

The FTAA Framework: What is in it for Latin America?

Germán A. de la Reza
Universidad Autónoma Metropolitana Mexico

Abstract

The present paper studies on the FTAA framework and its implications for the economic disparities in the Hemisphere. In particular, it analyses the possibilities of the Latin American and Caribbean countries achieving their market-access objectives, taking into consideration the current negotiations, and the third draft of the Treaty. It seeks to substantiate the idea that the FTAA institutes a trade regime unable to secure the equal distribution of economic benefits within the Western Hemisphere. Moreover, it argues that many countries remain involved in the process in order to avoid the costs of remaining outside it.

Introduction

The hemispheric negotiations have given rise to an impressive amount of literature linking the projected Free Trade Agreement of the Americas (FTAA) to political, economic, and social issues.¹ The most influential models seeking to identify the benefits for the less developed countries usually reach one or another of the following conclusions: free trade in the Western Hemisphere is expected to foster economic growth in big, medium, and small economies; and the FTAA will have different consequences depending on each country's degree of preparation. The first conclusion substantiates the classic free-trade conjecture, i.e. that freeing trade obstacles reduces transaction costs, boosts consumers' acquisitive capacity, and increases opportunities for large-scale industries and specialization, particularly for smaller countries owing to new access to larger markets. Therefore, the FTAA is equally advantageous for all economies, including the less developed. Hufbauer and Schott (1994) adhere to this approach by comparing FTAA and non-FTAA scenarios in the Western Hemisphere, and predict (in the first scenario) an additional annual growth rate of 1.5% (273 billion dollars; 525 dollars per capita). The authors underline this conclusion in a second study on U.S.-Brazilian economic relations within the FTAA (1999). Salazar and Segura (1994), on the other hand, also predict economic growth in the case of Costa Rica because of hemispheric regionaliza-

tion, and Hinojosa, Lewis and Robinson (1997) assert the same outcome in the cases of the United States, Argentina, Brazil, Chile, and Mexico. More recent studies, among them Schott (2001), are less optimistic, and avoid econometric forecasting.

The second set of conclusions usually criticizes this argument for its dependence upon simplistic assumptions such as full employment, unrestricted mobility of factors across sectors, and perfect competition. Singer (1995) itemizes other variables that can reduce free trade benefits or even harm less developed economies in particular ways: substantial disparities in infrastructure; difficulties in accessing special services and export markets; weak capital markets; or low organizational capacities. Within this paradigm, Escaith and Pérez (1999) develop a mixed forecasting model depending on countries' level of preparation. The variables considered in the study are: macroeconomic and microeconomic readiness; structural preparation (in terms of export diversification, human resources and infrastructure); and public policy adequacy (in macroeconomics, trade and productive transformation). The conclusions indicate that the degree of preparation of the small countries does not differ from large or medium-sized countries, although the former show higher commercial and macroeconomic vulnerability.

These studies define the outcome of the liberalization process as zero protection level, i.e. the unrestricted circulation of goods within the Western Hemisphere. This view overlooks the ambiguity that characterizes any liberalization process, as well as the significance of power bargaining in negotiating the agreement. Indeed, as practiced today, full free trade is not a workable scenario. The liberalization of trade barriers involves not only a complex product-by-product negotiation, but also several rules that entail specific approaches to their operation. In this sense, the FTAA's first years are likely to show an intricate and non-linear process of liberalization, characterized by complicated calendars, administrative stress, and heterodox consequences for the associated economies. For the assessment of this scenario, I distinguish in the first place the constituent elements of the FTAA model, and how they address the issue of economic disparity. This discussion is then linked (in the second and third sections), to the analysis of the main components of the trade liberalization process: the dismantling of tariff barriers, and the less conclusive eradication of non-tariff obstacles to trade.

The model behind the hemispheric project²

The first question that merits examination here is the extent to which the FTAA project encompasses a definite integration model. Undeniably, the FTAA's emergent structure is still diffuse in many concrete aspects, and needs time to consolidate its options. Following the Santiago Summit in April 1998, negotiations started on nine standard disciplines: market access; investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies; antidumping and countervailing duties; and competition policy. In addition to these negotiating groups, four consultative committees were created to address horizontally related issues such as: smaller economies; electronic commerce; civil society, and institutional issues. These negotiations are demanded in order to be consistent with World Trade Organization (WTO) rules and disciplines, and to be a single undertaking (i.e. non-partial agreements are issued before the conclusion of the negotiations).³ During the last six years, the process has produced partial consensus in every commission, and created a set of business facilitating measures concerning customs procedures. So far, the most important product is the Draft of the Treaty presented successively at the Quebec Summit (April 2001), the 7th Ministerial meeting in Ecuador (October 2002), and the 21st November 2003. Conclusion and implementation of the agreement is fixed for no later than January 2005, although it is highly likely that the Treaty will enter into force with fewer commitments or in only part of the hemisphere ("the Group of 14") due to the opposition of governments such as Brazil, Argentina, Venezuela, and civil organizations across the Americas.

Despite its particularities, it can be said that the FTAA and the North American Free Trade Agreement (NAFTA) share a common approach to economic integration as both represent an extension of the fifteen-year-old Washington Consensus, a set of policy guidelines that "continue to propel the integration process in the Western Hemisphere" (Schott, 2001: 5).⁴ The same as NAFTA, the Miami (1994), the Santiago (1998), the Quebec (2001), and the Puebla (2003) Plans of Action seek to promote prosperity, to strengthen democracy and fairness, almost exclusively *through* free trade. In that sense, both agreements can be seen as developments of the Initiative for the Americas, with the FTAA playing the role of a substitute to NAFTA's aborted plans of enlargement. Moreover, NAFTA settings represent the technical point of reference for FTAA negotiations, as it is the first free trade agreement linking a developing country with highly industrialized nations. In the light of these connections, FTAA embodies a (existing) model consisting of five features.

The first is that it represents a WTO-plus initiative: that is to say, the governments look for higher levels of obligation in certain WTO areas as a primary goal. This strategy implies the discarding of the more extensive integration programs, which characterizes all Latin American customs unions: the Central American Common Market (CACM), the Andean Community of Nations (ACN), and the Southern Cone Common Market (MERCOSUR). To some extent, the model seeks to achieve economic integration to free trade, and sees itself as a stage in the globalization process. The second is the criterion of association. The relative economic parity of the country members as a condition for optimal integration—an approach shared by the European Union (EU), CACM and ACN—is replaced by the attempt to associate with the main ('natural') trade partners. This policy supports Latin American attempts to integrate with the United States, the most significant source of Foreign Direct Investment (FDI), the biggest market and supplier for almost every country of the hemisphere. To be sure, it also stimulates U.S. and Brazilian strategies of economic leadership, with specific trends in the intensification of the economic interdependences. The third refers to this decomposition of LAC countries preferential mapping. Although FTAA official documents have repeatedly stated that the agreement would "build on existing subregional and bilateral agreements", it appears to be more a declaration of principles than a central policy, as it lacks instruments of implementation. None of the subregional agreements has official representation in FTAA process, and except for MERCOSUR, the co-ordination of negotiating positions at subregional level has a minor impact in developing Latin American and Caribbean (LAC) integration objectives. FTAA rather weakens the CACM and ACN, by helping the decomposition of their clusters of economic interdependence.

A related fourth characteristic is the emphasis on equality in trade commitments, leaving to the market the task of reaching a more equitable distribution of trade benefits.⁵ In concrete terms, it does not assume the costs of adaptation for the poorest economies, much less advocates the creation of distributive mechanisms, similar to EU structural funds or the Andean special treatment for less developed countries. The last feature is its institutional approach. It rejects the profuse institutionalism that still characterizes the CACM and ACN. For the European paradigm, deeper integration coincides with the progressive limitation of national sovereignties: international co-operation leads to co-ordination, and closer co-ordination to the fusion of national competences. The North American model, on the contrary, does not recognize the principle of upward supranationality in economic integration. Although some analysts accept the possibility of spill over (Hufbauer and Schott, 1994: 3), none of the available documents on NAFTA or FTAA prescribes the creation of supranational

institutions. In exchange, they promote flexible intergovernmental institutions, which are “more consistent with the nature of modern States” (Kozolchyk, 1996: 13). The five features—in particular the equality in trade commitments, combined with the lack of co-operation mechanisms—suggest that FTAA architecture relies almost exclusively on its trade liberalization plan.

The tariff liberalization

Broadly speaking, the most important way of creating free trade is the eradication of tariff barriers. The trouble for the market access commission is that the starting points in tariff protection in the United States and in the LAC countries are notably dissimilar. U.S. trade-weighted taxes are one of the lowest of the world: 2.0% in 1998 (2.8% after the Uruguay Round in 1994), even if the country also applies higher rates to products like concentrated orange juice, rubber footwear, suitcases, and women’s wallets. Among the 125 products imported from the Hemisphere, 30.4% are fully exempted from tariffs, 18.4% benefit from the preferential treatment accorded to the Caribbean, Central American and Andean countries, 32.8% benefit from one specific preferential program, and only the remaining 18.4% are always subject to tariffs (SELA, 1998). As an outcome, the percentage subject to tariff constitutes an even smaller part of the average duty rate of all imports from the region: 1.1% in 1998 (ECLAC, 1999). One of the most important sectors for many countries of the hemisphere is the textile and apparel industry and, therefore, is a principal negotiating issue for LAC representatives. The U.S. average duty for Central American exports of textiles and apparel is currently 18.5%. Without doubt, U.S. tariff liberalization under FTAA would propel Central American competitiveness against Mexican producers, whose exports to the United States were subject to 4.95% tariffs in 1994, which went down to 0.86% in 1998 due to NAFTA (ECLAC, 2000: 31).⁶

The LAC tariff dismantling process represents a different case. The liberalization within the region and with third countries, the spine of the economic restructuring in the late 1980s, began in the form of unilateral trade liberalization: in 1985, the tariff average corresponding to South America and Central America was 58.5%, with 80% covering of non-tariff barriers; later, it diminished to 28.7% in 1988, and to approximately 12% in the 1990s.⁷ However, this process has a long way before it reaches U.S. tariff levels. And the discrepancy entails an asymmetrical liberalization effort, with the lac countries likely to be much exercised by the process.

Table 1: Dependence on Trade Tariffs in LAC Countries Percentage of Total Tax Revenue

	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Minimal dependence ¹								
Brazil	3.1	2.5	2.5	2.6	6	4.6	3.5	3.9	4
Mexico	8.4	9.1	7.5	6.9	4.8	3.9	3.9	4.3	n.a.
Uruguay	8.2	7.1	5	4.1	3.5	3.5	3.6	3.7	3.6
	Low dependence ²								
Argentina	7.9	7.8	7.6	7.3	5.2	6.6	7.6	6.6	n.a.
Barbados	18.8	17.1	16.6	17.9	16	13.2	9.7	8.9	8.4
Bolivia	6	7	6.2	6.7	6.7	5.9	6.7	6.8	6
Chile	10.3	9.6	9.9	8.9	9.3	9.3	8.4	7.9	6.9
Colombia	13	8.8	8.4	9.4	9.2	7.6	8.1	9.9	7.3
Costa Rica	19.7	16.6	15	14.5	15	8.4	9.2	8.5	5.7
Trinidad & Tobago	15.1	13.6	10.7	9	5.8	5.2	6.7	8.1	7.7
	Medium dependence ³								
Ecuador	14.3	11.6	10.7	12.8	15.1	13.6	15.5	n.a.	n.a.
El Salvador	20.6	17	15.3	14.9	17	13.8	11.7	10.6	11
Guatemala	15.6	21.1	19.8	21.2	23.3	17.6	15.1	13.4	12.4
Guyana	16.4	12.4	14.9	14.5	14	13.5	12.9	13.6	n.a.
Honduras	36.8	31.8	30	18.3	23.7	22.8	20.8	16.1	n.a.
Nicaragua	17.9	17.9	22.9	19.5	21	20.5	21.8	25.7	n.a.
Paraguay	24.4	19.1	13	13.9	17.8	14.9	14.6	13.9	10.3
Peru	9.7	9.5	11.6	10.3	10.3	9.4	8.8	9.7	9.7
Venezuela	8	11.3	11	9	9.2	6.9	6.8	11	9.7
	High dependence ⁴								
Antigua & Barbuda	42.2	41.7	42.3	37	36.6	36.7	38.9	38.1	n.a.
Bahamas	62.2	58.2	59.7	60.3	57.3	57.4	58.6	57.3	56.7
Belize	61.3	56.9	56.4	48.9	50.9	27.7	31.7	30.6	31.8
Dominica	52.6	55.2	55.7	48.6	47.1	42.8	44.5	44.6	n.a.
Dominican Republic	47.5	49.6	47.9	42.1	40.3	36.8	36.1	37.2	n.a.
Grenada	27	24.9	22.1	20.6	20	18.2	23.2	24.8	24.3

Table 1 (continued)

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Jamaica	23.3	24.6	28.5	22.3	26.4	25.4	26.4	27.2	30.4
Haiti	22	16.6	16.8	13.2	18.9	15.7	21.8	20.5	n.a.
Panama	16.3	15.9	13.9	19.4	19	19.7	21	22.8	19.2
St. Kitts & Nevis	52.4	50.2	46.4	47.6	42.2	38.9	39.9	36.3	37.1
St. Lucia	28.7	29.6	26.5	26.1	26.1	26.7	26.3	25.5	n.a.
St. Vincent & G.	40.5	39.6	41	40.1	42.2	39.5	41.2	41.1	40.7
Suriname	27.9	29.7	23.5	35.3	30.1	34.9	n.a.	n.a.	n.a.
Annual average	24.3	23.2	22.5	21.3	21.5	22.5	19.5	19.6	
¹⁾ 1.0–4.9%. ²⁾ 5.0–9.9%. ³⁾ 10.0–14.9%. ⁴⁾ 15.0–									

Source: FMI, Government Finance Statistics, various issues.

For an accurate understanding of this issue, let us consider LAC dependence upon tariff revenue. As a whole, tariffs represent at the end of the 1990s approximately 20% of total fiscal incomes, 4.5% less than ten years ago. Table 1 classifies the level of dependence in four categories. Only three countries—Brazil, Mexico and Uruguay—belong to the group of minimal reliance, i.e. less than 5% of total fiscal revenue. The low reliance group—between 5 and 9.9%—includes seven countries with relatively diversified fiscal collection. Among them is Argentina, whose fiscal troubles reveal the narrow margins of public income diversification (see below). The remaining two groups encompass the vast majority of the continent, all of them showing a critical dependence on trade duties. Nine Central and South American countries belong to the medium reliance group, i.e. from 10 to 14.9%. Throughout the 1990s, only El Salvador, Honduras and Paraguay reduced their dependence by almost 50%. Five other countries recorded small modifications, and Nicaragua increased it sharply from 17.9% to 25.7%. The last group includes the Caribbean and Central American countries with the highest level of reliance: from 15% upward. Between 1991–1999, eight countries out of twelve make significant progress in diversifying their fiscal revenues, although five show unchanged or even higher reliance on trade tariffs, especially Suriname. As an outcome,

tariffs represented in 1998, 33.8% of total fiscal revenues, 0.1% higher than in 1991.

The issue of tariff dependence seems even more relevant if one includes the LAC fiscal reforms dilemma. In 1999 Costa Rica, Honduras, and Nicaragua faced considerable difficulties in reducing public deficits, while El Salvador and Guatemala had to commit a part of the sale of national companies to supplement their engagements. Similar restrictions can be found in the Caribbean. The December 2001–January 2002 Argentinian crisis was fuelled by the vulnerability of its fiscal sector. In this case, as well in other LAC countries, fiscal weakness appears as a result not only from traditional debt pressures and deficiencies in tributary collection, but also from the various tariff liberalization processes undertaken in the 1990s. It is important to understand that the situation would hardly improve in the short term, since most of the economies have not developed alternative means of financing their public expenditure (INTAL, 2000: 5–10; Schott, 2001: 48).⁸ Translation from direct to indirect taxes, the most common way of replacing trade tariffs, still needs to manage the inevitable demands from domestic groups to exempt them from new fiscal obligations.

As a whole, tariff liberalization represents a costly *non-reciprocal* trade concession for LAC countries and, except for few products, like textiles and agricultural goods, a modest U.S. contribution to free trade. Note that the U.S. position in this matter has advocated “rapid reduction of most duties” in the Western Hemisphere, as well as the elimination of a “high proportion of (each country’) tariffs within five years” (USTR, 2001). If this approach prevails in the Treaty, FTAA risks reducing LAC revenues on external trade without giving them enough time to efficiently adjust their fiscal policy, as well as affecting their macroeconomic equilibrium and growth.

The ‘lock in’ of non-tariff barriers

Let us look at the prospects of the other component of the FTAA process, the non-tariff barrier liberalization. The set of non-tariff barriers normally includes customs technicalities; strict rules of origin; contingent barriers (safeguards, antidumping and compensatory duties); complex environmental, health or labour regulations; corporate and government protection of national industry; and barriers to services and labour mobility. Among them, the antidumping policy attracts a growing interest due to its impact on the international economy.

Antidumping measures

According to its original scope, antidumping law is aimed at correcting, “unfair prices discrimination implemented by foreign producers in order to gain market power and extract economic rents” (Russell, 1999: 325). The explicit purpose of this rule is to protect national industries from a long-term dumping strategy that involves government subsidies, protected home markets or monopolistic behaviours (LICIT, 1995: 17). However, antidumping can also be a neoprotectionist rule, with harmful effects whether justified or not. As recently as 1990, U.S. antidumping investigations against LAC exports represented in tariff equivalence 25% *ad valorem* of textiles, ferrous metals, steel, and colour television exports; 30% of rice, and 40% of sugar and gear (Erzan and Yeats, 1992: 59 and s). As Prusa (1999) points out, the costs for the targeted countries sometimes are *higher* than the current tariff levels. When the duties are applied, the costs range from 50 to 70%, and when they are turned down—that is to say, the investigation has not revealed any irregular practice—the losses fluctuate between 15 and 20% *ad valorem*.⁹ Another sporadic but pervasive effect is market uncertainty. In some cases, taking advantage of the relative ease with which U.S. firms can pursue unfair trade strategies, they have **put into effect** arrangements favourable to their interests by filing several antidumping petitions against the same product: companies under investigation find themselves forced to negotiate voluntary exports restraints (Finger, 1993: 5). Since 20 to 25% of U.S. antidumping petitions filed between 1980 and 2004 resulted in voluntary restraints, this kind of agreement has to be seen as a sensitive challenge for the less powerful firms of the hemisphere.¹⁰

Let us analyze more in depth the significance of the proliferation of antidumping investigations. Apparently, the increasing number of antidumping cases is connected to the diminishing role of tariffs as a means of trade protection. While the world tariff average in 1958 was 50% and fell to only 5% in 1988, antidumping investigations in the 1980s grew twice as much as in the preceding decade (Bhagwati, 1988). In the Western Hemisphere alone, 484 antidumping investigations were filed between 1987 and 2000. The United States initiated 147 cases, in particular against Canada, Mexico, Brazil, Argentina and Venezuela, and was the subject of 182 investigations, 73% of them conducted by Mexico and Canada. It is worth mentioning that the shift from one to another type of barrier is not true of all countries. Although Mexico, Argentina and Brazil have joined the United States and Canada as leading users of antidumping measures (90% of total FTAA cases), 20 Latin American and Caribbean countries have *never* carried out any investigation under trade remedy laws; 17 have yet to be the target of any investigation, and eight countries have used

them on seven or fewer occasions (see Table 2). This situation leaves NAFTA members, together with Argentina and Brazil (Colombia and Peru to a lesser extent) as the sole *connoisseurs* of an important trade rule. Moreover, although the vast majority of LAC nations have adopted WTO agreements on trade remedy laws, in most cases the legislation shows operational gaps and reduced capacities of enforcement.

Table 2: Antidumping Investigations in the Western Hemisphere (1987–2000)
(Percentage of total cases)

Country	Initiating (%)	Affected (%)	Country	Initiating (%)	Affected (%)
Antigua & B.	0	0	Guyana	0	0
Argentina	61 (12.6)	22 (4.5)	Haiti	0	0
Aruba	0	0	Honduras	0	1 (0.2)
Bahamas	0	0	Jamaica	0	0
Barbados	0	0	Mexico	103 (21.3)	54 (11.2)
Belize	0	0	N. Antilles	0	0
Bolivia	0	1 (0.2)	Nicaragua	2 (0.4)	1 (0.2)
Brazil	40 (8.3)	104 (21.5)	Panama	1 (0.2)	0
Canada	84 (17.3)	48 (9.9)	Paraguay	0	2 (0.4)
Chile	5 (1.0)	16 (3.3)	Peru	11 (2.3)	2 (0.4)
Colombia	11 (2.3)	11 (2.3)	St. Kitts	0	0
Costa Rica	6 (1.2)	2 (0.4)	St. Lucia	0	0
Dominica	0	0	St. Vincent	0	0
Dominican R.	0	0	Trinidad & T.	4 (0.8)	3 (0.6)
Ecuador	1 (0.2)	4 (0.8)	United States	147 (30.4)	182 (37.6)
El Salvador	0	0	Uruguay	0	3 (0.6)
Grenada	0	0	Venezuela	7 (1.4)	28 (5.8)
Guatemala	1 (0.2)	1 (0.2)			

Source: Tavares *et al.* (2001).

For these reasons, many authors and LAC policy makers have recommended that the existing legislation (at national, regional or multilateral level) not be considered for drawing the FTAA antidumping and countervailing duties chapter. The critics observe that antidumping often constitutes “an import’s relief regulation” (Tavares et al. 2001); therefore, it should be replaced by competition rules or safeguards. Yet these initiatives do not have any impact in FTAA negotiations. The substitution of antidumping by competition rules implies a long and difficult process. In the EU, and the Australia and New Zealand custom union, it began after the tariff liberalization was completed. According to this model, the start of the substitution process in the Americas would have to wait (at least) until the year 2015, when it is expected that substantial trade would be free of tariffs. Seemingly, meeting this requirement could prove insufficient in the FTAA for two reasons. First, the putting into practice of alternative instruments also needs supranational institutions (Horlick and Shea, 1997: 276), not foreseen by the FTAA model. Second, United States has declared itself “vigorously opposed” to any change or amendment of the antidumping rules, and that its main goals include preserving U.S. trade remedy laws. The country argues that antidumping and competition rules, “address distinctly different problems”, and consequently they are not interchangeable (USTR, 2001).¹¹ Clearly, antidumping regulations represent another source of administrative stress for Latin America, and a threat to its exporting aspirations.

Section 301

Another important non-tariff barrier is the U.S. Section 301, a form of extended antidumping aimed at promoting the opening of foreign markets by means of economic retaliation. According to the Trade Act of 1974, Section 301 authorizes the U.S. Trade Representative to negotiate with other governments the elimination or the reduction of obstacles to U.S. exports. It applies when a foreign country pursues unfair trade practices at the domestic level (which violate or are not consistent with the U.S. trade rights), or discriminates against U.S. products by allowing anticompetitive activities. It also applies when a country blocks U.S. trade or investment opportunities, and shows limited commitment in respecting intellectual property rights, trade union activities or labour rights. Once unfairness is verified, retaliation can adopt the form of suspension or elimination of trade concessions, application of new duties, or other kinds of economic reprisals (Husted, 1995).

In the 1980s, United States procecuted around 350 cases under Section 301, 88 against LAC countries. Some of them resulted in voluntary export re-

straints or in higher trade tariffs, such as the 1985 action against the Brazilian import license system, which led to a 100% tariff increase in Brazil's paper, pharmaceutical and electronic exports (Abreu, 1995: 396). In the 1990s, the 301 action against the Argentinian patent law in pharmaceuticals led in turn to the annulment of 50% of the benefits received by this country as part of the Generalized System of Preferences. The costs of this measure—a warning message to the region—were estimated to be about 600 million dollars loss in export earnings. Mexico, on the other hand, was the subject of 301 actions in three specific areas: tomato exports (it did not benefit as a consequence of the non-demonstration of the zero year argument); the export of millet brooms (a conflict that has generated mutual trade reprisals), and the Mexican policies regarding the import of high-fructose corn syrup from the United States.

Table 3: Special 301 Review affecting LAC countries (1999)

	1999	2001	2002	2003
Priority Watch List	Argentina	Argentina	Argentina	Argentina
	Dominican Rep.	Costa Rica	Brazil	Bahamas
	Guatemala	Dominican Rep.	Colombia	Brazil
	Peru	Uruguay	Dominican Rep. Uruguay	
Watch List	Bolivia	Bolivia	Bahamas	Bolivia
	Brazil	Brazil	Bolivia	Chile
	Chile	Chile	Chile	Colombia
	Colombia	Colombia	Costa Rica	Costa Rica
	Costa Rica	Guatemala	Guatemala	Dominican Rep.
	Ecuador	Jamaica	Jamaica	Ecuador
	Jamaica	Peru	Peru	Guatemala
	Mexico	Venezuela	Venezuela	Jamaica
	Uruguay			Mexico
	Venezuela			Peru Uruguay Venezuela

Source: ECLAC (1999–2003)

Another instrument, the Special 301 (an enforcement of the Section 301), “identifies” the countries that violate or give limited protection to intellectual property rights. This law registers four levels of enforcement, which constitute successive steps towards a 301 action. The “Other Observations List” reflects the lowest level of concern. In 2003, it did not include any LAC country (Bolivia unsuccessfully demanded to be incorporated into this list in order to avoid the pressures that characterize the “Watch List”). The Watch List indicates in turn a higher concern for a country not taking action against piracy or preventing the application of the WTO agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Twelve countries (the largest number in five years) were placed under this heading in 2003, mainly because they failed to achieve TRIPS compliance (See Table 3). The “Priority Watch List” represents an even higher level of pressure, which means constant supervision to ensure the changes recommended by the U.S. authorities are implemented. This category included in 2003 three countries due to inadequate patent protection in pharmaceuticals: Argentina, the Bahamas and Brazil. Finally, the “Priority Foreign Country” specifies the nation that must be investigated under Section 301. The last country placed in this category was Paraguay, but this status was revoked in 1999 after it committed itself to strengthening intellectual property rights at its borders, especially with Argentina and Brazil.¹²

Implementing Section 301, Special 301 and Super 301¹³ actions, has given rise to a tense atmosphere in inter-American relations. Even so, none of these rules is likely to be eradicated since U.S. participation in trade agreements does not pose limits to their use. During the negotiation of the U.S.-Canada Free Trade Agreement (CUFTA), Canada tried on several occasions (and using different approaches) to protect itself from 301 actions (Winham, 1988: 38; Hart, 1990). Yet, until now the country has been the subject of several actions regarding the fishing industry, the conditions for beer import, and the export of wooden beams of coniferous. As mentioned above, Section 301 inside NAFTA also targeted Mexico. Note that the inflexibility of these rules does not only entail the risk of recurrent unilateralism. Empirical evidence suggests that it also stimulates trade diversion in favour of U.S. firms.¹⁴

Strict rules of origin

Here some definitions are in order. Rules of origin, as they are used in free trade areas, consist of a set of provisions and procedures implemented for determining the national source of the goods exchanged in the area. These rules and their principal goal—hindering commercial triangulations—are of strategic importance for administrating regional preferences, since the op-

eration of the rule associates aspects such as: productive chains; origin and degree of elaboration of industrial components; and indirectly, conditions for trade creation and trade diversion. It explains why rules of origin can foster trade diversion, in particular when they specify restrictive levels of regional content (Krueger, 1993; Ju and Krishna, 1996). Note that the design of rules of origin normally differs from one industry to another, as they depend on the characteristics of the productive process. The countries with more integrated industries, like the United States, are often interested in the creation of restrictive rules of origin. At the U.S. automobile industry's insistence, NAFTA rose CUFTA's 50% of minimum content to 60% and 62.5% of regional content for cars and their components respectively. In the other sensitive industry, textiles and apparel, the rule was reinforced to its maximum: from weave onwards. Less industrialized countries, on the other hand, usually promote low and harmonized content regulations because of their superficial productive chains. The CACM rule, for instance, stipulates 25% of minimum content. The Andean Community and MERCOSUR have established low content rules for their less developed partners (Bolivia and Ecuador, and Paraguay and Uruguay respectively).

To be sure, the rules of origin represent a key and complex issue for almost all participants in the corresponding FTAA commission.¹⁵ In many LAC countries, except for oil, metal or agricultural products, the rest of their exports are extremely sensitive to U.S. rule of origin. Machinery and equipment, largely composed by imported inputs, are sold to the United States in a proportion of 20.7% of total exports in the case of MERCOSUR, 21.1% in the Andean Community, and 44.6% in Central America. The same applies to the Central American and Andean apparel industries, which export to the U.S. market respectively 71.8% and 56.6% of the total item (See Table 4). Thus, depending on the definition, FTAA rules of origin will be fundamental for stimulating or, conversely, for worsening commercial conditions of local industries. In brief, if the negotiations lead to higher levels of content requisite—the U.S. main objective in the matter—FTAA risks embracing a set of anticompetitive distortions. Among them higher costs for inputs that can be bought more cheaply outside the region, and the reduced attractiveness for extra hemispheric FDI.

A different concern is the non-accumulative rule of origin proposed by U.S. negotiators. If the FTAA constitutes a single agreement (as stated by most FTAA documents), then all products elaborated in any Western Hemisphere country should be “accumulated” and benefit from the hemispheric trade preference. The principle of accumulation (i.e. that inputs and/or final products fabricated in the region are considered originary) has been until now a com-

mon feature for all free trade and integration agreements. In spite of this, U.S. authorities have recently addressed this topic in different terms: according to an official release, the country “reserves its position to the issue of permitting ‘accumulation’ of production across FTAA countries in qualifying for origin” (USTR, 2001). Although the statement could merely be an attempt to exert bargaining pressure, it is worth noting that the non-accumulating rules of origin might involve a drastic modification of the FTAA project. Due to the limited geographical coverage of these rules, instead of composing a single agreement, FTAA would be *de facto* divided into several agreements (between each country or grouping and the United States). This unwelcome scenario would stimulate the dismantling of productive chains where they are much less integrated (in every country of the continent, except for Brazil), and foster the creation of passive-transformation industries throughout the region.

Table 4: Latin American Exports to the United States (Percentage of total exports)

Item	Mexico	MERCOSUR ¹	ACN ²	CACM ³
Machinery & equipment	91.4	20.7	20.1	44.6
Textiles	79.2	11.6	19.5	34.4
Apparel	96.7	17	56.6	71.8
Other manufactured goods	87.1	21	32.5	37.8

¹ Argentina, Brazil, Paraguay, and Uruguay. ² Bolivia, Colombia, Ecuador, Peru, and Venezuela. ³ Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

Source: ECLAC, 2001 (Tables 4.1 to 4.4).

Other non-tariff barriers

U.S. obstacles to LAC exports encompass other important non-tariff barriers. Between 1998 and 2003, the country applied 35 countervailing duties (normally included as part of the contingent barriers) against a set of products from Argentina, Brazil, Chile, Mexico, Peru, and Venezuela. It also applied tariff-rate quotas to the sugar exports of 23 LAC countries, and to textile and apparel imports from Central America. During the same period, U.S. phytosanitary and environmental rules sanctioned Mexican avocados and tuna, Brazilian fruits and vegetables, Guatemalan raspberries, and Venezuelan gasoline. Two controversial barriers, the embargo on LAC shrimp exports, and the U.S. subsidies of domestic agricultural industry, have been used for some time, especially the latter, in force since 1956. Except for quotas, embargoes, and perhaps the agricultural subsidies, these barriers will remain in place after 2005, as the United States shows no interest in making important concessions

in these fields. In the case of technical barriers, the U.S. Trade Representative has addressed their liberalization in diffused, but significant terms: “the country is taking a range of options into consideration in determining the best means of achieving the goal of eliminating and preventing unnecessary technical barriers” (USTR, 2001). Obviously, this concern does not embrace the ‘necessary’ technical obstacles, which the U.S. considers an instrument for fulfilling “legitimate objectives.”

Why would LAC countries agree to an asymmetric liberalization?

If the prospects of getting free access to the U.S. market are so limited, why do LAC countries remain involved in the process? One of the early and obvious answers was that the FTAA would represent an important device for attracting new flows of FDI. Indeed, the market enlargement and its opportunities for scale industry usually stimulate mobility in investment. However, this aspect is not the only one a multinational firm considers. Other elements can be much more important, such as: competitive wages; adequate infrastructure and legislation; the proximity to central markets; macroeconomic or political performance, etc. Moreover, available FDI has fallen every year since 1997, and the international rivalry for it has grown. This makes the attraction of fresh FDI a more conditioned and uncertain matter than the simple proliferation of trade agreements. As a result, the FTAA could represent an appealing set of opportunities to foreign investors, but on a smaller scale than expected.

Three other arguments have become fashionable in the literature at the same time as an awareness that the FTAA implies minor changes in the U.S. trade regime. The first assumes that the FTAA will “provide an insurance policy against [U.S.] new protectionism” (Schott, 2001: 91–92). For an accurate definition of this benefit it is necessary to recall that the scope of U.S. trade concessions depends more on WTO prospects than on its hemispheric interests alone. The EU, Japan, and China are, together with Canada and Mexico, its most important trade partners, and the country might be tempted (and forced) to assist the hemispheric negotiations with only one eye, and with the other on the revival of the Doha negotiations. In this scenario, the benefits for LAC countries will be higher if U.S. trade concessions are granted much sooner at a hemispheric than at a world level. The second argument is that the FTAA will help to consolidate LAC economic reforms as part of an overall development strategy. To be sure, LAC economies still need support in order to adapt to international competitiveness, and in this respect, the FTAA represents a significant opportunity. Yet it is not imperative to frame the project solely as

an enforcement of the existing economic model. As with any strategy, it needs economic results for its validation, which is not the case.¹⁶

The third argument concludes that the hemispheric agreement will help reduce trade diversion and administrative waste produced by the large number of trade agreements in the continent (Weintraub, 2001). Also that the rationalization of institutional efforts represents an important task for Latin America, and that the limited geographical coverage of the existing 41 agreements (most of them bilateral) and the overlapping of their competences, constitute a frequent source of economic distortions. However, the intervention of CACM, CAN and MERCOSUR representatives is required to achieve this task. From an LAC perspective, the FTAA constitutes an opportunity for increasing access to the U.S. market; that is to say, its design does not encompass, at least in the same detail, the intra-Latin American trade goals, fundamental for explaining (and *replacing*) the agreements in force.

Note that the four previous goals are secondary to the formal *raison d'être* of the negotiations, free access to U.S. market. Nevertheless, they could provide LAC countries with several benefits, albeit modest or conditioned. These gains include: tariff liberalization in some sensitive U.S. sectors; new U.S. and international flows of FDI; and the enforcement of current economic strategies. Nevertheless, perhaps the most important outcome pursued by many small and medium-sized economies is a no-win scenario. The traditional concern of small economies does not embrace trade agreement benefits exclusively, but also the costs of not participating in them. In the light of FTAA constraints, it seems that many LAC countries see their involvement in the FTAA as entailing fewer costs than would be the case if they remained outside the process.

Towards a more 'integrated and focused approach'

As was shown above, tariff liberalization represents a unilateral LAC trade concession, while several non-tariff obstacles used by the United States will probably remain in place. Under these circumstances, the current design of the FTAA brings the risk of generating an asymmetrical liberalization process with negative effects for the less developed countries in the Hemisphere. However, this risk does not necessarily need to be addressed in terms of replacing the entire project or eliminating U.S. neoprotectionist barriers. By adopting a general rule limiting the application of non-tariff barriers, negotiating the lengthiest possible calendars for the most vulnerable industries, and building a more consistent approach to economic disparity, the FTAA could pave the way for a less biased process. In order to deal more efficiently with this issue, the

FTAA should include a set of resources facilitating higher levels of adaptation to new forms of competition and social cohesion; that is to say, implementing a wide-ranging program of economic co-operation.¹⁷ The Plan of Action seems to carry this conviction, but not the proper instruments of implementation. According to the Quebec Summit, the FTAA needs to adopt “an integrated and focused approach in order to promote economic growth, overcome economic disparities, and strengthen democracy in the Hemisphere.” In reality, the current process concentrates attention and resources on how Latin America and the Caribbean will manage to adapt to the FTAA, instead of on how the FTAA will be able to respond to hemispheric challenges.

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Endnotes

- ¹ Practical data on the current trade legislations is available online at the OAS Trade Unit page (<http://www.sice.oas.org>). For sound analysis and useful information, see the collective volumes edited by: Rodriguez, Low and Kotschwar (1999); Bulmer-Thomas and Dunkerley (1999); Stephenson (2000); Salazar and Robert (2001). An analysis of the FTAA negotiations from a Latin American point of view can be found in SELA (1998).
- ² For further analysis on the North American model, see De la Reza, 1998: chapter 1.
- ³ According to the Summit of the Americas, the hemispheric agreement "should improve upon WTO rules and disciplines wherever possible and

appropriate, taking into account the full implications of the rights and obligations of countries as members of the WTO.”

- ⁴ *Washington consensus* refers to: free trade; fiscal discipline; privatization of the public sector; capital liberalization; and competitive rates of exchange (Williamson, 1990). In a very narrow sense, these guidelines reflect the assumption that export promotion constitutes a central source of economic growth.
- ⁵ The U.S. Section 202 approved in 1993 requests from the less developed partners not to demand special treatment if they wanted to establish formal free trade negotiations with this country.
- ⁶ The Central American and Mexican textile industry usually assembles U.S. inputs and, therefore, benefits from reduced duties under the regime 9802.0080. Imports from Asia and Eastern Europe are subject to much higher duties.
- ⁷ The tariff reduction is not a uniform process. After the Mexican financial crisis, Costa Rica increased its duties from 5% to 13% for non-refined products, and from 20% to 28% for finite products. In the same year, Guatemala faced difficulties in achieving external equilibrium, while Honduras and Nicaragua declared, once again, their inability to put into practice the common external tariff decided by the Central American Tariff Council.
- ⁸ According to Escaith and Inoue (2001), except for the Dominican Republic, the countries with the highest dependence on tariff revenues also show a trade deficit. Venezuela, together with four Caribbean countries (the Dutch Antilles, St. Kitts & Nevis, St. Lucia, St. Vincent & Grenadines) register moderate deficits, while the remaining 10 are exposed to a large deficit: Antigua & Barbuda, the Bahamas, Belize, Colombia, Dominica, Grenada, Haiti, Honduras, Jamaica, and Nicaragua.
- ⁹ There is no available information on the comprehensive win/loss record of the Western Hemisphere antidumping cases. Note that antidumping investigations also have costly effects for the initiating country. Extensive research carried out by the U.S. Commission of International Trade showed in 1992 that the eventual antidumping and compensatory duty suppression in this country could have increased its trade by 1.6 billion dollars. Morkre and Kelley (1994) support the same conclusion in their analysis of the U.S. antidumping cases during 1980–1988. Finally, Dutz (1998) finds that Canadian antidumping investigations as reducing import competition.
- ¹⁰ U.S. negotiators advocate adopting the voluntary export restraints rule “in compliance with the WTO regulations”; that is to say, without significant modifications to present U.S. behaviour (USTR, 2001).

- ¹¹ During the meeting of the Committee of Commercial Negotiations in Lima (Peru) in January 2001, the four members of MERCOSUR announced that they would not agree to negotiate with the FTAA if antidumping were not part of the agenda (INTAL, 2001: 53). In April 2002, the Committee of Trade Negotiations will meet to evaluate the different methodologies for unblocking the U.S.-MERCOSUR antagonism on the matter.
- ¹² For a more detailed presentation of this trade barrier and its consequences for LAC economies, see ECLAC (1999).
- ¹³ The Super 301 mandates the U.S. Trade Representative to identify the most important unfair practices in foreign markets.
- ¹⁴ A study carried out by McMillan (1990) on 301 actions against South Korea in 1985, shows that the rule caused trade diversion in favour of North American firms.
- ¹⁵ For a valuable analysis of the rules of origin in the Western Hemisphere, see Palmeter (1995).
- ¹⁶ Note that this argument has a different interpretation. According to a Deputy USTR, “the FTAA will help to ‘lock in’ economic reforms that many countries have taken in recent years, including the dismantling of state monopolies in sectors such as telecommunications and transportation; introduction of transparency and competition in government procurement; strengthened protection for intellectual property rights; and unilateral reduction of import barriers” (Allgeier, 2001). Exposed in such terms, the FTAA does not differ very much from a simple mechanism of U.S. business promotion.
- ¹⁷ An aspect that needs a distinct consideration in this context is the low or non-existent involvement of civil society. It seems that the technical complexity of the negotiations, extreme in most of the topics, has insulated the FTAA process from much-desired social debate. If this situation persists, the process risks reinforcing its current dependence on corporate goals and alienating itself further from the social context it is expected to represent.