the-border" issues reduces the scope for policy measures less than what was the case in the development process of today's industrialized countries or the newly industrialized economies. This is the case of provisions that impede regulatory measures on capital inflows, for instance.

D. Agriculture and "WTO-plus" issues in FTAs

The existing and forthcoming BTAs, especially those with the North that tend to adopt the "WTO-plus" approach, basically involve a trade-off between market access to the North's huge goods and financial markets and the South's liberalized markets for imports, services, investment and intellectual property rights. This, in turn, reduces the ability of the Latin American and Caribbean countries to maneuver their already limited autonomy in trade and development policy. It should also be remembered that the BTAs with industrial countries include disciplines in investment, competition policy, government procurement and trade facilitation, for which there are no multilateral rules. As this type of FTA proliferates, it is important to understand the potential short- and long-term benefits and costs of such arrangements. Given their depth and scope, it is difficult to ensure that norms developed at WTO can be easily built into bilateral agreements. However, this would not necessarily be the case at the regional level. The relationship between WTO and regional agreements is a realm where coherence could be sought as a means of ensuring that there will be room for development policy, as opposed to the limited scope for policy measures available under the "WTO-plus" approach.

In the following pages, the scope and depth of Latin American FTAs are examined in five areas of negotiation (agriculture, services, investment, rules of origin and competition policy) in

[33] The Santiago Declaration repeats the Declaration of the IV Ministerial Meeting on Trade in San José, Costa Rica stipulating that FTAA can co-exist with bilateral and sub-regional agreements to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of FTAA (building blocks approach); and that FTAA should be constructed based on commitments that are balanced, equitable and advantageous for each of the members.

order to show how rigorous these FTAs are in the latter three negotiation sectors than in the former with respect to their rules and disciplines, in comparison to those of WTO. Although not dealt with here due to space limitations, a similar case can be made for the region in regard to intellectual property rights (Vivas-Eugui 2003) None of these areas is not covered by a complete set of WTO rules and standards, while such norms are increasingly being incorporated into the recent FTAs.

1. Agriculture

A detailed review of agriculture-related provisions in FTAs signed by Latin American countries, that had entered into force before the end of 2004[34] (Kjöllerström 2005) indicates that the special status, and thus treatment, conferred to agriculture in the WTO, is widely reproduced in the regional sphere. However, in contrast to those in other negotiating sectors, major agriculture-related provisions contained in the FTAs are not by any means "WTO-plus" disciplines.

Table 5

AGRICULTURAL PRODUCTS MOST FREQUENTLY EXCLUDED FROM TARIFF LIBERALIZATION[a] IN FTAS SIGNED BY LAC COUNTRIES

Sugar	Poultry	Beef	Pork	Dairy	Cereals
Excluded in:					
All agreements except **Canada-Costa Rica** and **Chile-United States**. Within **NAFTA**, trade between Mexico and the United States will be liberalized, but not between Canada and Mexico.	**NAFTA** (between Canada and Mexico), **Costa Rica-Mexico**, **G3**, **Bolivia-Mexico**, **Canada-Chile**, **Central America-Dominican Republic**, **Central America-Chile** (between Chile and Costa Rica)[d], **Mexico-NT**, **Canada-Costa Rica**, **Mexico-EU**, **Chile-EU**[b], **Chile-South Korea**[c].	**G3**, **Bolivia-Mexico**, **Central America-Chile** (between Chile and El Salvador), **Mexico-NT** (excluded only by Mexico), **Canada-Costa Rica** (excluded only by Costa Rica), **Mexico-EU**, **Chile-EU**[b] **Chile-South Korea**[c].	**G3**, **Bolivia-Mexico**, **Central America-Chile** (between Chile and El Salvador), **Mexico-NT**, **Canada-Costa Rica** (excluded only by Costa Rica), **Mexico-EU**, **Chile-EU**[b].	**NAFTA** (between Canada and Mexico), **Bolivia-Mexico**, **Central America-Dominican Republic**, **Chile-Mexico** (excluded only by Mexico), **Chile-South Korea**[c].	**G3**, **Bolivia-Mexico, Canada-Chile** (excluded only by Chile), **Central America-Dominican Republic**, **Chile-Mexico, Central America-Chile Mexico-NT**, **Canada-Costa Rica** (excluded only by Costa Rica), **CAFTA-DR** (all Central American countries, except Costa Rica) **Mexico-EU**, **Chile-EU**, **Chile-South Korea**[c].

Source: Kjöllerström, Mónica (2005), "The Special Status of Agriculture in Latin American Free Trade Agreements", mimeo, ECLAC, Santiago, Chile. Compilation follow text of the agreements, downloadable from the Foreign Trade Information System of the Organization of American States, OAS-SICE (http://www.sice.oas.org/).

[a] Two agreements that only recently entered into force (Mexico-Uruguay and Panama-Taiwan Province of China) have not been studied here. In addition, the Israel-Mexico, Chile-EFTA and Mexico-EFTA are not considered given that they consist mainly of permanent tariff reductions and a short list of agricultural products for which trade is fully liberalized.

[b] Excluded only by the EU, but with the concession of a duty-free quota to Chile.

[c] Excluded by South Korea pending Doha round negotiations;

[d] Note that the Central America-Dom. Republic FTA is not in force yet for Nicaragua and that the Central America-Chile FTA is only in force for Costa Rica and El Salvador.

With respect to product coverage, as in the multilateral forum, more products tend to be excluded altogether from trade liberalization in the agricultural sector than in other sectors. Sugar, dairy products, cereals and meats are the most common exclusions. Many of these products are

[34] In this analysis, the CAFTA-Dominican Republic agreement is also considered. The ECAs signed within the scope of ALADI that are not FTAs in strict rigor have not been reviewed. Such ECAs are less ambitious in terms of both scope (issues covered) and product coverage. These include: Chile-Venezuela (ECA 23), Chile-Colombia (ECA 24), Chile-Ecuador (ECA 32), MERCOSUR-Chile (ECA 35), MERCOSUR-Bolivia (ECA 36) and Chile-Peru (ECA 38).

either "sensitive" or "special" as defined in the multilateral negotiations, for the reasons either of food security, livelihood security or rural development.[35] In addition, tariff reduction/elimination schedules for agricultural goods tend to be longer than for other sectors.[36] Furthermore, for most agricultural goods that receive some kind of preferential treatment, the tariff reduction with respect to the pre-FTA level is rather small (see Table 5).

Despite these generalities, the FTAs vary substantially with respect to the product coverage and tariff reduction/elimination schedules, and in the opinion of Kjöllerström (2004), they can roughly be divided into four categories (see Figure 3). In the first group of countries, the Chile-United States agreement stands out because no product is excluded from the tariff elimination schedule, and because applied tariffs are reciprocally and completely eliminated for the majority of agricultural goods either immediately or in the short-run. In the Chile-Mexico and G3 agreements, although a few products considered "sensitive" are excluded, tariffs on the remaining agricultural goods are eliminated upon entry into force of the agreement.

Figure 5

COVERAGE AND TARIFF ELIMINATION SCHEDULES FOR AGRICULTURAL GOODS

	Short-term liberalization for most products	Medium to long-term liberalization for most products
Few or no products excluded	Chile-United States Chile-Mexico G3 (Mexico-Colombia-Venezuela)	NAFTA Mexico-Nicaragua CAFTA-Dominican Republic Chile-Rep. of Korea
Many products excluded	Israel-Mexico EFTA-Mexico Chile-EFTA	Costa Rica-Mexico Bolivia-Mexico Canada-Chile Central America –Dominican Republic Central America-Chile Mexico-Northern Triangle (El Salvador-Guatemala-Honduras) Canada-Costa Rica Mexico-European Union Chile-European Union

Source: Kjöllerström, Mónica (2005), "The Special Status of Agriculture in Latin American Free Trade Agreements", mimeo, ECLAC, Santiago, Chile.

[35] For instance, in the Bolivia-Mexico FTA, almost 100% of the products excluded are agricultural goods, and in the G3 agreement, the percentage is similarly high regarding the Mexico-Colombia tariff schedules, 90% - although much smaller for Mexico-Venezuela (approximately 30%; here the exclusions are concentrated in the textile sector, which accounts for 70% of the total number of excluded products). The same holds for the Chile-Mexico FTA (almost 80%).

[36] In the case of the agreements signed by the EU with Mexico and Chile, for instance, the average phase-out period for all the sectors is 1.71 and 1.14 years, respectively, versus 5.09 and 3.78 years in the case of agricultural goods. In the Bolivia-Mexico FTA, agricultural goods represent 78.9% (100%) of the products with longest phase-out periods (10 and 15 years, respectively). In the association agreements between Bolivia and Chile with MERCOSUR, in force since 1997 and 1996, respectively, agricultural goods with tariff phase-out until 2006 and 2011 and later, represent 0% and 16.0%, 49.4% and 5 7.6% and 100% and 100%, of all products included in each of the phase-out categories, respectively.

A second group of trade agreements have a short list of exclusions, but relatively long tariff elimination schedules for some sensitive products, as in NAFTA, CAFTA-Dominican Republic (CAFTA-DR) and the Mexico-Nicaragua agreements. The agreement between Chile-Republic of Korea is rather unique in that Chile has limited its list of exclusions to the products subject to price bands (wheat, vegetable oils, sugar) while the Asian country postponed the negotiation of a significant number of goods pending the outcome of the Doha round negotiations, although its formal list of exclusions is also limited to a few products.

The third group shows a relatively large number of agricultural goods excluded altogether from any concessions (or that remain with large above-quota duties), and the remainder are for the most part liberalized either in the medium or long-run, usually with large grace periods. Such is the case of Canada-Costa Rica, Costa Rica-Mexico); Mexico-Northern Triangle and Chile-EU. The last group lists those FTAs whose commitments in agricultural goods are "fairly modest", excluding many products and consisting mainly of permanent tariff reductions.

The factors explaining the heterogeneity between the examined FTAs include, among others: (i) cross seasonality between the North and South hemispheres that reduces competition in certain products (e.g., Chile and the United States versus Mexico and the European Union); (ii) unilateral liberalization on the part of some countries as part of extensive structural reforms (such as Chile) which have made these countries more prone to seek further liberalization covering multiple aspects of bilateral relations beyond trade (e.g., investment); and (iii) the relative importance of some products in terms of their contribution to internal production, employment, and total exports. In some cases, the asymmetry in the level of development between signatory countries has been taken into account, by establishing, for instance, longer tariff elimination schedules for the less-developed party, or allowing certain products considered important in terms of food security to be excluded non-reciprocally.[37]

Regarding export subsidies, most agreements establish their elimination on reciprocal trade, but the products excluded from tariff liberalization are also excluded from this obligation. Moreover, countries are allowed to reintroduce such subsidies if the counterpart is importing subsidized similar goods from third parties. At the same time, the commitments with respect to domestic support measures and anti-dumping remedies are basically inexistent. Besides, a group of FTAs include special safeguard (SSGs) measures for an extensive list of products. In some cases, the conditions governing the SSG application are more flexible than what the WTO Agreement on Agriculture establishes.[38] Moreover, in some agreements it is specifically stated that one or more Parties have the right to maintain their band price mechanisms. In addition, the agroindustrial sector, together with textiles and apparel, has also the strictest rules of origin in all agreements considered, and the most exceptions with respect to the so-called "*de minimis*" rule (tolerated percentage of imported inputs when these are not allowed).

[37] This is the case of Mexico, in NAFTA and the agreement with the EU; of Nicaragua, in the agreement with Mexico; of Costa Rica, in the agreement with Canada; and of the Central American countries in CAFTA. For example, while Canada liberalized trade with Costa Rica for 87% of its agricultural goods upon entry into force of the agreement (that is except refined sugar, which is liberalized in 8 years, and the list of exceptions), the latter does so for only 45% of its agricultural goods. In addition, only 8% are liberalized in the medium-term (7 years) and the remainder, 36%, only in the long-term (14 years) (Ministerio de Comercio Exterior de Costa Rica, 2001).

[38] For instance, Chile would not in principle be allowed to apply such measures given that it has "not reserved the right to do so in its schedule of commitments on agriculture". However, this is possible in the context of the FTA with the United States. In the case of the Andean Community (CAN), the application of SSGs "can be prolonged indefinitely, and under any form, as tariff or non-tariff measures". In fact, the obligation to provide non-discriminatory treatment to CAN members with respect to third countries would be the only thing preventing the latter from receiving a more favorable treatment. Safeguards can now be imposed in 85 tariff lines, which represent a significant proportion of the agricultural trade within customs union members. Overall, the "SSGs in the CAN are significantly more restrictive than those of the Chile-United States agreement, and thus the possibility that an agreement between the Andean countries and the United States is reached would severely limit the former" (Secretaría General de la Comunidad Andina, 2003, p.16).

On the other hand, the provisions on intellectual property are in some cases stricter than what has been agreed multilaterally (for instance, with respect to protection of geographical indications in the agreements where the European Union is a Party; or with respect to the patenting of plants and second use of agrochemicals in CAFTA-DR). The reverse is also true, as happens with the exceptions to the protection of geographical indications, which are broader than the TRIPS provisions in the agreements where the United States is a Party. Notwithstanding, in some cases some steps have been taken towards trade facilitation in the areas of sanitary and phytosanitary measures and agricultural standards, by the establishment of clear rules in their application between FTA members.

2. Services

A major difference between WTO and the sub-regional negotiations being pursued in the western hemisphere on trade in services is that the former follows the "positive-list" approach while the latter has preferred the negative-list option (Prieto and Stephenson 1998; Stephenson 2001). The positive-list method was agreed on and applied during the Uruguay Round and is established at the multilateral level under GATS. Points of emphasis of GATS include the creation of commitments in market access and treatment of foreign providers in specific service sectors. Periodic rounds of negotiations have served to add liberalization measures in sectors not originally considered. In contrast, most of the FTAs signed by the Latin American and Caribbean countries are based on the "negative list" approach that was first pioneered in NAFTA. This method commits the members to liberalize all forms of discriminatory treatment faced by all service sectors, with the exception of certain sectors and measures that are clearly identified in accompanying reservations.

Another differentiating element is the *local presence* provision that is contained in the majority of FTAs signed by the countries of the region. This provision prohibits any party in a given agreement from requiring a foreign services provider to establish itself locally in order to supply a traded service. This "right of non-establishment" is harmonized within these NAFTA-type agreements.[39] In sum, some areas of divergence exist among the bilateral and subregional agreements on trade in services that have been concluded. However, the scope of these agreements tends to be similar to that of NAFTA, and a foundationally compatible relationship thus exists between this agreement and those signed by the countries in the region (see Table 6). Meanwhile, the FTAs signed with the European Union tend to be less demanding in terms of their commitments and disciplines.

Speaking specifically of the BTAs singed by the United States, Abugattas (2004) argues that services disciplines under the proliferating US BTAs with Latin American countries exceed GATS requirements in certain areas, while they go less far in others, resulting in a considerably less development-friendly regime than the one offered under the WTO. In principle, RTAs and BTAs should go beyond the obligations contained in the GATS, and address those areas where multilateral experience has revealed the need for improvement or clarification. However, his analysis of the services provisions in the BTAs, which are modeled after the NAFTA, indicates that these conditions have not necessarily been fulfilled.

[39] Other similarities with NAFTA-type pacts in trade in services include: (i) the similar coverage of sectors, for which substantive provisions are established that have very few specific exceptions, (ii) the importance of the two principles in trade in services of MFN treatment and national treatment, together with the even more important principle of transparency; (iii) the lack of any stipulation on subsidy disciplines in the NAFTA-like agreements; (iv) the lack of any stipulation on the possibility for general safeguard action with respect to services, though this is found in the GATS (however, safeguard action in the case of balance-of-payments difficulties is foreseen in most agreements, including NAFTA, the Group of Three, the Andean Community and the agreement reached by Central America with the Dominican Republic; the bilateral treaties signed by Mexico with Bolivia, Costa Rica and Nicaragua specify that procedures for the establishment of disciplines on safeguards will be developed); (v) their disciplines on monopoly service providers are designed to ensure that monopoly suppliers do not abuse their position in the market or perform actions inconsistent with the WTO guidelines accepted by a member (State-owned enterprises are also included in these advanced agreements); and (vi) provisions on the relationship between services and investment.

Table 6

LATIN AMERICA AND THE CARIBBEAN: SUMMARY OF PRINCIPAL INTERNATIONAL COMMITMENTS IN TRADE IN SERVICES

Agreement	APPROACH	Trade in Services	Temporal entry of business persons	Professional services	Tele-communications	Financial Services	E-Commerce	Air Transport	Land transport
	Sub-regional agreements (Customs Unions)								
Andean COMMUNITY	Negative List (1998)	Decision 439	Decision 504 (Andean Passport)	...	Decision 462	...	...	Decision 320	Decision 399
MERCOSUR	Positive List (1997)	Protocol of Montevideo Decision 9/98	Annex to protocol Decision 9/98	Annex to protocol Decision 9/98	....	Annex to protocol Decision 9/98	...	Annex to Protocol Decision 9/98	Annex to Protocol Decision 9/98
CARICOM	Negative List (1998)	II Protocol	...	Political decisions 1995 y 1996	...	...	...	Multilateral Agreement	...
CACM	(1995)	...	...	Art. 18 of Protocol de Guatemala	...	...	...	...	...
	Free Trade Agreements (bilaterals and plurilterals)								
Bolivia-Mexico	Negative List (1995)	Chapter 9	Chapter 11	Annex al Chapter 9	Chapter 10	Chapter 12	...	...	...
Chile–Canada	Negative List (1997)	Chapter H	Chapter K	Annex al Chapter H	Chapter I	...	...	...	...
Chile–USA	Negative List (2003)	Chapter 11	Chapter 14	Annex al Chapter 14, section D	Chapter 13	Chapter 12	Chapter 15	...	...
Chile – Korea	Negative List (2003)	Chapter 11	Chapter 13	Annex 11.10	Chapter 12	...	...	...	...
Chile–EU	Positive List (2002)	Title III Chapter 1	...	...	Chapter 1, Section 3	Title III Chapter 2	Art. 104 (Cooperation in regulation)	...	...
Central America – USA	Negative List (2003)	Chapter 11	...	Annex al Chapter 11	Chapter 13	Chapter 12	Chapter 14	...	...
CARICOM –Dom. Republic	Negative List (1998)	Annex II	Annex especial	...	...	...	...	...	...
Chile - Central America	Negative List (2000)	Chapter 11	Chapter 14	Annex al Chapter 11	Chapter 13	...	...	Chapter 12	...
Central America Central – Dom. Republic	Negative List (1998)	Chapter 10	Chapter 11	Annex al Chapter 10	...	...	...	...	...
America Central – Panama	Negative List (2002	Chapter 11	Chapter 14	...	Chapter 13 (does not apply between Panama and Costa Rica)	Chapter 12	...	...	Annex 11.16
Chile-Mexico	Negative List (1998)	Chapter 10	Chapter 13	Annex al Chapter 10	Chapter 12	...	...	Chapter 11	...
Costa Rica-Mexico	Negative List (1994)	Chapter 9	Chapter 10	Annex al Chapter 9	...	...	...	...	...
Group of Three	Negative List (1995	Chapter 10	Chapter 13	Annex al Chapter 10	Chapter 11	Chapter 12	...	Annex al Chapter 10	...
Mexico-Nicaragua	Negative List (1998)	Chapter 10	Chapter 12	Annex al Chapter 10	Chapter 11	Chapter 13	...	...	Annex al Chapter 10
Mexico—Northern Triangle	Negative List (2001)	Chapter 10	Chapter 13	Annex al Chapter 10	Chapter 12	Chapter 11	...	...	Annex al Chapter 10
Mexico - EU	Positive List (2000)	Title II	...	...	...	Annex 11 to 26 Chapter III	...	...	...
NAFTA	Negative List (1994)	Chapter 12	Chapter 16	Annex al Chapter 12	Chapter 13	Chapter 14	...	...	Annex al Chapter 12

Source: ECLAC, International Trade and Integration Division, based on the legal instruments signed by the respective countries: The information for the majority of the agreements is available online on the website of the Organization of American States (OAS) (www.sice.oas.org). In the case of the agreement between the Central American countries (Guatemala, Honduras, Nicaragua and El Salvador) with the USA, consulted the following draft reports available online:http://www.unes.org.sv/unes/capitulo10.pdf; and http://www.ustr.gov/new/fta/Cafta/text/index.htm

The BTAs concluded to date reflect the US trade interests especially in areas such as financial services, telecommunications, express delivery, the protection of local distributors and transparency. In other areas, however, the BTAs either for the most part duplicate existing obligations under the GATS or are even more restricted in scope.

Such is the case, for instance, for 'temporary movement of natural persons' (Mode 4). The GATS covers all kinds of movement and all categories of providers with no reference to their level of qualification; under Mode 4, WTO Members commit to temporarily admitting into their territory citizens of other Member countries —and, under certain circumstances, permanent residents in other Member countries— to provide services to both natural persons and legal entities in the receiving country. The GATS neither defines the meaning of 'temporality' nor imposes any conditions as to how the 'movement' must take place. Latin American countries have prioritized this mode of services supply in their requests in the WTO's services negotiations (Abugattas 2004). The US agreements with Chile and Singapore which contain a chapter on the temporary movement of businesspersons, and professionals[40] may be an exception in this area, since the US Congress clearly indicated that it would not accept similar concessions in future agreements.[41]

Another area of trade in services that deserves attention is domestic regulation. The BTAs limit the breadth of obligations to that specified in GATS Article VI.4, excluding the requirement of the first paragraph in that article, which requires all measures of general application affecting in trade in services to be "administered in a reasonable, objective and impartial manner." This occurs due to the definition of investment in the BTAs that goes far beyond GATS provisions on "commercial establishment" extending commitments pertaining to domestic regulation to the broad spectrum of investment measures.

3. Investment

There is no comprehensive agreement on investment within the WTO framework. The scope of arrangements in this area is primarily confined to performance requirements in the TRIMs for goods and the provisions of the GATS concerning commercial presence (Mode 3) and movement of natural persons (Mode 4) for the supply of services. In parallel to these commitments at WTO, to promote a marked increase in FDI flows, during the 1990s the countries negotiated a large number of bilateral investment treaties (BITs). These treaties are officially called Investment Promotion and Protection Agreements (IPPAs) and Agreements on Double Taxation. These investment agreements set standards for the treatment and protection of investment and investors; they include an admission clause that refers to the laws and regulations of the host State concerning the admission of investment and provide a dispute settlement mechanism for arbitrating disagreements between the investor and the host State. The Latin American and Caribbean countries were reported to have concluded more than 400 BITs and 260 double taxation treaties by the end of 2003. Among those, Chile has signed 61 BTI agreements up to November 2005 (http:/www/direcon.cl/). In the case of the FTAs signed by Chile until now, with the exception of the lately P-4 signed with New Zealand, Singapore and Brunei Darussalam, investment is included in the main text, and the norm seems to be the inclusion of BIT disciplines in FTAs. Because of the

[40] The United States gave Chile a quota of 1,400 professional entries and granted access to 5,400 service providers from Singapore.

[41] Another example that Abugattas (2004) illustrates is the definition of 'consumption abroad' (Mode 2) in the BTAs signed by the United States that differs from the one contained in the GATS Article I. The formulation incorporated in the BTAs limits the scope of Mode 2 to only those transactions between a consumer in one Party and a provider of the Party in whose territory the service is offered. In the case of the BTAs, Mode 2 is defined as the supply of a service "in the territory of one Party by persons of this Party to persons of the other Party", whereas Mode 2 under the GATS contains no specifications for the provider of services to persons of another party. Therefore, what is excluded from the reach of Mode 2 in the BTAs but is included in Mode 2 of GATS is the supply of a service to consumer of Party (A) in the territory of the other Party (B) through a temporal presence of natural persons of another Party in whose territory the service is offered. This problem derives in part from that the chapter on services which does not include the supply of a service in the territory of one Party by an investor of another Party.

inclusion that removes all restrictions on business and provides more certainty to foreign investors, FTAs act as an open "market access" for investment.

Since the 1990s an increasing number of countries in the Americas have concluded agreements that go beyond the traditional approach based on protection and promotion by including a "market access" dimension mentioned before. These NAFTA and NAFTA-like agreements are specifically designed for the twofold purpose of achieving a high level of investment protection while also ensuring the free entry of investments and investors into the territory of the host country. This is achieved by adding a "right of establishment" for foreign investors and investments.[42]

In the context of agreements on investment, the FTAA member countries can be divided into four groups. The first group consists of those that have signed IPPAs with the United States (e.g., Argentina, Bolivia, Ecuador, Grenada, Haiti, Jamaica, and Trinidad and Tobago) and of those that have signed an individual investment chapter within their FTAs. Main similarities and differences in the treatment of investment across different FTAs existing in the region are illustrated in table 7. It is important to note that, even though they may take the form of IPPAs, all the agreements signed with the United States follow a format similar to that of Chapter 11 of NAFTA and incorporate many rigorous features (see Note No. 43 of this paper). The above countries, as well as Mexico, Canada, Chile, the Central American countries, Panama and the Dominican Republic, all of which have signed an FTA with the United States, might not have a problem in accepting a chapter similar to this in FTAA. The second group consists of the countries that have signed a NAFTA-type agreement, but not with the United States (e.g., Colombia and Venezuela). The third group consists of countries that have signed agreements of the IPPA category (e.g., Barbados, Brazil, Dominican Republic, Paraguay, Peru and Uruguay) without mimicking the NAFTA model. It should be also mentioned that in the case of MERCOSUR and the Andean Community, each has its proper provisions on investment, which are relatively broad in their scope but are less ambitious with respect to international dispute arbitration. It is also interesting to note that in the case of CARICOM-Dominican Republic agreement, the parties agreed to include a clause allowing for the postponement of profit repatriation for foreign investment for at least three years, should the host country face balance-of-payments problems.

[42] These NAFTA-like agreements, whose disciplines are strict and coverage is wide, can be characterized by the following features: (i) a "broad, open-ended, asset-based" definition of investment, though some agreements try to avoid specific monetary and speculative flows that are not related to investments; (ii) the inclusion of a right of establishment (right to establish a new business or to acquire an existing one) with no admission provision but with a list of country-specific exceptions; (iii) strict disciplines on non-discrimination, --pre- and post investment stages,-- national treatment, MFN; (iv) prohibition of performance requirements for both goods and services which go far beyond the multilateral commitments under the TRIMs; (iv) freedom of payments and free transfer of funds; v) strict conditions for expropriation and guarantees for investors and adequate compensation if an expropriation were to ever occur; (vi) disciplines that prohibit the relaxation of internal environmental standards aimed at investment promotion; (vi) an investor-state dispute settlement process (Robert 2001, Blanco and Zabludovsky 2003). The rest of the investment agreements existing in the Americas are less ambitious: their disciplines incorporate internal legislation that has a discriminatory character, referring, for instance, only to the post-establishment stage, and direct investment. The latter do not prohibit the application of performance requirements, and permit new dispositions in the future that could be more restrictive than at the moment of the signature.

Table 7a

LATIN AMERICA AND THE CARIBBEAN: SUMMARY OF PRINCIPAL INTERNATIONAL COMMITMENTS IN TRADE IN INVESTMENT

(as of February 2005)

Agreements*	Basic norms	Definition	Performance Requirements	Transfers	Expropriation and indemnifications	Dispute Settlement
	Bilateral and Plurilateral Free Trade Agreements with NAFTA influence					
NAFTA	Chapter XI	a) an enterprise; b) an equity security of an enterprise; c) a debt security of an enterprise[b]; d) a loan to an enterprise[b]; e) to a state enterprise; f) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise; g) an interest in an enterprise that entitles the owner to share in the assets of that enterprise in dissolution[b]; h) real estate or other property, tangible or intangible; and i) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or contracts where remuneration depends substantially on the production, revenues or profits of an enterprise.	In general, is forbidden: a) to export a given level or percentage of goods or services; b) to achieve a given level or percentage of domestic content; c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory; d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; e) to restrict sales of goods or services; f) to transfer technology[a], a production process[a] or other proprietary knowledge to a person in its territory, g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.; h) to force the appoint of senior management positions individuals of any particular nationality	They are allowed to: profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment; proceeds from the sale of all or any part of the investment,...; payments made under a contract entered into by an investor, payments made for compensation indemnifications.	Expropriation is forbidden, except: for: a) a public purpose; b) on a non-discriminatory basis; c) in accordance with due process of law and d) in accordance with international law, including fair and equitable treatment and full protection and security; and, on payment of compensation.	Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in the Chapter XI of NAFTA Agreement. The ICSID Convention; New York Convention; the Inter-American Convention; and the UNCITRAL Arbitration Rules are applicable for the arbitral procedures
Bolivia-México	Chapter XV	Similar Chapter XI NAFTA	Similar Chapter XI NAFTA	Similar Chapter XI NAFTA	Similar Chapter XI NAFTA	Similar Chapter XI NAFTA
Chile–Canada	Chapter G					
Chile–USA	Chapter X					
CACM – USA (CAFTA[c])	Chapter X					
CACM -Chile	Chapter 10[d]					
CACM –Panama	Chapter 10					
CACM- Dom. Republic	Chapter 9					
Chile-Mexico	Chapter IX					
Costa Rica-Mexico	Chapter XIII					
Group of Three	Chapter XVII					
Mexico-Nicaragua	Chapter XVI					
Mexico—Northern Triangle	Chapter XIV					
CARICOM – Costa Rica	Chapter X					

Sources: ECLAC, International Trade and Integration Division, under the basis of trade agreements signs by the countries. Some acronyms utilized: the International Center for the Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington D.C. on 18 March 1965; The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), approved by the General Assembly of the United Nations on 15 December 1976.

*All cases have National Treatment and also Most Favored Nations.

Table 7b

LATIN AMERICA AND THE CARIBBEAN: SUMMARY OF PRINCIPAL INTERNATIONAL COMMITMENTS IN TRADE IN INVESTMENT

(as of February 2005)

Agreements*	Basic norms	Definition	Performance Requirements	Transfers	Expropriation and indemnifications	Dispute Settlement
	Trade and Integration Agreements (Custom Unions) and FTAs without mimicking NAFTA Model					
ANDEAN COMMUNITY	Decision 291	Contributions from abroad owned by foreign individuals or legal entities, to the capital of an enterprise, in freely convertible currency or in physical or tangible assets; reinvestments	All direct foreign investments or Sub regional investments that comply with the conditions established in this Regime and in the respective national legislation of the Member Countries, shall be registered with the competent national agency in freely convertible currency.	They are allowed after payment of the corresponding taxes	...	In settling disagreements or disputes arising from FDI,... the Member Countries shall abide by the provisions of their domestic legislation
MERCOSUR	Colonia Protocol	Any kind of asset invested either directly or indirectly by an investor of a Third Party in the territory of a Member State. It includes in particular, though not exclusively: movable and immovable property and any related property rights, such as mortgages, liens or pledges,... etc (A Broad Definition)	Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements	They are allowed[e]	Expropriation is forbidden, and apply for exception following international principles[f]	Any dispute shall be settled through diplomatic consultations[g].
CARICOM –Dominican Rep.	Annex III IPPAs	Investments: means every kind of asset and in particular, though not exclusively, includes: a) movable and immovable property and any other property rights such as mortgages, liens or pledges,... etc. (A Broad Definition)	No Party shall impose any performance requirements, which are contrary to the World Trade Organisation Agreement on Trade Related Investment Measures as a condition for establishing, expanding or maintaining investments.	They are allowed[h]	Expropriation is forbidden, and apply for exception following international principles[f]:	International arbitration after diplomatic consultations

Sources: ECLAC, International Trade and Integration Division, under the basis of trade agreements signs by the countries. Some acronyms utilized: the International Center for the Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington D.C. on 18 March 1965; The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), approved by the General Assembly of the United Nations on 15 December 1976.

* All cases have National treatment and also Most Favored Nation.

a Except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; b Only when the enterprise is an affiliate of the investor, or in the case where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise (subparagraph c and d); c Include: Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador, and also Dominican Republic.(— http://www.ustr.gov/new/fta/Cafta/text/10-investment.pdf—); d Include as Annex all the IPPAs signed between Chile and Central American Common Market countries; e They are allowed to: capital; benefits, profits, salaries, interests, dividends and other current incomes; funds for the reimbursement of loans; bonuses and honoraria and other types of payments related to intellectual or industrial property rights, concessions; proceeds of the total or partial liquidation of an investment; compensation; indemnifications; f The four internatio nal principles are: a) reasons of public interest; b) in non-discriminatory fashion; c) after payment of prompt, adequate and effective compensation; and d) in accordance with due process of law; g Is important consider that only after failures in Diplomatic consultations within a prudential period the dispute shall be submitted to international arbitration; h They are allowed in general in the case of: i) returns; ii) the proceeds from the total or partial liquidation of an investment; iii) amounts for the repayment of loans incurred for the investment; iv) the net earnings of nationals of one Party who are employed and allowed to work in connection with an investment; v) indemnifications. The main difference with NAFTA model is that in periods of serious balance of payments difficulties such transfers may be phased over a period of three years.

The last group is comprised of those countries that have not signed any investment agreement (Antigua and Barbuda, Bahamas, Belize, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia and Suriname (Blanco and Zabludvsky 2003).

4. Rules of origin (RoO)

Conceptually, there are two basic criteria that determine origin. With the criterion of "wholly obtained or produced", as in the case of commodities and related products which have been entirely grown, extracted from the soil or harvested within the country, only one country enters into consideration in attributing origin. Most countries have adopted the precise definition contained in the Kyoto Convention for this criterion. The same convention does not, however, provide a single approach for defining the other criterion, "substantial transformation", where two or more countries have taken part in the production process. It should be noted that WTO has not yet developed binding multilateral rules of origin. One of the goals underlying the NAFTA negotiations on rules of origin was to develop specific criteria to give more precision to this concept.

In addition to the "wholly obtained or produced" criterion, there are three other rules-of-origin methods provided for in NAFTA: (i) changes in tariff classification; (ii) domestic content rules or regional value added; and iii) technical requirements. These three methods are used with different degrees of precision under different FTAs. In the old agreements signed by the countries in the western hemisphere, mostly under the LAIA framework, the general rule, applied across-the-board, is based on a change in tariff classification at the heading level or, alternatively, a regional value-added rule of at least 50% of the f.o.b. export value. At the other extreme, there is the type of rules of origin negotiated under NAFTA, which incorporates a general rule plus additional specific rules negotiated at the product level that combine the above three methods in many different ways. An intermediate group with a lower degree of specificity includes the United States-Canada FTA, the Group of Three agreement, Mexico's bilateral agreements with Costa Rica and Bolivia, Chile's FTAs with Mexico and Canada, and the rules of origin applying under the MERCOSUR bilaterals with Chile and Bolivia, as well as CACM (Izam 2003).

In sum, the proliferation of PTAs, each with quite different and restrictive rules of origin, diverts trade and undermines the trade-creating potential of these agreements (Estevadeordal and Suominen 2003). PTAs have their own rules of origin, whose characteristics are increasingly complex and specific, making them difficult to harmonize. Additionally, there are a series of difficulties in arriving at a single multilateral system of rules of origin on non-preferential trade in goods within the WTO framework. Therefore, it does not seem reasonable to expect, at least in the short run, the emergence of a multilateral system of rules of origin for international trade under the MFN clause, and the harmonization of the rules of origin for preferential trade in goods appears even less likely.

5. Competition policy

Diverse anti-competitive practices experienced in the region in recent years, especially in the area of acquisitions and fusions and cartels, have increasingly shown a cross-border character. And among the countries, there is a common spectrum of the sectors that have been affected by these practices (Valdes, 2005). For this reason, the objective of international cooperation in competition policy, in particular of its incorporation in FTAs, is that expected benefits of trade and investment liberalization are not to be impaired by cross-border anti-competitive practices in an increasingly integrated economy. In fact, FTAs have increasingly incorporated disciplines on competition policy since the beginning of the 1990s. At the same time, some countries of the region have developed a national competition defense mechanism of some sort, despite a marked, persistent heterogeneity

among them, in terms of depth, level of development or maturity of their competition systems; indeed, some participating countries do not even have competition laws or institutions.[43]

Although the WTO does not provide comprehensive norms on competition, the URAs contain several provisions in order to ensure authentic competitive conditions in trade. They include the provisions on monopoly and exclusive services providers in the GATS, the abuses of intellectual property rights or controls on anticompetitive practices in contract licensing in the TRIPS, and the provisions of the GATT with respect to antidumping or State enterprises, among others. The search for a multilateral agreement on competition policy, an issue systematically addressed in the WTO framework since 1997 that originated from the Singapore Ministerial mandate, has not produced concrete results up to now, and remains outside the Doha Round negotiations at present.[44] In this context, RTAs could become a necessary "stepping stone" toward reaching an agreement at the multilateral level. As the Secretary-General of UNCTAD in a recent publication stated: "A fundamental message to be derived from the empirical findings and policy experiences presented in the publication is that competition provisions at the regional levels can act as a major complement to the current efforts to develop an open, rule-based, predictable, non-discriminatory trading system, with a fair distribution of benefits for all developing countries" (Brusick et. al., 2005: p.iii).

The countries in the region, which addressed the issue of competition policy in the FTAA framework earlier, have incorporated this policy agenda in inter- and intra-regional bilateral trade agreements and/or integration agreements, whose coverage is wider and commitments are deeper.[45] While NAFTA's orientation is the enforcement of national laws and the strengthening of national agencies in charge of competition policy through mutual capacity-building assistance, regional integration schemes tend to focus on harmonization or creation of a supra-national institution, as in the case of the European Union (Tavares y Tineo, 1999). Although the incorporation of competition policy in sub-regional or integration agreements has had some impact to strengthen national policies, efforts at the sub-regional level have been held back in recent years.

For example, MERCOSUR ruled the protocol on competition defense in 2002 (Protocolo de Fortaleza de 1996), but this provision has not entered in effect due to the difficulty of being legislated into national laws. For this reason, up to now there has been progress only on the "Understandings" between competition agencies in this sub-region.[46] In the case of CARICOM, the Revised Treaty of Chaguaramas of 2001 establishes a far-reaching competition scheme, Chapter 8, which requires national regimes in the participating countries in order to strengthen cooperation and implementation of this policy, but only two of the member countries are equipped with that legislation at present.[47] Only the Andean Community of Nations has recently implemented a wide-raging reform to strengthen the community's competition regime.[48]

In contrast to the meager progress made via the sub-regional routes, a greater advance has been made through the competition provision in FTAs and other bilateral cooperation agreements such as cooperation agreements between competition agencies. This could help to form and/or strengthen the culture of competition in a more general sense (Silva, 2004). Actually, since the mid

[43] Only a little more than one-third of the countries of the region have in their disposal comprehensive provisions on competition policy (Argentina, Barbados, Brazil, Chile, Colombia, Costa Rica, El Salvador, Honduras, Jamaica, México, Panama, Peru, Uruguay and Venezuela), and around ten countries are at present formulating or revising respective legislation.

[44] The negotiations in the Doha Round in this area were not included in the WTO's "July Package" of 2004.

[45] Last version of Agreement Draft – Chapter XIX, November 2003, available at: http://www.ftaa-alca.org/FTAADraft03/ChapterXIX_e.asp

[46] See the Mercosur site: www.mercosur.org.uy.

[47] The FTAs signed by the countries of this sub-region since 1998 with the Dominican Republic, Cuba and Costa Rica contain provisions on competition with a limited scope in terms of cooperation (Stewart, 2005b).

[48] Decree No. 608, March 29, 2005 (available at: http://www.comunidadandina.org/normativa/dec/D608.htm). See García-Gallardo y Dominguez, 2005.

1990s, some twenty trade agreements with such provisions have been signed, more than half of that since 2000, mainly with extra-regional trade partners.[49] These agreements have followed diverse formats, but can be grouped into basically two patterns, the EU model vs. the NAFTA model (see Table 8).[50]

Table 8

DIVERSE FORMATS OF THE COMPETITION POLICY CLAUSE IN FTAS

NAFTA Model	EU +- Model:
• Chile with Canada, Central America, USA • Mexico with Israel, Uruguay, • Others: Chile–Mexico, Central America-Panama, Panama- Taiwan Province of China	• Chile with: EU, EFTA, Rep. Of Korea, P4 • Mexico with: EFTA, EU, Japan • Others: Costa Rica-Canada

Source: Authors' elaboration based on Silva (2004).

The EU model, oriented specially toward cooperation, defines explicitly the anti-competitive situations to be covered and provides more detailed commitments to be established for one or more of the cooperation functions. Normally, such agreements do not include provisions for dispute settlement. The NAFTA model, whose main focus is to strengthen legislation and its application, has as an objective that monopolies and State enterprises should function in accordance with trade considerations (even pricing).[51] In order to ensure the fulfillment of this condition, countries are expected to establish control or supervision mechanisms. The importance of cooperation and coordination is recognized for the application of the laws in the free trade area, but as a whole these agreements do not establish clear conditions and procedures on the subject. Thus, more recently, the signing of specific cooperation agreements between competition agencies has complemented some of these agreements. Finally, almost all agreements do not make it explicit the relationship between competition policy and trade remedies such as antidumping rules and countervailing duties.

In the majority of cases, with the exception of NAFTA, a short time elapsed since their implementation makes it difficult to evaluate the effectiveness of the agreements. The asymmetries involved and the fear of losing autonomy (which limits, for example, the transfer of confidential information) magnify, to some extent, the difficulty in coordinating among countries, despite greater articulation achieved with respect to national measures (Valdés, 2005). In addition, to evaluate the benefits is complex because they are not restricted not only to the estimates on cost savings by preventing anticompetitive practices, which is a difficult task in itself, but also the general incidence on market efficiency involved. In any case, the agreements influence these conditions. On the other hand, the costs associated with implementing and strengthening competition policy systems in order to comply with the commitments of the agreements depend on the initial conditions of the participating countries and the type of agreement signed. In this respect, the discussions and negotiations at broader forums —like OECD and UNCTAD— also contribute

[49] Furthermore, while the CAFTA-RD agreement does not include provisions on this respect, the ongoing negotiations of the United States with the three Andean Community countries (Colombia, Ecuador and Peru) are reported to include a chapter on competition. The ongoing negotiation between the EU and MERCOSUR also include a chapter on this issue.

[50] Other agreements basically establish the concept of strengthening the competition systems of the countries involved (Chile-MERCOSUR, Central America-Dominican Republic, CARICOM-Costa Rica and other countries cited in Stewart, 2005b).

[51] In a way that they do not minimize the benefits of the agreements, contradict competition laws or grant discriminatory treatment to investment. Furthermore, dispute settlement is not normally applied to the fulfilment of domestic laws or policies, as in the case of rules relating to monopolies and State enterprises.

to capacity-building in countries which are just beginning to develop a competition policy. Furthermore, there have also been contributions in terms of concepts and principles from bodies such as APEC, FTAA and WTO.

Nevertheless, it is important to underline that despite the disparity that exists in the region surrounding competition policy regimes, those countries with a less developed competition scheme do not seem to benefit from any special and differential treatment (SDT). In general, the agreements make no reference to exceptions for sensitive sectors. They neither offer longer periods to adapt or implement the norms, nor establish commitments to receive technical assistance from more developed countries, albeit in practice there exists such a possibility.[52] In this respect, competition policy incorporated in regional integration schemes could contribute to strengthening competition defense mechanisms of the less developed member countries,[53] in such a way that international cooperation effectively becomes an instrument to address the existing asymmetries in the region and to overcome the scale limitations, while facilitating the task of capacity building in competition policy. These long-term elements can contribute to moving forward the negotiations at the multilateral level as well.

Finally, despite more research undertaken in recent years,[54] there still remains a great need of technical work to be done, especially with respect to the relation between specific provisions on competition including those on the infrastructure sectors and other provisions within the FTA (e.g., services, investment, and trade defense). In the same vein, it is necessary to put in place an effective evaluation and improvement mechanism of the agreements in order make those provisions more operational, especially in light of the fact that competition policy remains outside the WTO negotiation processes.

52 See also the articles of Alvarez and other, and Brusick and Clarke in Brusick et. al. (2005).
53 As in the case of the new CAN norms of 2005 with regard to Bolivia.
54 Among the most recent works, see Brusick, et. al (2005).

III. Conclusion

Given the increasing need for the Latin American and Caribbean region to integrate itself into the world economy, the possibility of walking away from the rules-based multilateral trading system is no longer a valid option for trade strategy. Bilateral and regional trading arrangements cannot take the place of multilateral rules. As the inconclusive negotiation process of FTAA attests, genuine market access and the removal of market distortions in global agricultural and other product markets can only be effectively addressed and successfully negotiated in WTO. Latin America and the Caribbean must remain firm but must also stand ready to negotiate in this forum, ideally on the basis of a united stance. The broader and the more cohesive the Latin American and Caribbean coalition is, the higher the likelihood of achieving more balanced and favorable results in these negotiations.

A Doha Round that includes ambitious agricultural liberalization measures would provide the most significant gains to the world economy and particularly to the Latin American and Caribbean countries, while agricultural negotiations (multilateral, regional or bilateral) are of central importance. An ambitious agricultural liberalization program should, in turn, allow the Latin American and Caribbean countries to offer concessions in other areas and still sign a Doha Round agreement that strikes a proper balance of rights and obligations and serves the interests of the region. Latin America and the Caribbean should ensure that concessions in these sensitive areas are supported by adequate safeguard mechanisms.

For the region, a comprehensive and balanced FTAA might be a better option than a complex web of hub-and-spoke BTAs, if

implemented with care and with effective safeguard and social policies. The challenge for the Latin American and Caribbean countries is to find ways to minimize concessions in sensitive sectors and maximize those in areas such as market access, movement of workers and technical assistance in connection with sanitary and phytosanitary rules. FTAA should be quite ambitious in terms of liberalizing market access for goods, especially for agricultural products, but not in respect of non-border issues. For the western hemisphere, a successful and comprehensive FTAA would enhance regional alliances for multilateral negotiations. This calls for generous and visionary leadership, with additional concessions from all sides. In short, a Doha Round that includes an ambitious agricultural liberalization component promises to deliver the most significant gains among alternative scenarios.

Obviously, certain principles in RTAs are liable to create positive synergies with the multilateral system. The first would be for countries to engage only in regional commitments that they would be willing to eventually extend to the multilateral setting. This might occur when countries concurrently lower MFN tariffs along with preferential rates, thereby reducing the likelihood of trade and investment diversion. Countries also should promote the principle of transparency by ensuring that comprehensive information on the tariffs, regulations and rules of origin of their RTAs is publicly and readily available and that all such RTAs are notified to WTO in a timely manner (WTO 2003). On the other hand, WTO rules should provide the limits and boundaries for the scope and nature of RTAs. But, first, WTO rules themselves need to be made more flexible and development-friendly. In particular, WTO rules should provide sufficient scope for addressing the development concerns of its member countries. When such agreements involve both developing and developed countries, they should allow for less than full reciprocity in trade relations between the two. In addition, RTAs that are or are intended to become "WTO-plus," should be made as WTO-compatible as possible.

Initiatives to strengthen positive synergies among sub-regional, regional and bilateral agreements, as well as plurilateral North-South initiatives, and the advance of the multilateral trading system create a heavy institutional and financial burden for the Latin American and Caribbean countries. Bilateral agreements between countries or sub-regions could serve as "building blocks" when and if the precedents they establish are consistent with a comprehensive, balanced FTAA or WTO that takes due account of the smaller economies' vulnerabilities. This is also true in cases where the commitments made in certain disciplines included in bilateral and sub-regional agreements facilitate the adoption of multilateral rules in the same disciplines. Otherwise, bilateral agreements could impede the construction of a development-oriented FTAA or WTO, leaving the region with too extensive a web of hub-and-spoke agreements, with high associated costs of administration, transparency and efficiency.

Although regional integration has suffered a number of setbacks in the course of its consolidation process in recent years, there is a wide recognition among government officials that a revitalized and thriving regional integration process is a prerequisite for raising international competitiveness and achieving greater economic and social stability. It is also recognized that, in order for regional integration to play such a role, several dimensions of "deep integration" will need to be tackled within a context of "Open Regionalism". This means going far beyond conventional arrangements concerning trade in goods and moving forward with the liberalization of trade in services and investment and of factor movements, harmonizing regulatory regimes and environmental and labor standards, and regulating private anti-competitive practices. In addition, this approach to integration requires the adoption of agreements that will contribute to macroeconomic stability in each country and its harmonization among countries, suitable

technological infrastructure, the modernization and construction of infrastructure in such areas as transport, communications, and ports, and the establishment of trade-promotion mechanisms.[55]

Over the years, ECLAC has argued that to ensure their development, countries generally must hold onto some flexibility in stimulating productive development, boosting competitiveness and managing their capital account as a tool of macroeconomic regulation. Moreover, to ensure that participating countries' levels of development eventually converge, new initiatives are vital, among them the creation of cohesion or integration funds[56] and increasing international labor mobility (Assael 2004, Bustillo and Ocampo 2003). With respect to FTAA, as outlined in the Hemispheric Cooperation Program that was endorsed by trade ministers attending the meeting held in Quito, Ecuador, on 1 November 2002,[57] the technical cooperation made available will be of fundamental importance in ensuring that FTAA brings benefits to its members. This should not be limited to providing technical assistance, but should also include strengthening production capacity and stimulating competitiveness, innovation and technology transfers.

Special care should be taken to ensure that the countries participating in North-South BTAs are not subjected to onerous "WTO-plus" obligations and are accorded SDT (as they should be in WTO), as well as being provided with adequate financial and technical assistance to undertake any necessary adjustments. Technical assistance and capacity building programs focused on enhancement of international competitiveness of the productive sectors should be increasingly taken into account in the negotiation/implementation/administration process of North-South BTAs. With respect to SDT, traditional means of developmental flexibility, such as transition periods and permitted derogations, need to be combined with special considerations and meaningful preferential treatment by developed countries, not only in the area of trade in goods but also in other negotiation areas, such as services, investment and competition policy (Silva 2003). How to conceive SDT in areas other than goods is a complex task, and more analytical work should be undertaken to supports the countries of the region on policy options on these issues.

A large constraint on developing countries' efforts to build value-added industrial production capabilities is the instability and long-term negative trend in primary commodity prices. In this respect, multilateral price support mechanisms for the major primary commodities could greatly enhance developing countries' ability to capture greater gains from commodity trade, a topic that has been addressed in the Working Group on Trade, Debt and Finance. In this respect, attention should be given to the provision of assistance to: (i) mitigate the consequences of temporary earnings shortfalls by means of such mechanisms as IMF facilities and market-based instruments; and (ii) promote diversification programs. It might also be desirable to create one or more kinds of regional schemes to deal with sharp downturns in capital flows or the terms of trade as a complement to, rather than a substitute for, the facilities offered by the International Monetary Fund (Machinea 2003a, 2003b).

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[55] Regional cooperation efforts on infrastructure, such as the Initiative for the Integration of Regional Infrastructure in South America (IIRSA) and the Puebla-Panama Plan (PPP), have high priority in this respect.

[56] With respect to FTAA on this issue, in the Third Summit of the Americas (April 2001, Canada), various leaders called for the creation of different funds for social cohesion or integration that would allow greater support to be provided for the hemispheric agreement. In that meeting, the President of Mexico referred to a cohesion fund, while the prime ministers of various Caribbean countries highlighted the importance of funds for integration. The Government of Ecuador, which was in charge of coordinating negotiations until November 2002, later proposed the creation of a fund for the promotion of competitiveness (Assael 2004). Venezuela has put forward a number of proposals regarding the issue of structural convergence funds (see FTAA.TNC/w/242, 16 February 2004 on the FTAA website).

[57] In support of FTAA, the trade ministers instructed the TNC in November 2002, with the support of the Consultative Group on Smaller Economies (CGSE) and the Tripartite Committee, to create the Hemispheric Cooperation Program (HCP). "The Program is intended to strengthen the capacities of those countries seeking assistance to participate in the negotiations, implement their trade commitments, and address the challenges and maximize the benefits of hemispheric integration, including productive capacity and competitiveness in the region." "The Program includes a mechanism to assist these countries to develop national and/or sub-regional trade capacity building strategies that define, prioritize and articulate their needs and programs pursuant to those strategies, and to identify sources of financial and non-financial support." (Ministerial Declaration in Quito, 2002, paragraph 18, www.ftaa-acla.org).

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