

A MODEL OF ECONOMIC INTEGRATION FOR LATIN AMERICA

INTRODUCTION

International trade is redefining its negotiation process. The round of Uruguay in which the WTO Treaty and its Annexes were agreed proved that the States are considering the importance of negotiating in block rather than individually. Block negotiation gives to the States more leverage and negotiating power since the negotiation position will be enhanced and backed by the member States forming the block.

To obtain negotiating block power, the States have to previously enter into an economic or political integration scheme in order to bring a unique negotiation position embodied in the community interests. Moreover, the integration process is moving from sub-regional schemes to hemispheric schemes. This trend was initiated in 1992 by the European nations with the Maastricht Treaty that created the European Union. Today, the Latin American countries are moving to a similar trend with the imminent creation of the Free Trade Area for the Americas by the year 2005.

This paper intends to provide a vision of the importance of the FTAA as an integration model for the Latin American countries, and, as a first step for reaching a higher level of economic integration in the future, that would bring economic development to the nations of the hemisphere. To that purpose, it is important for the FTAA to consider the experiences of its nations in the different sub-regional integration processes to which they pertain.

This paper will also examine the relationship between the benefits that the FTAA would bring to the hemispheric countries in relation to the WTO Treaty and the GATT Agreement. As required by the Declaration of San Jose, the FTAA, is intended to better

the WTO rules and disciplines. Despite, the integration model is to be construed with due respect of the rights and obligations of its member States under the WTO.

The paper concludes that the FTAA, as difficult as the task may be, should be used by the countries of the hemisphere to move forward into a higher level of economic integration, if possible, into a Common Market. We also conclude that the FTAA, in the near future, would give its member States the benefit of free movement of goods and services, in contrast to the GATT provisions that permits customs tariffs. Thirdly, we conclude that the FTAA Agreement would be more comprehensive than the WTO and the GATT Agreement, since it would incorporate rules of competition policy to avoid impairment of the benefits of the customs tariff free commerce. Lastly, we also conclude that the FTAA would give to the countries of the hemisphere more negotiation power in international trade, specially in those sponsored or conducted under the WTO Treaty, since said countries would negotiate as an economic block with other economic blocks or with economic power countries.

THE NEED FOR THE ECONOMIC INTEGRATION

The world economy is currently under a total reformulation. Today, economic activity is based upon interdependence among States in international trade and in the internationalization of trading relations as its distinctive characters. This means that the economy is everyday getting closer to a stage in which the political borders of the countries will nearly disappear economically in order to facilitate the nations development. This reformulation that we may call the XXI century economics is taking place as some countries have achieved total international economy.

This internationalization of the economy and the economic power of the international corporations originates a self defense response mechanism in the countries to both

confront what they believe to be economic aggression and to provide themselves with a mean to face the challenges that the new economic schemes brings along. One of the most harmful challenges to the countries brought by the economic schemes is that “currency is losing its status of sovereignty incarnation and it becomes a representative asset of the wealth of a country ...”¹.

The ultimate goal for the countries in confronting the internationalization of the economy is to combat one of the effects of this phenomena, called global economy which may be defined as:

“... such process by which the national economies progressively integrates within the frame of the international economy, so that its evolution will increasingly depend more on economic markets and less on government economic policy.”²

In this way, countries are more eager to participate in some kind of economic integration scheme existing nowadays, making economics blocks which allow them to both resist the harmful effects of the economic power developed by the big international corporations, and to protect their interests and their economic policies. Notwithstanding, integration has its main obstacle in the limitation of the sovereignty of the States since it could mean the disappearance of the political, economic, social, cultural and juridical borders; and that role of the State in the society is made by supranational institutions to which the State could have to render sovereignty.

The political decision for the integration is rather pragmatic because it relies on reality and because it assesses national benefits, namely, the benefits that each country independently will obtain with the integration process. In any case, the integration process has always two objectives:

1. Political, since it uses the process as a mean to obtain more international political importance in order to obtain more negotiating power. Thus, integrated countries are in a better position for a political negotiation than if they were on its own, obtaining more benefits. This objective is important, specially in the multinational organizations.
2. Economical, since it aims at a better social and economical development level; namely, an economic growth and a balanced distribution of wealth. The intention is to share with other countries the economic benefits originated with the integration process which would be difficult to obtain with small or less developed national economies.

The integration process passes through many previous consolidation stages which have to be duly complied by the States. Facing a historical need, which in this case is the internationalization of economy, the States should make an effort to adequate themselves to reality. This effort would conduct nations to an integration (whether economical, social or total) and such integration, to become reality, need a political decision. The States are solely called to decide their integration, according to their proper internal decision making mechanisms. Lastly, such political decision becomes official with the correspondent Treaty which is the required juridical formality. Only with the integration Treaty the external phase of the process is reached making official for the countries the agreed method and mechanisms of integration.

METHODS OF INTEGRATION

The integration process have three fundamental aspects for its functioning. Without determining those aspects the process would not be possible to start. The Treaty of

Constitution³ is the juridical frame where the following aspects of the process are determined:

1. The method of integration, which is the political decision about the way to integrate choosing between an economic or a political integration;
2. The model of integration, which is the concretion of the method of integration; that is, the level of integration to achieve; and,
3. The mechanisms of integration, which are the operational instruments established to consolidate the method of integration.

As today, three methods of integration had developed in the world, each one with its own characteristics. To choose one of these methods is a political decision, so it is not accurate to say that one method is the best of all. Of these three methods of integration, two were originated from the capitalist economy, while the third one was born from the socialist central planned economy system and as a reaction against the different integration schemes from the capitalism, specially the successful European Economic Community (now the European Union).

The first method of integration to appear was the so called American method of integration of States and it is the scheme created and used by the United States of America. In this method, superstructures are integrated in the first place, namely, the integration of the social-political level to consequently integrate the infrastructure (the economy)⁴. This means that the American is a method of integration that goes from the political to the economy: the economic integration is a consequence of the political integration which means that, from the beginning, the States loose their identity and sovereignty. It is fair to say that the American method has been successful, specially to

its creator the United States of America in which it has more than 200 years of existence generating an economic super power.

Due to the success reached by the American method, at the early years of last century, Europe wanted to implement the method. However, this European intention failed due to the nationalism of the European countries that were unwilling to sacrifice their identity towards a continental integration. Failure to implement the American method brought European countries to seek another integration method more compatible with the nationalist feelings of the States, certainly sharpened as a consequence of the World War II.

That is how the second method of integration was born created by Jean Monnet, and proposed in 1950 by the Foreign Ministry of France Schuman⁵. Originally the integration scheme was proposed to regulate production and peaceful use of steel and coal among the member States through the European Community for the Coal and Steel. Its Treaty of Constitution embodied several rules creating different supranational institutions. “The institutional shape of this Community and its concept of economic integration was to influence powerfully to the outlines of the further communities to come”.⁶

The European method of integration is the opposite of the American method because it first integrates the infrastructure to then reach the political integration. This method uses the maturity of the economic integration to facilitate the political integration, since the States, under the success of the economic integration, will be eager for relinquish of their nationalism aspirations to obtain in the future the anxious political integration. By its nature, the European method is longer than the American one. It is a long term method of integration because economic identity among the States is long to obtain.

Proof of this statement is the European Economic Community which after more than 30 years of integration has recently entered into the stage of the Economic Union which theoretically is the previous stage to total political integration⁷.

The socialist method, applied to the countries of the formerly called East Europe, was the product of a political need of the communist parties in power and of the marxist-leninist model of the State in the economy. This method of integration can be considered as an hybrid of the American and the European methods since it functioned under a scheme of State control of the means of production (central planned economy) simultaneously converging the superstructure and the infrastructure to obtain a political-economical integration. However, due to its hybrid nature based on the political influence or domain of one State over another was in fact a fragile method since it depended on the subsidies and the excessive protectionism of the economic activities of the State. This method was not a method of economy development but rather of central planning and controlling: therefore, it failed from the start. That is why many of these economies are having serious problems due to the change of economic model.

MODELS OF INTEGRATION

Models of integration are the levels of integration or the concretion of the chosen method by the Members States; namely, the aimed objectives to obtain with the integration. Therefore, the characteristics of the integration process will depend of the model. There are two levels of integration: the previous and the definitive, the latter with two kinds of integration: that of social-political structures and that of social-economical structures. Each model of integration has its own mechanisms which embodies the correspondent and distinctive elements of the integration process and that

puts on practice the characteristics of the chosen model. The levels of integration and their mechanisms can be outlined as follows:

PREVIOUS LEVEL	Integration of Borders	
	Customs Preference Area	
		Free Trade Area
DEFINITIVE LEVEL	Integration of Social-economical Structures	Customs Union
		Common Market
		Economic Union
	Integration of Social-political structures	Confederation
Federation		

THE FREE TRADE ASSOCIATION

In the level of definitive integration, the will of the States who decide to integrate tend to favor either social-economical or social-political union of structures. This implies that integration at this level is a primary objective of the States as a response to a factual need that gives them the intention and willingness to structurally unite. That is, to carry on with a permanent process that changes their social and economic structures to establish the basis to obtain total unity at the social, cultural, economical and political levels. Hence, within the social-economical definitive integration level, the first model is the Free Trade Association.

The Free Trade Association originates within the States willing to take the economic measures to eliminate or substantially reduce the mechanisms that constitutes the commercial barriers among them. Normally it requires of a gradually program, although it may also be traumatically implemented; namely, omitting the intermediate stages in the free transit of goods. This means that the Free Trade Association is the simplest model of integration of the definitive level since it only looks for the elimination of the commercial barriers, including customs tariffs. There are customs related mechanisms with the sole purpose to eliminate customs tariffs and non tariff barriers to commerce among member States.

The purpose of the Free Trade Association is the freedom of transit of goods among member States, inclining towards the formation of a single common market which implies equal commerce for the members of the Association excluding third countries from the benefits of the integration process. Hence, the Free Trade Association has two important mechanisms: the common internal tariff and the differentiated external tariff.

The common internal tariff is the customs mechanism by which imports of the same product to the territory of one member State enters into the territory of another member State paying the same customs tariff. Therefore, it is assured that imports from the members States within the commercial common area would be imposed with the same tariff rate, making customs tariffs of neutral incidence in the consumer price of the product. Customs tariffs are agreed by the member States who will negotiate the rate for each tariff item. These commitments may have a lowering of import duties timetable in order to smooth the impact on a sensitive internal market in regard to a particular good.

Along with the common internal tariff, the Free Trade Area characterizes for its differentiated external tariff. That is, imports from non-members countries will remain levied with a greater tariff than those imposed on imports from member States. In the differentiated external tariff, each member State will keep its own tariff policy and levels in regard to those imports from third countries and contrary to the imports within the Free Trade Area in which the worst case scenario is an equal tariff for the same product in every member State. Therefore, in the Free Trade Area there is no commitment of its member States in the tariff treatment to imports from third countries.

THE WORLD TRADE ORGANIZATION

As a result of the Uruguay Round of Multilateral Trade Negotiations the parties to such negotiations, members States of the General Agreement on Tariff and Trade (GATT) subscribed de Act of Marrakesh of 1994 by which the Treaty of Constitution of the World Trade Organization (WTO) was formalized (hereinafter the Treaty). The Treaty has three Annexes embodying the GATT 1994 provisions and the Multilateral and Plurilateral agreements on several subject matter regulating international trade, which may be classified in new multilateral agreements⁸ and in agreements regulating and interpreting the specific rules of the GATT 1947⁹.

The WTO was constituted for the administration of the commercial relationships among its member States in the matters related with the agreements and juridical instruments annexed to the Treaty¹⁰. Therefore, the WTO is an administrative organization entrusted for the application of the instruments ruling international trade.

That is why the Treaty creating the WTO has general provisions embodied only in 16 articles. Certainly no more provisions are needed since the specific rules for the regulation of the international trade are contained in the GATT and its interpretative and

supplementary agreements which are part of the Treaty. Hence, the Treaty only have provisions regarding the purpose of the WTO, its structure, functioning and adoption of decisions. The Treaty is of the kind called Administrative Treaty by the Public International Law¹¹.

The first of the Multilateral Agreements annexed to the Treaty is the new version of the GATT (GATT 1994). According to Article II of the Treaty, the GATT 1994 is juridical different to the GATT 1947. However, the first provision of the GATT 1994 precise that it is composed by the rectified, amended or modified provisions of the GATT 1947 in effect prior to the validity of the WTO; the Protocols and Decisions related to the GATT 1947 and the Understandings related to the interpretation and execution of the GATT 1994 rules. Moreover, the GATT 1994 have Understandings interpreting the execution of certain GATT 1947 provisions for its adaptation to the new terminology, to the creation of the WTO and to the dates of entering into effect of certain obligations.

In essence, the new regulation of the international commerce is an adaptation of the former GATT to the current trade circumstances which means the permanence of the GATT principles and rules and its second launching with the aid of an administrator organism¹².

The novelties introduced by the Treaty are of the most importance for international trade. The GATT 1947 only ruled the commerce of goods and the commercial policy over such kind of trade. But the scope of application of the GATT provisions were superseded by the new tendencies in commerce. It was no longer the exchange of goods but also the commerce of services and of non tangible goods or rights. Under the GATT 1947 provisions these kind of commerce had no general rules of trade to balance and to set its standards. Although the existence of international agreements on intellectual

property, such as the Convention of Paris, it is the WTO Treaty that rules the commerce of such rights rather than the protection of the intellectual property rights of the owner.

It is important the incorporation of the Understanding related to the dispute resolution. GATT 1947 lacked a fitted mechanism for such purpose. GATT 1947 rules on the subject matter provided for bilateral negotiations between the member States, making it difficult to use the mechanisms due to the entrapment attitude of the States that prevented them to obtain a definitive solution. Lack of an organism to oblige the member States to solve their differences, or to act as a decision maker of last resort allowed member States to unilaterally suspend the application of the GATT provisions.

THE GENERAL AGREEMENT ON TARIFF AND TRADE (GATT)

The GATT was never intended as an autonomous instrument but as part of a more complex structure with the International Trade Organization. Therefore, the GATT rather than an international agreement creating an organism for the ruling of the international commerce is a commercial agreement to which the parties commit to observe by themselves. This is an important issue since the GATT did not have an international organism to assure the application of the agreement provisions.

The general principles established in the GATT may be reduced to three in connection to which the general and specific rules for the international commerce are construed in the agreement; specially those related to customs tariff and other levies to the free transit of goods.

The first of those principles is called Most the Favorable Nation provided in paragraph of article I of the GATT. This principle announces what is also called “equal treatment”, by which an equal and balanced trade among nations free of distortion measures favoring some nations over others is assured. All member States shall be equally treated

in relation with the levying of tariff duties and other levies on imported or exported goods. It should be stressed out that this principle is only referred to customs duties

The second principle is similar to the previous one but referred to the taxes imposed over the imported goods. Article III of the GATT provides for the national treatment in taxation and internal regulation. The rules set forth in this provision call for an equal treatment in imposing national taxes to the imported goods. Both paragraphs of the article prevent the imposition of taxes or internal levies to protect the national industry and establishes an equal tax treatment by a member State either for the national or imported goods.

Therefore, article III of the GATT prevents substitution of the reduced customs tariff provided by article I with the imposition of taxes once the goods are customs cleared. Hence, the GATT makes sure that the international commerce is not affected or restricted with non tariff measures imposed after importation of the goods.

The third principle of the GATT is contained in indent 1 of article XI of the GATT which calls for the elimination of the quantitative restrictions to the commerce¹³. This principle is the third milestone of the freedom of commerce. A quantitative restriction to the commerce is any non tariff measure with the purpose to discriminate in commerce (like the importation quotas) or to request administrative requirements (like the importation license) that prevents the freedom of transit of goods. These quantitative restriction measures are used as protection measures for the national industry since they restrain circulation of the imported goods in the national market of one country.

The keystone of the international commerce within the GATT is the application of these three principles to free international commerce so that the main non tariff barriers would be eliminated. The GATT does not intend to immediately eliminate tariffs since they

respond to a protective policy for national industry, although it is recognized that at the end tariffs are also a barrier to commerce.

The intention of the GATT is to fix equitable basis for the application of a fair tariff which does not mean an entrapment to commerce rather than an adequate protection to the national industry. This is the current prevalent fundament of international commerce today as a regulatory scheme¹⁴.

THE FREE TRADE AREA FOR THE AMERICAS

The 34 countries members of the OAS (Organization of American States) have realized that they must participate in a trade integration scheme as a step forward towards complete economic integration. For that purpose, since 1994 they are committed to create a huge trade area known as the FTAA (Free Trade Area for the Americas) which will allow its members to free its trade and harmonize its trading rules. The FTAA is intended to be fully operating by 2005.

The purpose of the FTAA is established in the Declaration of Principles of San Jose of 1998. According to said Declaration of Principles, the 34 countries members of the OAS, are committed to establish a Free Trade Area in the Americas. This Area will allow free trade of goods and services among its members. Therefore, commerce of goods and rendering of services within the Area and among its members will be tariff free. The ultimate purpose of the FTAA is to reduce poverty and inequity, rise the standards of life and promote sustained development by granting open and free markets, access to markets, the sustained flow of investments, financial stability, adequate public policies, access to technology, development and training of human resources¹⁵.

Since the Declaration of Principles of Miami, every Presidential and Ministerial Summit thereof has stressed that the FTAA would be construed consistently with the principles of the WTO and its obligations should be taken as a single undertake by the member States¹⁶. Therefore, the FTAA shall be construed under the following three principles set forth by the Presidential Declaration of Miami and reaffirmed thereafter by every Presidential and Ministerial Declaration:

1. Consistency of the FTAA rules with the GATT 1994 provisions and its multilateral agreements annexed. This consistency however, should not prevent the FTAA to improve trading rules of the WTO Treaty;
2. Coexistence of the FTAA with the bilateral and sub-regional agreements as long as the rights and obligations of those agreements are not superseded by the provisions of the FTAA. This is, the FTAA would be the preferential integration scheme in Latin America; and,
3. The single undertaking of the FTAA provisions. As the primary integration scheme for Latin America, its member States should commit themselves to wholly and preferentially apply the provisions of the FTAA in order to assure an equal trade exchange for the region.

INTEGRATION EXPERIENCES IN LATIN AMERICA

The FTAA will be built from the experience, rules and schemes of the different integration models in Latin America, the most important of which are NAFTA, CARICOM, CENTRAL AMERICA COMMON MARKET, COMMON MARKET OF THE SOUTHERN CONE (MERCOSUR), ANDEAN COMMUNITY and THE GROUP OF THE THREE (G-3). Moreover, bilateral agreements are also considered in the formation of the FTAA, which the Latin American countries had executed many¹⁷.

Nevertheless, the burden for the success of the FTAA goal is that these integration schemes are of different degree and complexity and that the national legislation of the Latin American countries have its own singularity.

The diversity of integration schemes in the region certainly will make the task complex, since the countries will have to harmonize the rules and terms of exchange in the different aspects of trade that are currently provided in the many integration schemes of the Latin American countries and in their national legislation. Moreover, the harmonization of the trade rules will have to take place among developed and less developed countries which are distinguished precisely by the more flexibility or the more protectionism of the national production¹⁸.

Along with the different integration schemes in Latin American, the countries of the region are currently executing bilateral agreements to create a free trade area between the parties. This is true particularly under the Treaty of Montevideo of 1980 that constituted the Association of Latin America Integration Association (known as ALADI for its Spanish anachronism)¹⁹. The purpose of the Latin American Integration Association is the gradual and progressive formation of a Latin American Common Market among its member States, although no timetable is set forth. In the mean time, pursuant to articles 7, 8 and 11 of the Treaty member States may execute economic complementation agreements to create a free trade area between them. Several of this areas has been created by the member States, in some cases with a gradually timetable for reaching total free tariff trade.

The Andean Community (formerly the Andean Pact)²⁰ has the purpose to gradually create a Common Market²¹. The integration mechanisms to reach that purpose are the gradual harmonization of the economic and social policies and the coordination of the

national legislation on the subject matters; a more aggressive program to free trade within the Pact than the complementary economic agreements subscribed under the Treaty of Montevideo of 1980; a common external tariff and the physical integration, among other mechanisms²². Currently the Andean Community is entering into a Customs Union since the common external tariff is in effect to its member States, however with some special rules for the less developed nations (Bolivia and Ecuador) and for Peru.

The Common Market of the Southern Cone (known by its Spanish anachronism MERCOSUR) was constituted by the Treaty of Asuncion of 1991 under the scope of the Treaty of Montevideo of 1980. Member States to this Treaty are Argentina, Brazil, Paraguay and Uruguay. Chile and Bolivia are associated members. Article 1 of said Treaty provides for the constitution of a Common Market by December 31, 1994²³. The Treaty also calls for a transition period between its entering in force until the dateline for the constitution of the Common Market in which the internal tariff should be progressively diminished until reach zero in December 1994 and a common external tariff should be adopted. Other regulations of the Treaty are consistent with the GATT provisions, like the equal treatment in commerce for third countries and equal tax treatment for the national products of one member State in the territory of another member State.

Currently the MERCOSUR has reached the stage of a Customs Union since it only have a common internal tariff and a common external tariff. Notwithstanding, the common external tariff is perforated by the commercial agreements executed by its member States with other countries of the Latin American Integration Association which may be in effect until December, 2003. Contradictorily too, in this early stage of Customs

Union, the Council of the Common Market²⁴ is issuing regulations for the coordination of national policies in international trade which is one of the distinguishing elements of the Common Market.

The Central American Common Market (Known by his Spanish anachronism MCCA) was constituted by the Treaty of Managua of 1960. Its member States are Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica. This Treaty was construed upon the commitments agreed on the Multilateral Treaty of Free Commerce and Economic Integration for Central America and the Central American Covenant for the balancing of imports duties and its Protocol on the Central American Tariff Preferences.

Article 1 of the Treaty states the agreement of the members to constitute a Common Market within five years from the entering into effect of the Treaty²⁵ and to further create a Customs Union within their territory. To achieve those purposes, the member States agreed to improve a Central American Free Trade zone within five years and to adopt a uniform tariff as provided for in the General American Agreement on Equalization of Import Tariff. The Treaty has also provisions to ensure free movement of goods and of means of transport; the establishment of a Central American Bank of Integration; the harmonization of the fiscal regulations of the members States and the industrial integration.

As of today, the Central American Common Market has yet not achieved that level of integration. It is really a Customs Union since 1985 with the adoption of the General American Agreement on Equalization of Import Tariff which creates a common external tariff for the members States.

The Caribbean Community and Common Market (CARICOM) was created by the Treaty of Chaguaramas of 1973. Its member States are Antigua, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kittis-Nevis-Anguilla, St. Lucia, St. Vincent and Trinidad and Tobago. The objectives of the Treaty are the economic integration of the Member States by the establishing of a Common Market Regime, the coordination of the foreign policies of member States and the functional cooperation²⁶.

The Treaty establishing the CARICOM is a complete instrument (similar to that establishing the European Common Market) since it has provisions ruling the four principles of a Common Market: freedom of movement of goods within the member States (called trade liberalization); a common external tariff (called protective policy); free movement of the means production (called establishment, services and movement of capital) and coordination of economic policies and development planning.

The North American Free Trade Area (Known as NAFTA) was constituted by the Treaty of December of 1992, entering into effect on January 1, 1994. Its member States are Canada, United States of America and Mexico. Article 101 of the Treaty calls for the establishment of a Free Trade Area pursuant to Article XXIV of the GATT. The objective of the Treaty is to eliminate the obstacles to trade and to facilitate movement of goods and services within the territories of the member States²⁷.

Notwithstanding, the objectives of the Treaty exceeds those to be achieved by a Free Trade Area. According to article 102 are also objectives of the Treaty to substantially increase investment opportunities in the Area and to protect and enforce intellectual property rights in the Area. This objectives are more likely to be found in a Customs

Union scheme since they are related to the freedom of movement of the means of production.

Article 302 of the Treaty agrees for a *status quo* in the tariff levels of the member States preventing them of increasing their existing tariff or adopting new ones. Same article provides for a gradual elimination of tariff according to the timetable set forth in Annex 302.2. Such timetable establishes completion of total free tariff by January 1, 2008.

The Group of the Three was established by the Treaty of Free Trade in accordance to the GATT provisions and with the nature of an economic complementation agreement under the scope of the Treaty of Montevideo of 1980. Its member States are Mexico, Colombia and Venezuela. The treaty entered into effect in January 1, 1995²⁸. According to article 1-01 objects of the Treaty are to eliminate barriers to the commerce and to facilitate movement of goods and services among member States; to promote the fair trade competence among member States; to establish the guidelines for the subsequent cooperation among member States, among other specific objectives.

In large this Treaty of Free Trade is like the NAFTA since the provisions of both Treaties are very similar. Article 3-03 grants the application of the GATT national treatment rule for the goods of the member States. Article 3-04 of the Treaty agrees for a *status quo* in the tariff levels of the member States and provides for a gradual elimination of tariff according to a timetable annexed to the Treaty. The treaty have specific trade provisions for the automotive and the agriculture sector, rules of customs proceedings, rules for investments, government procurement and State companies, dumping and subsidies rules, protection of intellectual property and rules for the dispute settlement.

Like NAFTA the Treaty of Free Commerce have extensive rules not only to grant free movement of goods but also for the free movement of services and investments, exceeding the scope of a Free Trade Area. It also have rules to facilitate movement of persons in respect to investment and business visas, committing the members States to harmonize their immigration regulations on that subject matter.

THE IMPORTANCE OF THE FTAA

The FTAA is part of a more extensive program for Latin America reaffirmed in the Third Summit for the America in Quebec. This program is conceived to strengthen democracy, to create prosperity in the region and to develop the human potential. Within the 18 action programs established in the Declaration of Quebec, the one related to commerce, investment and financial stability agrees for the constitution of the FTAA by 2005. Therefore, the FTAA is intended to strengthen and balance the hemispheric commerce as part of a complete program for Latin America for the social and economic development of its countries to contribute with the increasing of the life standard, the improving of the labor conditions and the protection of the environment²⁹.

Economically the FTAA would be the largest Free Trade Area in the world with a population of 783 million of persons, representing 20% of the world commerce and a GDP of 11.5 billions of dollars which amounts for the 40% of the world GDP.

Commercially the FTAA will rule several and different aspects of trade and not only customs related issues. Nine negotiation groups are currently negotiating the following topics which will be incorporated in the FTAA Treaty: access to markets, investment, services, government procurement, dispute settlement, agriculture, intellectual property, subsidies antidumping and countervailing duties, competition policy. Note the similarity that the scope of application of the FTAA will have with the NAFTA Treaty. This

similarity could be explained if we bear in mind that the United States of America was the promoter of the FTAA in the Presidential Summit of Miami, after NAFTA entering into effect. With the economic results of the NAFTA in these years, the United States is the main interested in the successful and timely conclusion of the FTAA negotiations.

The FTAA is also important for Latin American countries because it may be used in the future to be the foundation basis for a higher integration level. We think that constitution of a Customs Union should be pursued by the FTAA member States taking advantage of the Treaty rules. As per its intended scope of application it seems that the FTAA Treaty would only need to incorporate the regulations for the adoption of a common external tariff to become a complete Customs Union, which even though could be a difficult task to obtain nevertheless it would strength the commercial position and negotiation power of the hemisphere.

Although we consider that the FTAA Agreement should become in the future a Customs Union, we think that the economic integration process triggered by the Agreement should be expanded to a higher integration level for the benefit of the whole hemispheric. In that regard, the formation of a Common Market should not be discarded by the hemispheric countries. The experience of the European Community shall be the guide to that purpose since is the most advanced economic integration model and has proven that it can be achieved with the right political decision and commitment. Reaching a Common Market would be a step forward for the countries of the hemisphere to concrete the Monroe Doctrine and the dream of Simon Bolivar to have one American Nation.

Nevertheless, we are aware of the difficult task to reach that economic integration model. The hemispheric nations are conducting economic integration processes since the 60's some of them failed, others had to be reformulated for its continuance. However, none of those integration processes could reach a higher stage than the Customs Union not even those which were envisioned and constituted as a Common Market. It is obvious that if the hemispheric countries has failed to reach a higher level of economic integration in the sub-regional level, it would be harder to reach it in an hemispheric level for that more countries are involved in the process, making more difficult the decision making.

Therefore, a first obstacle for the hemisphere to reach a higher economic integration model is the lack of political decision that the nations of the region may show. This political decision is critical to enter or to advance into an economic integration model. Lacking of such decision prevents any integration need since the State is unwilling to relinquish sovereignty to a Supranational institution conducting the integration process.

A second obstacle would be the economic and development gap among the nations of the hemisphere in which we find developed nations such as the United States of the America and Canada, not so developed nations like Brazil, Argentina and Mexico and less developed nations like Jamaica and other Caribbean countries. Harmonizing and coordinating economic interests, needs and policy of nations having this development barrier is of very difficult achievement, specially when the development nations have more negotiation power than the other nations that is used to agree better commercial conditions for its products and services. Again, the European Community is an example of this inconvenience. The 12 economies of its member States at the Common Market level where somehow similar developed making easier to achieve the objectives of the

integration. When the European Market decided to move forward to an Economic Union, incorporating new member States with less developed economies than the other members, long negotiations and political consultations had to precede the Maastricht Treaty for the accession of those new members.

Nevertheless, we think that it is of the best interest for the countries of the hemisphere to try by all means to reach a Common Market in the mediate future, once that the Customs Union that could be constituted under the FTAA basis prove to be successful. It is a long term path but the countries of the region should commit itself to gradually reach higher levels of economic integration, making its best efforts to bridge any political or economic gap or difference they may find in this objective.

BENEFITS OF THE FTAA FOR THE LATIN AMERICAN COUNTRIES COMPARED TO THE WTO

As we previously said, the WTO is the international organization entrusted to ensure application and administration of the GATT among the member States. The principle in the GATT regarding customs tariffs is that despite constituting an obstacle for free commerce it may be accepted. For that reason a GATT contracting party's fundamental obligation is to charge no more than its currently agreed maximum tariff rates on imports from other contracting parties³⁰. However, member States are encouraged to reciprocally and mutually negotiate a substantial reduction of its tariff levels³¹. Note that the GATT does not encourage or commit its contracting parties to eliminate customs tariffs but only to reduce them.

Nevertheless the GATT recognizes the importance for the freedom of commerce of the agreements to constitute economic integration models. Therefore, although customs tariffs are accepted under the GATT it also desires to increase freedom of commerce

with agreements that eliminates tariffs. Consequently, any agreement constituting an economic integration model between contracting parties to the GATT is regarded consistent with this latter Agreement as long as they do not raise a barrier to the trade with third countries³².

The FTAA, by its own nature, has the purpose to gradually eliminate tariffs to imports of its member States. Thus, contrary to the GATT the FTAA is intended to free trade of its contracting parties within the constituted customs territory. Although tariffs would not be totally eliminated from the beginning it is clear that this zero tariff will be reached according to an approved timetable, making such goal an aim of the contracting parties.

This means that trade between the member States to the FTAA in the mediate future will be freer than under the sponsor of the GATT. Therefore, trade terms of exchange would be better than those that could be obtained under the GATT, since imports of a contracting parties would be customs tariff free. As a consequence, the economy of the member States would be fostered and economic development would be enhanced probably faster than without participating in this economic integration model.

The GATT was first intended to regulate trade of goods. The GATT 1994 also regulate trade of services, intellectual property and foreign investment in a more comprehensive Agreement in accordance to the new development of commerce since the first version of 1947. As a whole then, the GATT and its side agreements only refers to the international trade, to fairness commerce between the contracting parties sponsoring reduction of tariff and non tariff barriers. The only GATT provisions related to unfair trade practices are those related to dumping and subsidized imports.

The FTAA is intended to regulate business and trade competition within the area. For that purpose the Group on competition policy is working the correspondent chapter to be included in the Treaty. Currently the Group is dealing to solve specific problems arose in competition policy in the less developed countries and in the countries lacking such policy of the future FTAA³³.

According to the Declaration of San Jose, the general objective of the Group is to guarantee that the benefits of the FTAA liberalization process would not be undermined by anti-competitive business practices. To achieve this objective, the Group principal task is to develop mechanisms that facilitate and promote the development of competition policy and guarantee the enforcement of regulations on free competition among and within countries in the hemisphere³⁴.

The Group will have to harmonize the different regulations on competition policy set forth in the sub-regional mechanisms of integration entered into by the countries of the hemisphere. Practically every Treaty establishing an economic integration has ruled the subject matter, some with more detail than others. In this respect, three categories of Treaty provisions can be found in the hemisphere³⁵:

- a) Those that indicates the general principles for the enterprises, included State owned, to conduct business according to the principles of free competition and creating Committees to review the development of competition policies within the framework of the Treaties (NAFTA and the Group of the Three).
- b) Those that establish a common regime of rules for each of its member States prohibiting those trade practices that limit, restrict, affect or distort competition (MERCOSUR and the Andean Community). In the case of the Andean Community the rules and the institutions that enforce them are supranational.

- c) Those that creates an institution that will establish the rules to prevent and control anti-competitive practices. In this case, regulation of the subject matter shall be developed within the framework of the Treaty probably harmonizing the national legislation of the member States (CARICOM).

It is foreseen then that the FTAA Agreement, respecting the tradition of the sub-regional economic integration Treaties, will regulate trade within the Area in a more complete manner than the WTO under the GATT, since it will incorporate rules for fair competition among member States enterprises and with respect to State enterprises. This ruling will assure and guarantee that the FTAA purposes and objectives would not be subverted by trade practices not related to customs regulations.

Current international trade trend, even under the WTO sponsor, is the negotiation in block of general or specific multilateral agreements in commerce related issues. Negotiations rounds within the WTO and of Agreements under the GATT provisions have been conducted with this particularity. The main objective of this block negotiation is enabling the negotiating parties to obtain more negotiation power in order to agree a fairer or more balanced Agreement for its commercial and political interests, specially where the counterpart is a developed nation.

The FTAA will give to its member States this better negotiation power for two reasons. Firstly, as a member State of the hemispheric Agreement the country will bring to the negotiation table common rules in a specific commercial topic that were previously agreed in the FTAA. Therefore, that country will find sponsorship and will be backed by the other member States to the FTAA, enhancing its negotiation power to obtain trade rules more fitted to those set forth in the hemispheric Agreement.

Secondly, member States to the FTAA will be encouraged to negotiate international trade agreements as an economic block, fostering and multiplying its negotiation power. Negotiating in block introduces an element of pressure to the negotiation table since the counterpart will have to deal with several countries sponsoring and backing the hemispheric Agreement. In this regard, countries of the hemisphere should realize that negotiating in block within the FTAA would obtain better results than even negotiating as the sub-regional Agreement to which they previously came from.

The possibility to obtain a better power negotiation of international trade Agreements should be used by the countries of the hemisphere in the WTO round in course at the entering into force of the FTAA Agreement. Such multilateral negotiations are of the most importance for international trade since the economic integration models are to be called in the near future to conduct negotiations for the ordering of international trade within the scope of the GATT and the sponsorship of the WTO. Therefore, GATT provisions and WTO negotiations will be construed under the expectations and interests set forth in the different economic integration processes of the WTO contracting parties.

END NOTES

¹ ESTEFANIA, Joaquín. La nueva economía. La globalización. Pg.13. Editorial Debate S.A. Madrid, 1996. Translation by the author.

² Op.Cit. Pg.14. Translation by the author.

³ The Treaty of Constitution is the international instrument duly approved and ratified by the member countries, according to the mechanisms provided by each national legislation for the incorporation of the Treaty to the national legislation of each country. This Treaty constitute the juridical frame in the first level in the Community of Law by which the juridical relations among the countries will take place and between them and the community institutions. In an analogy the Treaty of Constitution equals the Constitution of a country.

⁴ The concepts of superstructure and infrastructure are a creation of the German philosopher Hegel, one of the main exponents of the Sociologic School of Law. According to this theory the State, has a juridical and political superstructure to organize the society that will condition the rules for the infrastructure, represented by the means of production. Hence, the legal rules and the ideological orientation of the State (its policy) will determine the development of the economy system.

⁵ That is the reason why this proposal is known as the Schuman Plan.

⁶ BERMANN. Op.Cit. Pg.6

⁷ For this purpose is essential the approval and effect of the Maastricht Treaty of 1992 which introduced several amendments to the European Economic Treaty in order to move forward towards an Economic Union. Besides, the Maastricht Treaty provides for the political union of its Member States to which the first step has been taken with the adoption of the European nationality, the right to elect and to be elected in the place of residence independently of the nationality or the country of birth among other political and social aspects. Nevertheless, political integration is not a near ideal since some member States have some resistance to adopt the whole agreements provided in the Maastricht Treaty.

⁸ These are: the Agreement on measures for the investments related to commerce; Agreement on commerce of services; Agreement on intellectual property and Understanding on the rules and procedures for the dispute resolution.

⁹ These Agreements are: on agriculture; for the application of sanitary and fitosanitary measures; on textiles and clothing; on technical barriers for the commerce; for the application of Article VI of the GATT (dumping); for the application of Article VII of the GATT (customs value); on inspection previous to dispatch of merchandise; on rules of origin; on the procedures to obtain an import license; on protection clauses and on the mechanism for the examination of commercial policies.

¹⁰ See Article II indent 1 of the Treaty.

¹¹ REAÑO AZPILCUETA, Rafael. El camino hacia la Organización Mundial del Comercio. In Apuntes de Derecho. Revista de investigación jurídica. Nº 1, Pg.188. Universidad Mayor de San Marcos. Lima, 1996. Translation by the author.

¹² Op.Cit. Pg.190. Translation by the author.

¹³ See Paragraph one of article XI of the GATT.

¹⁴ REAÑO AZPILCUETA. Op.Cit. Pgs.182-83. Translation by the author.

¹⁵ See Declaration of Quebec. http://www.sice.oas.org/ftaa/quebec/declara_s.asp. Translation by the author.

¹⁶ See Indent II of the Ministerial Declaration of San Jose. http://www.ftaa-alca.org/ministerials/costa_s.asp.

¹⁷ See second paragraph of indent 2 of the Ministerial Declaration of Buenos Aires. http://www.alca-ftaa.org/ministerials/Bamin_s.asp. Translation by the author.

¹⁸ See indent 5 of the Ministerial Declaration of Buenos Aires. Translation by the author.

¹⁹ This Treaty superseded the Treaty constituting the Latin American Association of Free Trade (Known by its Spanish anachronism ALALC). Members to the Latin American Integration Association are: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

²⁰ In the Summit of 1996 in the city of Trujillo, Peru, the Presidents of the member States of the Andean Pact subscribed the Protocol amending the Treaty of Cartagena that constituted the Pact. The amendment consisted in reformulating the purpose and organization of the Pact so that thereafter the member States and the Pact institutions forming the Andean System of Integration would constitute an Andean Community.

²¹ See article 1 of the Decision 406 of the Cartagena Agreement codifying the Andean Agreement of Integration. <http://www.sice.oas.org/trade/junac/decisiones/dec406%5Fs.asp>. Translation by the author.

²² See article 5 of the Decision 406 of the Andean Community.

²³ See <http://www.rau.edu.uy/mercosur/tratasp.htm>, for the Spanish version of the Treaty of Montevideo.

²⁴ This Council is the highest authority of the Common Market and is entrusted to conduct the policy of the Market and to adopt the necessary decisions to assure compliance with the purposes and terms established for the definitive constitution of the Common Market.

²⁵ See <http://www.iadb.org/intal/tratados/mcca1.htm> for an Spanish version of the Treaty. The Treaty entered into effect on June 4, 1961 for Guatemala, El Salvador and Nicaragua; on April 27, 1962 for Honduras and on September 23, 1963 for Costa Rica.

²⁶ Article 4 of the Treaty. <http://www.sice.oas.org/trade/ccme2.asp>.

²⁷ See article 102 of the Treaty. <http://www.nafta-sec-alena.org/spanish/nafta/chap-01.htm>.

²⁸ Indent 1 of Article 23-04 of the Treaty. See <http://www.iadb.org/intal/tratados/g3completo.htm> for a Spanish version.

²⁹ Paragraph 3 of the Ministerial Declaration of Buenos Aires.

³⁰ ZAMORA, Stephen and Ronald BRAND. Basic Documents on International Economic Law. Vol.I, Pg.4. Commerce Clearing House, Inc. Illinois, 1990.

³¹ See Paragraph 1 of Article XXVIIIbis of the GATT.

³² See Paragraph 4 of Article XXIV of the GATT.

³³ See indent E) of the Annex 1 to the Ministerial Declaration of Buenos Aires on instructions to the Negotiating Groups. http://www.alca-ftaa.org/ministerials/Bamin_s.asp.

³⁴ See http://www.alca-ftaa.org/ngroups/ngcomp_e.asp.

³⁵ Organization of American States. Inventory of the competition policy Agreements, Treaties and other Arrangements existing in the Western Hemisphere. Pgs.119-20. Revised as of January 22, 2001.