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## **Beyond NAFTA: The Institutional Dimension**

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"If to do were as easy as to know what were good to do, chapels had been churches and poor men's cottages princes' palaces."

W. Shakespeare, The Merchant of Venice  
Act I. Scene II.

### 1. An "Inside-the-Beltway" Debate

This paper forms part of a debate which has been happening in Washington D.C., "inside-the-Beltway,"<sup>1</sup> on how to institutionalize the process of trade liberalization that is taking place throughout the Western Hemisphere.

The process of Hemispheric trade liberalization started when almost all the Latin American and Caribbean countries as a result of the depression, in the second half of the eighties, decided to reduce tariffs unilaterally. The first attempt to formalize this process of liberalization came with the decision by Canada, Mexico and the United States to undertake negotiations to create the North American Free Trade Agreement (NAFTA). Two weeks later, the process climaxed with the launching by President Bush, in June 1990, of the Enterprise of the Americas (EAI), whose "trade pillar" proposed the creation of a free trade area from Alaska to Patagonia.

Almost from the beginning, attention was focused on what would be the most appropriate methods to accomplish such ambitious goals. Illustratively, one of the most interesting facets of these discussions has been centered around the institutional alternatives. However, in intensity and sophistication, perhaps the institutional debate has only been upstaged by the even more remarkable debate in the United States about the costs and benefits of the NAFTA.

Two prominent figures, affiliated with Washington-based non-governmental organizations interested in Latin America and the Caribbean, fired the opening salvo in the institutional debate. Richard Feinberg, then Vice-President of the Overseas Development Council (ODC) and Peter Hakim, then staff director of the Inter-American Dialogue, in March 1991, released a paper proposing the creation of a new institution, the Americas Commission, to support and promote the process of Hemispheric trade liberalization. The reasoning underlying the Feinberg-Hakim proposal is simple, "none

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<sup>1</sup> According to Hedrick Smith, this is "political Washington's favorite nickname of itself," to distinguish itself from "the world beyond" the sixty-four mile freeway which encircles the city and its suburbs. The Power Game: How Washington Works (New York: Ballantine Books, 1989), p. 92.

of the hemisphere's existing institutions, as presently constituted, can adequately address the exigencies of the trade component" of the (EAI).<sup>2</sup>

By contrast, the debate on the costs and benefits of the NAFTA in the United States has resorted to some sophisticated modelling and quantitative analysis. To measure what could be characterized as "job creation and job diversion," it has been centered around the issue of labor rights and environmental standards, as influential factors in luring U.S. investment south of the border.<sup>3</sup>

An institutional spin-off from this apparently quantitative debate on costs and benefits has resulted in a proposal to create what has been baptized as a North American Bank, to promote investment and to finance some of the environmental cleaning costs along the U.S.-Mexico border, as well as some of the training of displaced workers which the NAFTA could cause on both sides of the border.<sup>4</sup>

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<sup>2</sup> Richard Feinberg and Peter Hakim, "The Americas Commission: A Proposal," in New Directions in U.S.-Latin American Economic Relations (Washington D.C.: Overseas Development Council and Inter-American Dialogue, March 1991) p. 27. For a description of the debate generated by the proposal, see: Peter Hakim and Nora Lustig, Western Hemisphere Free Trade: Issues and Prospects. Notes of a Policy Discussion (Washington D.C.: The Brookings Institution and the Inter-American Dialogue, September 16, 1991).

<sup>3</sup> There are several studies which attempt to quantify the economic impact of the NAFTA. For example, U.S. International Trade Commission (ITC), Potential Impact on the U.S. Economy and Selected Industries of the North American Free Trade Agreement (Washington D.C.: USITC publication 2596, January 1993). Also, U.S. National Commission for Employment Policy (NCEP), The Employment Effects of the North American Free Trade Agreement: Recommendations and Background Studies (Washington D.C., NCEP Special Report No. 33, October 1992). This volume contains the following studies: Robert M. Stern, Alan V. Deardorff and Drusilla K. Brown, A U.S.-Mexico-Canada Free Trade Agreement: Sectoral Employment Effects and Regional/Occupational Employment Realignment in the United States (September 2, 1992); DRI/McGraw-Hill, The Impact of the North American Free Trade Agreement on U.S. Regional and Sectoral Labor Markets (August 1992); Philip L. Martin, NAFTA, Migration, and U.S. Labor Markets (September 29, 1992).

<sup>4</sup> Originally, the North American Bank was proposed by Albert Fishlow, Raul Hinojosa-Ojeda and Sherman Robinson, Proposal for a North American Regional Development Bank and Adjustment Fund (Processed, May 1991). Subsequently, this original group of proponents was expanded, see: Albert Fishlow, Sherman Robinson, Raul Hinojosa, Carlos Melcer, Benjamin Darche, William Kelly,

The creation of a North American Bank has also attracted some attention in official circles in Mexico, particularly after President Salinas expressed interest in such financial instruments.<sup>5</sup>

Others have joined the debate in less detailed terms, supporting or opposing the creation of a new institution as an essential requirement of the sustained process of Hemispheric trade liberalization.

For instance, recently, Professor Peter Morici asserted that "the most reasonable solution," to manage the NAFTA, is the creation of "a strong central institution that can arbitrate disputes, and as importantly, support, facilitate and manage consultative process and negotiations to define the characteristics of national regimes essential to an integrated continental economy." Without going into many details, Professor Morici concludes that "to be most effective, such an institution should have its own staff, outside the three governments, and be ceded some limited sovereign prerogatives for ensuring faithful compliance with NAFTA undertakings." Moreover, "the argument for a central institution for enforcing disciplines and facilitating negotiations becomes even more compelling as the circle of free trade is extended southward."<sup>6</sup>

Contrastingly, Sydney Weintraub, from the University of Texas, has come out against the creation of new institutions, for the time being. In Weintraub's terms, "decisions on the architectural structure are best delayed until the path to free trade is more clearly defined."<sup>7</sup>

This paper joins this institutional debate arguing that, at

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Mitchell Stanfield, Proposal for the Establishment of a North American Development Bank (Processed, January 1993).

<sup>5</sup> President Salinas said "the cost of the border cleanup and infrastructure buildup should be shared jointly." He also used the example of the European Community's "variety of assistance funds established to support lesser-developed nations." Dianna Solis, "When Clinton Meets Mexico's Salinas Agendas on Free Trade Might Not Mesh," Wall Street Journal, January 6, 1993.

<sup>6</sup> Peter Morici, Hemispheric Free Trade: Defining the Challenge (Presented at the Conference on Designing the Architecture for a Western Hemisphere Free Trade Area, at the North South Center, University of Miami, January 28, 1993), p. 5.

<sup>7</sup> Sidney Weintraub, Western Hemisphere Free Trade: Getting from Here to There, IDB-ECLAC Working Papers on Trade in the Western Hemisphere (WP-TWH-13), November 1992, p. 28.

the present transitional phase in the Western Hemisphere, there is not much justification to create new institutions. First, it starts by looking at the relationship between values and institutions. Second, it describes some of the risks of premature institutionalization. Third, to illustrate how values and institutions relate to each other, it reviews briefly some experiences in the institutionalization of integrative processes in the Western Hemisphere, focusing particularly on the recently designed institutional frameworks of NAFTA and MERCOSUR. It concludes proposing an alternative for the management of the transition, based on existing institutions, which consists in the creation of a tripartite technical facility. This alternative is more feasible, because to function it only needs the support of three existing institutions, the Organization of American States (OAS), the Inter-American Development Bank (IDB) and ECLAC.

## 2. Values and Institutions

As described by Seymour M. Lipset, at least two perspectives are available to explain institutional experiences.<sup>8</sup> On one side are those who propose a structural interpretation, based on geographic, economic and political factors. On the other side, where Lipset places himself, are those who emphasize the influence which values and culture have on institutional arrangements.

For instance, those who prefer an economic interpretation treat institutions like poor relatives, they always come last and when they do they get the least attention. It is a well entrenched "ritual" in economic theory, concludes Pranab Bardhan, "to relegate all institutional matters into a 'black box.' The box is supposed to contain something vaguely important, but it does not usually receive more than a nodding, if somewhat intriguing, recognition in passing."<sup>9</sup>

Bardhan describes the remarkable coincidence which exists about the residual nature of institutions throughout the spectrum of economic theory. Some neo-classical economists believe the purpose of institutions is to minimize increasing transaction costs. For others, institutions are substitutes for missing or

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<sup>8</sup> Seymour M. Lipset, Continental Divide: The Values and Institutions of the United States and Canada (New York: Routledge, 1990) p. 17.

<sup>9</sup> Pranab Bardhan, "Alternative Approaches to the Theory of Institutions in Economic Development," in The Economic Theory of Agrarian Institutions, ed. Pranab Bardhan, (New York: Oxford University Press, 1989), pp. vii, 3-17.

imperfect markets.<sup>10</sup> Marxists were no exception, particularly in their most deterministic variety, they considered institutions to be part of the "superstructure," or of the "relations of production," resulting from the objective interplay of the "forces of production."

Arturo Israel offers two main reasons to account for why institutions remain an "unexplained residual factor," leading to the neglect of institutional issues. First, "development theory and practice have been for a long time in the hands of economists, who have a long tradition of focusing on resource allocation and allocative efficiency, not on the most effective ways of using the allocated resources." Second, since institutional issues are "a messy area," policy makers and experts tend to shy away from them because "there is no clear way of going about it."<sup>11</sup>

In the international realm, due to the absence of an exclusive holder of the monopoly of the use of force, the clash of interests and conflicts is more intense and diverse. This makes the creation and development of institutions even more complex and almost impossible to anticipate in a way that allows for accurate generalization. Thus, manuals of engineering in international institution-building are harder to find. Particularly because, as Ernst B. Haas explains, in the emergence of international and regional organizations, some "traumatic experience" can be found, which spurs the creative activities conducive to the functioning of international entities.<sup>12</sup>

Yet, it is in the institutional domain where interests and conflicts crystallize and manifest themselves with most acuity, where social interaction becomes ritualized, thus making a decisive contribution to both stability and change.

From the other perspective, focused on the role of values and culture, the comparison drawn by Lipset between Canada and the United States concludes that these "two highly similar nations" are based on "sharply different organizing principles," which account for some of the differences both exhibit in their values and institutions.

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<sup>10</sup> Joseph E. Stiglitz, "Rational Peasants, Efficient Institutions, and a Theory of Rural Organization: Methodological Remarks for Development Economics," in Ibid., pp. 18-29.

<sup>11</sup> Arturo Israel, Institutional Development: Incentives to Performance (Baltimore: published for the World Bank by the Johns Hopkins University Press, 1987) p. 4.

<sup>12</sup> Ernst B. Haas, When Knowledge is Power: Three Models of Change in International Organizations (Los Angeles: University of California Press, 1990) p. 225.



In the United States, "institutions reflect the effort to apply universalistic principles emphasizing competitive individualism and egalitarianism." Canada's institutions reflect a society which is "more class-aware, elitist, law-abiding, statist, collectivity-oriented, and particularistic." The United States reflects "the influence of its classically liberal, Whig, individualistic, antistatist, populist, ideological origins." Canada "can still be seen as Tory-mercantilist, group-oriented, statist, deferential to authority."<sup>13</sup>

The influence of these contrasting values is so pervasive that they even reflect themselves in the negotiating style practiced by governments when they participate in international negotiations. For instance, when Canada and the United States negotiated a free trade agreement, their contrasting styles were present since their negotiating positions were designed.

In the United States, negotiating positions are built from the bottom, by means of intense and open consultations, where a myriad of special interests try to assert themselves. In Canada, by contrast, negotiating positions are built from the top, by experts and technicians in relatively closed quarters, to be submitted to consultation only once they have been carefully crafted as to include winning coalitions.

The negotiations on the free trade agreement between the United States and Canada revealed these contrasting negotiating styles. For instance, an insider has described the Canadian delegation as "armed with a single vision of a comprehensive agreement." By contrast, the same observer describes the United States delegation as "driven by the pressures of individual irritants, by the views of special interest groups and by the worry of possibly unhelpful precedents for America's world-wide trade interests." This also reflected itself in the behavior of the U.S. negotiating team, perceived by the other side of the table as "a collection of individualists, each with their own agenda... virtually bankrupt of ideas and vision."<sup>14</sup>

The explanation offered for this negotiating behavior is found by the same observer in Washington's decision-making process, where "decisions emerge out of a highly brokered political market involving not only conflict between the administration and congress and the pressure of various interest groups, but also conflict between the various agencies that make up the administration and

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<sup>13</sup> Seymour M. Lipset, op. cit. pp. xiv, 2, 225, 8, 212.

<sup>14</sup> Michael Hart, Reconcilable Differences: Negotiating the Free Trade Agreement (Ottawa, April 3, 1990), pp. 17, 18.

even between factions within those agencies."<sup>15</sup>

Also, some of the institutional outcomes sought by each negotiating party were different. For instance, at one point during the negotiations of the free trade agreement, Canada was aiming at the creation of relatively more formal instances, to deal with the settlement of the sometimes acrimonious trade disputes which often erupt between both parties.<sup>16</sup>

The United States resisted this proposal and the outcome consisted in the creation of panels of arbiters which are organized case by case, each time a confrontation becomes impossible to solve by mutual understanding.<sup>17</sup>

The consequences of adding to these two negotiating partners, a third participant as Mexico, which exhibits a quite different set of values and institutions, can be imagined. Mexico's values are part of an ascriptive and elitist system, which on top exhibits one of the most conspicuous forms of what can be called Iberian-American presidential centralism.<sup>18</sup> Unfortunately, the analysis of the influence exercised by these and other values during the NAFTA negotiations will have to await the availability of their description by insiders.

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<sup>15</sup> Ibid., p. 18.

<sup>16</sup> According to one of the Canadian negotiators of the chapter on dispute settlement in the U.S.-Canada free trade agreement, the "asymmetry in power" which exists in the Western Hemisphere, with the United States exceeding the other trading partners, individually or collectively, makes the adoption of formalized dispute settlement procedures very attractive for the smaller partners. Because "such procedures, at least in theory, give the parties equal weight under the law of the agreement, and therefore should neutralize the power differential." Blair Hankey, Dispute Settlement in a Western Hemisphere Free Trade Agreement, IDB-ECLAC Working Papers in Hemispheric Trade Liberalization (WP-TWH-5) June 1992, pp. 2, 4.

<sup>17</sup> According to Hankey, the final outcome is placed in between the extremes of the spectrum of non-binding arbitration and adjudication. In effect, "a panel selected from a pre-established roster of panelists," constitutes a "middle ground between a purely ad hoc panel and a permanent tribunal." Ibid., p. 32.

<sup>18</sup> For an attempt to interpret Latin American history using centralism as the key variable, see: Claudio Véliz, The Centralist Tradition of Latin America (Princeton: Princeton University Press, 1980).

However, an observer recommends not to exaggerate the significance of the differences derived from the coexistence in the Hemisphere of two different legal and administrative cultures, the Napoleonic or civil law system and the common law system. In Blair Hankey's terms, the coexistence of these legal cultures has "never presented insuperable or even substantial obstacles to the operation of international dispute settlement mechanisms."<sup>19</sup>

### 3. Risks and Perils of Premature Institutionalization

Some of the factors mentioned above, particularly the role of well entrenched values in the creation of institutions, account for some of the risks and perils associated with attempts at social engineering leading to the birth of international organizations. After all, it is governments through negotiations, "acting on their perceived interests," rather than "scholars writing books," who ultimately are the designers of international organizations.<sup>20</sup>

Three of these perils are frequently present in attempts at social engineering aimed at the creation of new international organizations. First, there is the danger of forgetting that "form should follow function," or of putting the cart before the horse. Second, there is the closely related peril of assuming that institutions themselves will bring about an environment supportive of their effectiveness, this is better described as "the rooster syndrome." Finally, if despite these perils, the decision is adopted of creating a new institution, duplications should be deliberately anticipated, to prevent early friction and waste of scarce resources.

#### A) Form should follow function

This is an old maxim borrowed from architecture, which

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<sup>19</sup> Dispute Settlement in a Western Hemisphere Free Trade Agreement, *op. cit.*, p. 34. Even so, during the NAFTA negotiations there was concern about "the potentially lower standard of due process and judicial review," which prevails in Mexican law. Some of the technical and substantive issues are described by Heather Grant and Gilbert Winham, Anti-Dumping and Countervailing Duties in a Western Hemisphere Free Trade Agreement, IDB-ECLAC Working Papers on Trade in the Western Hemisphere (WP-TWH-8) January 1993, p. 25. However, all three authors agree that the NAFTA essentially contains the same dispute settlement mechanisms of the Canada-U.S. free trade agreement.

<sup>20</sup> Ernst B. Haas, When Knowledge is Power, p. 6.

institutional engineers should have in mind, if they want to avoid the dangers of inadequacy and disproportion. What this maxim indicates is that, before deciding that a new institution is required, it is better to identify first, as precisely as possible, the functions to be performed by the new entity. It is the need for the performance of certain functions which justifies the creation of institutions, not the other way around. This does not mean that institutions cannot learn and adapt their original mandates to new and different circumstances and objectives. It only means that in order to create institutions, it is essential that there be a shared perception of their need. Jean Monnet said it better, "when evidence meets need, they both do not allow hesitation nor respite."<sup>21</sup>

#### B) The rooster syndrome

It follows from the preceding requirement that it may be counterproductive to create an institution with the hope that it will generate the circumstances which will contribute to its effectiveness, as the rooster who sings to make the sun rise earlier.

Many examples can be found of premature institutionalization. One of the most recent has appeared within the process of monetary integration in Europe, where despite repeated warnings it was hoped that the fixation of exchange rates was going to force the coordination of certain economic policies. Also, several constitutions in Latin America contain numerous unfulfilled promises, testimonies to the fact that certain outcomes cannot be created by "ukase," or by decree. Once again, Jean Monnet said it better, "there are no premature ideas, only timely moments which one should know how to await."<sup>22</sup>

#### C) Avoid duplications

Sometimes, it can be argued, the deliberate generation of duplications can be fruitful, because decentralization and competition may generate efficiency. However, it should also be recognized that it is very difficult to justify the deliberate search for duplication in a context of scarce resources.

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<sup>21</sup> Jean Monnet, Mémoires (Paris, Fayard, 1976) p. 209.

<sup>22</sup> Ibid., p. 502. An ongoing exercise which risks turning into a case of premature institutionalization is the attempt to institutionalize the recent Earth Summit, see: Kathryn G. Sessions, Institutionalizing the Earth Summit: The United Nations Commission on Sustainable Development (New York: Occasional Paper No. 7 of the United Nations Association of the United States of America, 1992).

In such a context of scarcity, duplication may lead to wasteful utilization and overlapping, if not to the mutual cancellation of efforts. It should be kept in mind that, the purpose of institutional development is to "improve the effective use of the human and financial resources available."<sup>23</sup>

#### 4. Sub-regional Institutional Experiences

Abundant experience exists in Latin America and the Caribbean in the design of institutions within processes of economic integration. Invariably, these institutions have been created by the agreements, or treaties, that have been signed to launch processes of economic integration.<sup>24</sup>

In most cases, the institutional setting consists of an intergovernmental decision-making body, at ministerial level, supported by a permanent secretariat. This is the case of most of the integrative processes launched in the sixties, such as the predecessor of the present Latin America Integration Association (LAIA), the Latin American Free Trade Association (LAFTA), as well as of the Central American Common Market (CACM).

The Caribbean Community (CARICOM) distinguishes itself because besides a ministerial council and a permanent secretariat it institutionalizes a conference of heads of state or government, as the supreme decision-making body. This last may constitute a precedent, because presently all the subregional integration processes that exist in Latin America exhibit presidential summits as the ultimate decision making bodies.

Inversely correlated to its evolution, the most sophisticated institutional structure exhibited by a process of subregional integration in Latin America corresponds to the Andean Pact. Modelled after the European Community, the Andean Pact consists of a ministerial meeting called the commission, a community organ called the Junta, as well as a tribunal and a parliament. On top of these organs created by the original constitutive agreement, in the

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<sup>23</sup> Arturo Israel, Institutional Development, op. cit. p. 1.

<sup>24</sup> A recent compilation of the constitutive instruments of all the sub-regional integration processes of Latin America and the Caribbean is by Marcelo Halperín, Instrumentos básicos de integración económica en América Latina y el Caribe (Buenos Aires: Inter-American Development Bank and Latin American Integration Institute, 1992).

Andean Pact also functions a presidential summit.<sup>25</sup>

#### A. NAFTA's Institutional Outcome

By contrast, the free trade agreements signed by the United States with Israel, Canada and the most recent NAFTA, all are characterized by institutional structures which do not include permanent institutions. The governmental bodies have the responsibility of implementing the agreement, with the support of those agencies involved in the decision-making process. In all these free trade agreements, both decision-making and implementation are entrusted to the same inter-governmental instances.

The first impression caused by the institutional outcome of the NAFTA is that it sets up a very simple structure. Consistent with the precedent set in the other agreements signed by the United States, the NAFTA does not create a permanent body, to oversee its implementation.<sup>26</sup>

Articles 2001 and 2002 of the NAFTA create a free trade commission and a secretariat, respectively. In the Commission participate "cabinet-level representatives or their designees," to carry-out the following functions:

- "a) supervise the implementation of the agreement;
- b) oversee its further elaboration;
- c) resolve disputes that may arise regarding its interpretation or application;
- d) supervise the work of all committees and working groups..."

The Commission is also charged with overseeing the functioning of the Secretariat, which is composed of national sections. Each member government of the NAFTA will "establish a permanent office" to perform the following functions:

- a) provide assistance to the Commission;
- b) provide administrative assistance to other panels and committees;
- c) otherwise facilitate the operation of the agreement.

The Commission and the Secretariat, as the two basic elements of NAFTA's institutional structure, give ground to the assertion

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<sup>25</sup> Augusto Aninat del Solar, La institucionalidad en el Grupo Andino (LC/R.1151), ECLAC/Santiago, June 10, 1992.

<sup>26</sup> The quotations that follow are drawn from North American Free Trade Agreement (text prepared September 6, 1992) (Washington D.C.: Office of the United States Trade Representative (USTR), September 8, 1992.

that it is in effect a simple structure. However, a closer look reveals that the constitutive agreement of the NAFTA creates several other bodies, charged with the performance of specific tasks, essentially through periodic meetings, in what amounts to a quite complex institutional structure.

A brief description of these other committees, panels and advisory boards will illustrate the complexity of NAFTA's institutional structure.

The following committees can meet at least annually:

- Trade in Goods (art. 317): to deal with any matter related to national treatment and market access for goods;
- Worn Clothing (art. 300-B): to assess the potential effects that may result from the elimination of restrictions on trade in worn clothing and other worn articles;
- Sanitary and Phytosanitary Measures (art. 764): to facilitate the enhancement of food safety and improvement, through technical cooperation and consultations;
- Standards-Related Measures (Art. 913): to monitor the implementation and facilitate compatibility through technical advice and consultations on application and enforcement, as well as through specific subcommittees (art. 913 (5)), such as land transportation, telecommunications, automotive, and labeling of textiles and apparel;
- Small Business (art. 1021): identification of opportunities for training, partnerships, data bases and criteria for eligibility;
- Financial Services (art. 1414): to examine technical issues and to implement dispute settlement procedures;
- Private Commercial Disputes (art. 2022 (4)): to provide recommendations to the Commission on the effectiveness of arbitration and other procedures for the resolution of disputes;

Additionally, several working groups are established to cover the following topics:

- Rules of Origin (art. 513): to monitor their implementation and, through a subgroup (art. 513 (6)), to agree on uniform interpretations on tariff classifications and valuation, as well as on revisions of the certificate of origin, by meeting at least four times a year;
- Agricultural Subsidies (art. 706 (6)): to monitor the volume and prices of subsidized imports and to agree on the limitation or elimination of export subsidies, by means of semi-annual meetings, as well as annual reports to the Commission;
- Agricultural Grading and Marketing Standards (art. 704.3, Sections I and II): between Mexico and the United States and between Canada and Mexico, to review the operation of agreed standards;
- Trade and Competition (art. 1504): to make recommendations

to the Commission on the relationship between competition laws and policies and trade within the area;

- Temporary Entry (art. 1605): to facilitate temporary entry of business persons and their spouses.

Besides these intergovernmental decision-making bodies, the NAFTA also designs several procedures for the settlement of disputes, following closely, as it was previously mentioned, those contained in the Canada-United States free trade agreement. First, normal arbitration procedures, of a non-binding character, as they are found in most trade agreements. And second, the national adoption of anti-dumping and countervailing measures is submitted to the revision of binational panels endowed with binding decision-making power.<sup>27</sup>

#### B. MERCOSUR's Institutional Evolution

The most recently created process of subregional economic integration of Latin America, in a certain way, resembles the institutional outcome exhibited by the free trade agreements recently signed by the United States.<sup>28</sup>

The constitutive agreement of MERCOSUR does not create a strong permanent institution to oversee its implementation. The structure of MERCOSUR is also very simple, consisting of two basic intergovernmental bodies, the Common Market Council, composed by the Ministers of Economy and Foreign Affairs, and the Common Market Group, as an executive organ of the Council with the participation of four representatives of the Ministries of Foreign Affairs and Economy, as well as from the central banks.

One of the salient traits of MERCOSUR's institutional outcome, is that its only permanent body is a relatively weak administrative secretariat, staffed with personnel from the government of Uruguay and charged with servicing the documentation and communications required by the functioning of numerous inter-governmental bodies. Headquartered in Montevideo, Uruguay, this secretariat is entrusted mainly with administrative responsibilities and it has remained

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<sup>27</sup> For a preliminary analysis of the outcome contained in the NAFTA in the field of dispute settlement, see: Blair Hankey, Dispute Settlement in a Western Hemisphere Free Trade Agreement, *op. cit.*, as well as Heather Grant and Gilbert Winham, Antidumping and Countervailing Duties in a Western Hemispheric Free Trade Agreement, *op. cit.*

<sup>28</sup> For a recent evaluation of MERCOSUR see the collection of articles edited by the Ministry of Foreign Affairs of Argentina, El Mercado Común del Sur (Buenos Aires: Centro de Economía Internacional, June 1992).



quite small in terms of human and financial resources.

As in the NAFTA, the intergovernmental instances of MERCOSUR are also numerous. Under the Common Market Group, as the "executive organ," function eleven sub-groups dedicated to trade, customs and technical norms, fiscal and monetary policies, maritime and road transport, industry and technology, agricultural and energy policies, as well as the coordination of macroeconomic policies and labor relations, employment and social security.

Finally, the settlement of disputes in MERCOSUR is also based on arbitration procedures, as the final step in a process preceded by direct negotiations and the submission of the dispute to the Common Market Group.

A recent institutional development in MERCOSUR may be indicating that a further step has been given in the path of its institutionalization. It consists of the execution in the next two years of a technical cooperation project of US \$8.6 million, with almost half of this amount financed with a grant from the Inter-American Development Bank (IDB) amounting to US \$4.05 million.<sup>29</sup>

The technical cooperation project for MERCOSUR seeks to contribute to the following three objectives: 1) harmonization of norms and policies in the fields covered by the eleven technical subgroups which exist under the Common Market Group; 2) technical support to strengthen the negotiating capacity of Paraguay and Uruguay; and 3) to support sub-regional initiatives, such as the dissemination of experiences and some institutional support for a Joint Parliamentary Committee and the Administrative Secretariat.

As an indicator of the resistance to strengthen permanent institutions within MERCOSUR, it is illustrative that the executing agency of this technical cooperation project is the intergovernmental Common Market Group, assisted by the liaison agencies of the member governments, as well as by a specifically created "Technical-Administrative Management Unit."

Even more illustrative is that this Management Unit will function within the IDB's field office in Buenos Aires. Thus, instead of being lodged in one of the permanent organs of the MERCOSUR, such as the Administrative Secretariat, the project will be executed through the facilities offered by an already existing institution.

In conclusion, both institutional outcomes in the NAFTA and in MERCOSUR, by contrast with previous experiences, reveal a trend

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<sup>29</sup> Inter-American Development Bank, Technical Support for the Establishment and Implementation of the Mercado Común del Sur (MERCOSUR) (TC-92-01-31-0-RE) Washington D.C., October 23, 1992.

towards avoiding the creation of permanent structures and more reliance on inter-governmental bodies and existing institutions.

## 5. Looking Ahead

The new Administration in Washington still has to decide if it is willing to espouse, with even more fervor than its predecessor, the objective of moving towards a Hemispheric-wide free trade area. If such support is confirmed, this does not immediately warrant the conclusion that the transition towards that final goal demands, at this time, the creation of a new permanent institution.

In this sense, the recent report of the Inter-American Dialogue, under the stewardship of its former President Richard Feinberg, recognizes the need for relying on the existing institutions during the transition. The Dialogue's concrete recommendation says:

"The governments of the Americas should establish a new multilateral organization to guide and coordinate progress toward a Western Hemisphere Economic Community. The existing regional economic organizations--the Inter-American Development Bank (IDB), Organization of American States (OAS), and United Nations Economic Commission for Latin America and the Caribbean (ECLAC)--should play prominent roles in the new coordinating body, along with private business, trade unions, and other non-governmental organizations."<sup>30</sup>

Still, at the present time, it would be premature to create a new institution, for several reasons. During the lengthy transition which can be expected from the present state of affairs to the establishment of free trade throughout the Hemisphere, any kind of institutional arrangement created now, necessarily, has to be provisional. The process of Hemispheric trade liberalization is only beginning and even optimistic projections see the transition lasting at least throughout the rest of the decade.

This is in great measure due to the uneven "levels of readiness" to negotiate which exhibit the different countries and groups of countries in the Hemisphere. To the point that the immediate, preparatory task to be tackled by any institutional instance is to try to enhance these "levels of readiness."

At this time, the principal task consists in patiently strengthening the groundwork and the building blocks, to sustain

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<sup>30</sup> Inter-American Dialogue, Convergence and Community: The Americas in 1993 (Washington D.C.: 1992) p. x.

and nurture the environment of mutual knowledge and trust required to undertake mutually beneficial negotiations.

The United States has already spelled out the minimum requirements that should be met in the negotiations to gain accession to the NAFTA. The Department of Commerce has indicated that to negotiate, "a realistic candidate" must: first, "be committed to a stable macroeconomic environment and market-oriented policies;" second, participate "in good standing in the General Agreement on Tariffs and Trade;" third, exhibit "a willingness to open the economy to foreign investment and trade in services;" and fourth, be committed "to enforce world class intellectual property right protections."<sup>31</sup>

As spelled by an official from the USTR, these requirements basically include a schedule for the elimination of tariff and non-tariff barriers; market access for services; standards for treatment of investment; protection of intellectual property rights; special provisions on trade and investment in natural resources; commonly agreed rules on the origin of products, safeguards, dispute settlement procedures and requirements of future accessions; and finally, restraints on subsidies, state trading and the use of foreign exchange restrictions.<sup>32</sup>

Those interested in engaging negotiations with the United States should also be ready at least on three fronts.

First of all, internally, a decision has to be adopted about which agency will be charged with conducting the negotiations, as well as on the mechanism which will have to be established to coordinate all the interested agencies. As it is well known, cleavages are likely to emerge specially between the Ministry of Foreign Affairs and the Ministries of Finance or Commerce.

Bringing these tensions under control in a creative manner is an essential requirement for undertaking an effective negotiation, which is bound to be long-lasting and to demand levels of internal cohesion which are essential for the attainment of a fruitful outcome.

In some cases, instead of choosing between one of the existing agencies to conduct the negotiations and to coordinate the other

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<sup>31</sup> U.S. Department of Commerce, Enterprise for the Americas Fact Sheet: First Quarter Update (Washington D.C.: Regional Affairs Division, Office of Latin America, January 15, 1993), p. 7.

<sup>32</sup> Donald S. Abelson, Towards a Hemispheric Free Trade Area: Criteria for Entering into an FTA with the United States (presented at the Sixth Colloquium of the IDB/ECLAC Project on Hemispheric Trade Liberalization), Washington D.C., December 2, 1992, pp. 7-8.

interested agencies, the alternative has been to create a specific agency dedicated exclusively to carry out trade negotiations. In a way, this follows the precedent set in the United States with the creation of the office of the Trade Representative (USTR), which has been followed by Costa Rica, with the creation of a Ministry of Exports, as well as in Colombia with the recent creation of the Ministry of Foreign Trade.

A second requirement is relevant for those governments that belong to a sub-regional integration scheme. To obtain the increase in bargaining power generated by the adoption of common positions, particularly for the relatively smaller economies, it is essential to realize beforehand that the negotiations will test the cohesion of the sub-regional integration scheme.

In effect, almost all the sub-regional integration schemes which exist in the Hemisphere are already strained because some of the member countries have undertaken their unilateral liberalization at a faster pace than the other members.<sup>33</sup>

Tensions and strains of this nature are already present in the integration schemes of Central America and the Caribbean and they may appear in MERCOSUR. The mere possibility of undertaking negotiations with the United States, or with other countries of the Hemisphere, has come to exacerbate some of the differences which were already present because of the uneven speeds of unilateral trade liberalization.

Once internal coordination is assured and, if necessary, sub-regional cohesion is under control, the third step has to do with exercising a constant presence in Washington. This is an effort which requires considerable inputs in human and financial resources, for several reasons.

First of all, the negotiating process in the United States is wide open and it is subject to relentless debate and pressures from a wide array of interests. Second, a systematic effort is required to keep the negotiations on the agenda. For instance, Canadian experience reveals several occasions, during the negotiations of the free trade agreement, when it was necessary to deliberately raise the issue at the highest levels, because it had fallen into

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<sup>33</sup> These tensions, within the integration processes of Latin America and the Caribbean are not exceptional. There is evidence that in the recent disintegration of Czechoslovakia, among other factors, the different speeds at which the faster Czechs and the slower Slovaks wanted to undertake economic reforms turned out to be one of the decisive factors. Paul Wilson, "The End of the Velvet Revolution," New York Review of Books, August 13, 1992, pp. 57-64.

oblivion as a result of the emergence of other pressing matters.<sup>34</sup> Finally, the decentralized nature of the decision-making process in Washington demands action on several distinctive fronts simultaneously, particularly by means of lobbying activities at different levels.

Some indicators reveal that the Latin American and Caribbean governments have already activated their presence in Washington, through increased lobbying efforts, even according to the rather scanty figures available at the U.S. Justice Department.<sup>35</sup> Also, in general terms, it has been estimated that the Mexican government in 1991 dedicated between \$75 and \$100 million to support its negotiating effort with Canada and the United States.<sup>36</sup>

Impressive, as they are, these figures still remain below what are estimated to be the regular lobbying expenditures in a year by Canada and Japan, by far the first and second most active trading partners of the United States, as well as the most active spenders in lobbying in Washington D.C.

However, given the amounts involved, lobbying for international trade in Washington D.C. is an activity in which perhaps some economies of scale could be attained by the pooling of resources by groups of countries.

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<sup>34</sup> Due to what is called "the differing importance of the negotiations" for Ottawa and Washington, the Canadian authorities had to raise "the political stakes" several times. For instance, the then chairman of the Senate Finance Committee, Senator Lloyd Bentsen (D-Texas) visited Canada in December 1986, followed in January 1987, by then Vice-President George Bush and Secretary of the Treasury James Baker. Also, the Canadian Prime Minister "raised concern about the lack of tangible progress in the negotiations" with the U.S. President, "on four special occasions." Michael Hart, Reconcilable Differences, op. cit., pp. 20, 22.

<sup>35</sup> ECLAC, Latin American and Caribbean Lobbying for International Trade in Washington D.C. (LC/G.1632) ECLAC/Washington, June 29, 1990.

<sup>36</sup> These figures are not easy to find. The cost of Mexico's "successful campaign" in Washington, in 1991, was reported to amount to "an estimated \$75 to \$100 million," by Charles Thurston and Pei Tse Wu, "Mexico Steps Up Pressure for Trade Pact," Journal of Commerce, January 9, 1992. Also, without giving global figures, Dianna Solis, "Mexico Hires Numerous U.S. Lobbyists To Push Passage of Free Trade Accord," Wall Street Journal, September 24, 1992.

## 6. Conclusion: A Tripartite Technical Facility for the Transition

The most likely method to build a free trade area throughout the Western Hemisphere will be centered around the accession to the NAFTA. Thus, during the transition period, the implementation of the accession clause will demand the performance of at least the following three basic tasks, to enhance the "readiness to negotiate."

First, information gathering and dissemination of data, to sustain the adoption of informed decisions based on shared perceptions. Second, consensus-building through the identification of mutually beneficial alternatives and intense consultations on the issues contained in the negotiating agenda. And third, to make available technical cooperation and advisory services for the governments and private sectors, in the preparation of negotiating positions.

The performance of these tasks, in support of the negotiations during the transition, does not justify the creation of new institutions, because all of them can be carried out by those that already exist. The OAS, the IDB and ECLAC could draw from their own budgets the resources required to establish a tripartite technical facility, staffed with a small number of experts, to support the negotiations.

There are precedents of joint efforts carried out by these three institutions in the past, such as the support to the Committee of Nine of the Alliance for Progress, as well as the support granted to a program for fiscal reforms. In both cases, the OAS, the IDB and ECLAC joined forces to carry out a common objective.

Perhaps the time has come for these existing institutions to carry out another joint effort, at least during a lengthy transition period, in support of the negotiations to complete the process of Hemispheric trade liberalization which is already well under way.



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