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Latin America

Beyond NAFTA— Latin America

I. Latin America

A. NAFTA/Latin American Overview

Although passage of the NAFTA represented a significant achievement by the signatory countries, conflicting perspectives taken by the United States and Mexico regarding the accession of other signatories to the NAFTA have forced South and Central American nations to aggressively pursue other international trade alliances. On May 2, 1994, Mexican Secretary of Commerce and Industrial Development, Jaime Sierra Puche, asserted that Mexico supported enlarging the NAFTA as a means of expanding the free trade area in Latin America and not new bilateral pacts.[1] Sierra told a Council of the Americas Conference on Hemispheric Integration that Mexico has proposed creating an "accession annex" for each country joining NAFTA that would focus on market access and take account of a particular country's level of economic development.[2] Speaking at the same conference, United States' Trade Representative Mickey Kantor reaffirmed the Clinton Administration's commitment to negotiate the next free trade agreement with Chile, and restated that accession for Chile to the NAFTA was a distinct possibility.[3]

However, it is now apparent that neither of these policies will come into being in the near future, largely due to uncertainty over the level of commitment of the United States to trade liberalization in Latin America. As Mexican officials had indicated prior to the above referenced conference, Mexico is pursuing free trade areas and other regional integration efforts, including Mexican Free Trade Agreement's (FTA's) with other Latin American countries, the Southern Cone Common Market (MERCOSUR) (consisting of Argentina, Brazil, Paraguay and Uruguay) and the Andean Pact (consisting of Peru, Bolivia, Colombia, Ecuador and Venezuela), through the Latin American Integration Association (ALADI).[4] Mexican policy in this direction was recently demonstrated by its participation as a signatory to the Group of Three free trade agreement with Colombia and Venezuela.[5] Policy statements made by various Mexican trade officials have made clear that Mexico desires to become a hub for Latin American investment with free trade access to the United States, Canadian and Latin American markets.[6]

Conversely, Kantor asserted on September 13, 1994, that the Clinton administration had withdrawn its proposal to include a provision to extend "fast-track" negotiating authority in legislation being drafted to implement the Uruguay Round multilateral trade agreement.[7] The Uruguay Round was successfully concluded in December 1993 after more than

1. 1 Inside NAFTA No. 9 p. 1 (May 4, 1994).
2. 11 Int'l Trade Rep. (BNA) No.18 p. 699 (May 4, 1994).
3. Int'l Trade Rep., *supra* note 2, at 700.
4. 1 Inside NAFTA No. 5, p. 1, 12 (Mar. 9, 1994).
5. 11 Int'l Trade Rep. (BNA) No. 24, p. 945 (June 15, 1994).
6. Reuter Textline, Euromoney Trade Fin. & Banker Int'l, *South America: South American Trade Angles* (June 30, 1994), available on LEXIS.
7. 11 Int'l Trade Rep. (BNA) No. 36 p. 1388 (Sept. 14, 1994).

seven years of negotiations under the General Agreement on Tariffs and Trade (GATT) signed by 108 countries in April 1994.[8] In addressing reporters after a meeting with private business groups that support the legislation called the "Alliance for GATT NOW," Kantor stated that "To risk bipartisanship [with the Uruguay Round legislation] when the timing wasn't necessary now seemed to us not to be appropriate..."[9] The United States' decision resulted in placing any bilateral or NAFTA accession plan with Chile and other Latin American signatories on hold indefinitely; and, despite its reassurances of future integration to Chile,[10] has left the other Latin American countries foreclosed from any imminent attempts to accede to the NAFTA and thus reverse the trend towards closer hemispheric economic integration.[11] This reversal is made apparent from examining the regional multilateral and bilateral trade agreements recently entered into force or modified in the Latin American arena.

B. Latin American Regional Developments

1. *MERCOSUR*

a. Ratification of Common External Tariff Accords

On August 5, 1994, the common external tariffs of the MERCOSUR were ratified by the presidents of Argentina, Brazil, Paraguay and Uruguay.[12] The great majority of the common external tariffs on approximately 9,000 types of goods will come into force in January 1995, thus enabling MERCOSUR to pass from a free trade zone to a customs union.[13] In Agreement No. 7 of the Common Market Council, the four presidents ratified that the common capital tariffs for capital goods imported from external MERCOSUR countries are fixed at 14% by 2001 for Brazil and Argentina, and by 2006 for Paraguay and Uruguay.[14] The group's top common external tariffs for information systems and telecommunications products will be 16%, but these begin in 2006.[15]

For all MERCOSUR member countries, products having 60% of locally manufactured components will be considered of national origin with the possibility of free access to the MERCOSUR nations.[16] Paraguay will consider products with a 50-50 proportion of national and imported components as of national origin by 2001.[17] All capital goods having 80% locally produced items will be considered as MERCOSUR-originated.[18] In addition, Argentina, Brazil and Uruguay each will have 300 exceptions to the common external

8. 11 Int'l Trade Rep. (BNA) No. 16 p. 610 (Apr. 20, 1994).
9. Int'l Trade Rep., *supra* note 7, at 1388.
10. 11 Int'l Trade Rep. (BNA) No. 37 p. 1442 (Sept. 21, 1994).
11. 11 Int'l Trade Rep. (BNA) No. 38 p. 1504 (Sept. 28, 1994).
12. 11 Int'l Trade Rep. (BNA) No. 33 p. 1268 (Aug. 17, 1994).
13. Int'l Trade Rep., *supra* note 13, at 1268.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*

tariffs outside of the telecommunications, computers and other capital goods areas.[19] Paraguay will be allowed 399 exceptions.[20]

b. Expanding the Coverage of a South American Free Trade Area

For all practical purposes, the MERCOSUR is likely to expand faster than the NAFTA. The MERCOSUR presidents' meeting was also attended by Chilean President, Eduardo Frei, and Bolivian Vice President, Hugo Cardenas Conde, who were formally invited as official observers because of their countries' expressed interest in establishing a closer association with the economic bloc.[21] In fact, Chile's recent proposal to set up a free trade partnership with the MERCOSUR countries would broaden the coverage of a South American Free Trade Area (SAFTA) beyond the elimination of tariffs and non-tariff barriers for goods originally proposed and subsequently modified by Brazil earlier in 1994.[22] The proposal indicates that Chile desires any regional free-trade area in which it participates to encompass trade in services, as well as protection of intellectual property rights and the environment.[23] Its more comprehensive coverage makes Chile's proposed association with MERCOSUR more like the NAFTA. The June 8 proposal would eliminate barriers to trade over ten years, and calls for Chile and each MERCOSUR nation to set "bilateral tariff-elimination schedules that would respond to the specific conditions and sensitivities in the bilateral relationship."[24] Last year Chile exported goods and services worth US $1.1 billion to and imported US $1.8 billion from the four MERCOSUR nations.[25] Chile's talks with the MERCOSUR were scheduled to end in December 1994.[26]

Another result of the Presidents' meeting in August was the issuance of a special declaration on encouraging closer trade and economic ties with the European Union (EU).[27] The presidents of the MERCOSUR countries asserted that the European experience was the most important and valuable example for MERCOSUR to follow in deciding to integrate their economies, thus ratifying their nations' readiness to intensify economic links with the EU.[28] The European Union members have expressed interest in developing closer economic relations with MERCOSUR, but upon the condition that MERCOSUR successfully shift from an agreement on trade preferences to a customs union with common external tariffs, which is scheduled to be institutionalized by January 1995.[29] Hence, at a

19. 1 Inside NAFTA No. 16 p. 15 (Aug. 10, 1994).
20. Inside NAFTA, *supra* note 19, at 15.
21. Int'l Trade Rep., *supra* note 12, at 1268.
22. 1 Inside NAFTA No. 11, p. 6-8 (June 1, 1994) (See Unofficial Translation of Initial Brazilian Proposal to MERCOSUR for SAFTA).
23. 1 Inside NAFTA No. 13, p. 1, 13 (June 29, 1994). See also Unofficial Translation of Chilean Proposal to MERCOSUR, *Id.* at 14-15.
24. Inside NAFTA, *supra* note 23, at 13.
25. See Latin America Regional Reports: Mexico and Central America, THE MERCOSUR, *Thinking Big; the Brazilian Counterweight*, p. 2 (Sept. 29, 1994), available on LEXIS.
26. THE MERCOSUR, *supra* note 25, at 2.
27. Int'l Trade Rep., *supra* note 12, at 1268-69.
28. *Id.*
29. *Id.*

July 7 press conference, Argentina's Foreign Minister, Guido Di Tella, said "Now when MERCOSUR makes a customs union a reality on January 1, 1995, we can start up negotiations with the EU right away. We do not give away any advantage to this or that group in negotiations, but the possibility of creating a free-trade zone with the EU is now more important for us than to create such a zone with the NAFTA countries."[30]

2. "Group of Three" Free Trade Zone

On July 13, 1994 the presidents of the "Group of Three" — Mexico, Colombia and Venezuela — signed a treaty to create a free trade zone among the three countries (G-3).[31] The G-3 agreement is scheduled to come into effect on January 1, 1995. According to a Colombian Embassy announcement, the three nations have a combined domestic GNP of US $487 billion and a total population of 144 million persons.[32] The G-3, over a period of ten years, eliminates tariff barriers for all goods traded among the three countries except for automobiles, which will be integrated over 12 years.[33]

a. Trade Sectors Covered by the G-3 Treaty

Apparently modeled after the NAFTA, the G-3 contains dispute resolution mechanisms and provisions on market access, rules of origin, foreign investment, government procurement, intellectual property and agricultural trade, and builds on a trade agreement established between Colombia and Venezuela in 1991.[34] According to the Latin American Integration Association, in 1993 Mexico exported US $259.5 million worth of goods to Colombia and US $198.6 million to Venezuela, and imported US $80.1 million from Colombia and US $182.0 million from Venezuela.[35] Trade flow to Colombia from Venezuela totalled US $697.1 million in 1993, and trade flow from Venezuela to Colombia totalled US $968.1 million.[36] Colombian Foreign Trade Minister, Juan Manuel Santos, called the pact "the most important in our history. It's another step toward the formation of a giant free trade zone involving all of Latin America."[37] He noted that Colombia will also begin negotiations on joining the MERCOSUR before the end of 1994.[38] After the NAFTA, G-3 represents the second largest trading bloc in the Americas.

However, the G-3 countries must still resolve differences in rules of origin for textiles and apparel products. The Venezuelans wanted a less-strict type of rule used by the Andean Pact, while Mexico insisted on the NAFTA-type "yarn forward" rule. Under the "yarn forward" rule, all textiles and apparel that would receive eventual duty-free treatment would have to be composed of yarn, cloth and other major components made in the region.[39] Colombia accepted the Mexican origin-rules methodology, but required quota-

30. *Id.*
31. Int'l Trade Rep., *supra* note 5, at 945.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. Inside NAFTA, *supra* note 22, at 11-12.

like tariff preference levels with Mexico, which would allow it to export increasing amounts of textiles and apparel that use some materials imported from outside the G-3 over the first five years of the pact.[40] The signatory countries expect to resolve these differences by the end of 1994.

Overall, the G-3 agreement means an immediate average 35% tariff cut for Venezuelan and Colombian exports destined for Mexico and an immediate average 21% cut for Mexican products headed to those countries.[41] Besides the automotive, textiles and apparel sectors, the only other sector not completely covered by the G-3 is the agricultural sector. In agriculture, import-sensitive products would not be included in the pact in the short-term, and their future incorporation into the tariff-phaseout schedule will depend on the elimination of trade-distorting measures in the three countries.[42] For example, Venezuelan and Colombian farm goods that are protected by systems of price-bands are excluded from G-3, as are Mexican products that benefit from production subsidies, such as those provided by the rural credit program PROCAMPO.[43] The G-3 also includes a commitment to eliminate subsidies for all the farm exports for which tariffs are being eliminated over a transition period.[44]

b. Effects of G-3 on United States' Companies

Subsidiaries of U.S. companies will apparently have no difficulty meeting the requirements of the G-3. It is expected that subsidiaries with production centers in just one of the three countries — such as General Motors of Mexico — will take full advantage of the treaty to increase market participation.[45] Most experts agreed that the G-3's rules of origin, which were modeled directly on those in the NAFTA, avert any threat of Latin American products entering the U.S. market free of duty, by way of transhipment.[46] Rene Espinosa Torres, Director of External Trade for the Confederation of Mexico's Industrial Chambers, said Mexican producers were "very insistent" that their government's bilateral and trilateral agreements be similar to the NAFTA. Espinosa said that less than 10% of the NAFTA's rules of origin for Mexico's 11,800 tariff items needed to be changed for the G-3 accord. Thus, almost all manufacturers will be able to simultaneously comply with the provisions of NAFTA and the G-3 accord with a single line of production.[47]

C. Unilateral Agreements of NAFTA Signatories in Latin America

1. Mexico: Mexico — Costa Rica Free-Trade Accord

Mexico and Costa Rica successfully concluded three years of negotiations aimed at establishing a comprehensive bilateral free-trade pact covering trade in goods and services

40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. 11 Int'l Trade Rep. (BNA) No. 26, p. 1051 (June 29, 1994).
46. Int'l Trade Rep., *supra* note 45, at 1051.
47. *Id.* at 1052.

as well as investment, intellectual property protection and government procurement beginning January 1, 1995.[48] The Mexico — Costa Rica pact will eliminate tariffs immediately on 8,500 of 12,000 tariff lines traded between the two nations. Until March 1994, the countries had been at odds over the origin rules that would govern which products and services received the benefits of the accord. Costa Rica, whose maquiladora industries for production of textiles and apparel use many foreign inputs, wanted a less stringent origin rule than imposed in the NAFTA (e.g. requiring that at least 50% of the value of the good be produced within a free-trade area itself) so that those goods would qualify for eventual duty-free treatment.[49] To bridge this gap, negotiating teams from the two countries maintained the NAFTA-level regional content requirements, but created a system for seeking exemptions from those requirements. Mexican Commerce Undersecretary, Herminio Blanco, stated that "if an input is not available either at the right prices, quality, quantity or terms of delivery, then such an exemption can be sought."[50] Under the arrangement, a committee known as CIRI will hear such appeals from Costa Ricans or Mexicans for a temporary waiver from the origin rules if they cannot obtain a component under the proper conditions.[51]

2. United States: Argentina to Negotiate for Bilateral Pact

Argentine Secretary of State for Foreign Economic Relations, Jorge Campbell, stated on September 13, 1994, that Argentina is prepared to enter into bilateral trade negotiations with the Clinton Administration or join the NAFTA "as soon as possible" in spite of its participation in the MERCOSUR.[52] One of the primary issues of consideration is the interpretation of the Treaty of Asuncion, the founding document of MERCOSUR, signed by the four South American governments in 1991. Argentina is arguing that the transition period toward a common market outlined in that document will continue past January 1, 1995, when the customs union covering 85% of trade enters into effect.[53] United States and Argentine officials noted that technically, under the president's agreement reached by MERCOSUR on August 5, 1994, a comprehensive customs union featuring the common external tariff for all products would not be reached until 2006, although Brazil and other observers considered the January 1, 1995 date to mark the end of the transition period.[54] During the transition period, Article Eight of the Treaty of Asuncion states that Argentina can negotiate bilaterally on trade matters with third countries that are not members of the ALADI so long as "any benefit, franchise, immunity or privilege granted to" products from those third countries is also granted to its MERCOSUR members.[55] Both U.S. and Argentine officials portrayed the new Argentine statement as part of an effort to retain flexibility in its trade relations until the Clinton Administration delineates its view on

48. Inside NAFTA, *supra* note 4, at 7.
49. *Id.*
50. *Id.*
51. *Id.*
52. 1 Inside NAFTA No. 19, p. 4 (Sept. 21, 1994).
53. Inside NAFTA, *supra* note 52, at 7.
54. *Id.*
55. *Id.*

hemispheric trade integration, which became muddled when the Clinton Administration dropped its request that "fast-track" negotiating authority for future free-trade pacts be included in the Uruguay Round implementing bill.[56]

D. Latin American Perspective: Notes and Events

1. South American Transportation Pact

The presidents of Bolivia, Peru and Paraguay signed a plan on September 25, 1994, to create a land/river transportation corridor linking South America's Atlantic and Pacific coasts to stimulate interest in a possible future merger of the MERCOSUR and the Andean Pact.[57] The impact that such a transport corridor could have on South American integration has been a key issue ever since Bolivia and Peru signed the Bi-Oceanic Interconnection Project Treaty.[58] The project would create a road link from the southern Peruvian port of Ilo to Paraguay and a more efficient system of river transit to the Atlantic port of Mar de Plata, Uruguay. The three presidents signed a 20-point memorandum creating a trinational coordination unit to oversee planning of the project, ensuring a mechanism under which funding and development issues are to be analyzed.[59]

2. Columbian and Trade Accords and Preferences

On June 14, 1994 Colombia and the 13-member Caribbean Community (CARICOM) concluded negotiations on an agreement on trade, economic, and technical cooperation.[60] The agreement, scheduled to take effect on January 1, 1995, will be implemented in three stages. First, a list of CARICOM exports to Colombia would receive immediate duty-free entry. Second, a gradual dismantling of tariffs on other CARICOM goods would occur over a period of three years. Third, after the three-year term, the parties will negotiate Colombia's tariff liberalization as well as tariff concessions Colombia will receive from five major Caribbean nations (e.g. Jamaica, Trinidad and Tobago, Guyana, Barbados, and the Bahamas), according to the U.S. Commerce Department.[61] The rule of origin adopted in the agreement is a 40% regional content for goods receiving preferential treatment.[62]

Furthermore, Colombia is apparently giving more priority to maximizing the trade benefits it receives under the Andean Trade Preference Act (ATPA) than to gaining access to the NAFTA.[63] Colombia will enjoy greater access to the U.S. than to Mexico for at least eight years in many areas because of the ATPA, and thus Colombian officials believe that "early accession to the NAFTA is not immediately essential for market access."[64] In addi-

56. *Id.*
57. Int'l Trade Daily (BNA), South America, *South American Transportation Pact Heightens Interest in Trade Integration* (Oct. 6, 1994).
58. Int'l Trade Daily, *supra* note 57.
59. *Id.*
60. 11 Int'l Trade Rep. (BNA) No. 25, p. 993 (June 22, 1994).
61. Int'l Trade Rep., *supra* note 60, at 993.
62. *Id.*
63. 1 Inside NAFTA No. 15, p. 11 (July 27, 1994).
64. Inside NAFTA, *supra* note 63, at 11.

tion, Colombia's immediate trade priority with the U.S. will be "to make these Andean preferences work maximally to their advantage."[65] The unilateral trade benefit program allows for expanded duty-free entry into the U.S., and is similar to, but not as broad as, the Caribbean Basin Initiative. Other countries in the ATPA program, enacted in 1991, are Bolivia, Ecuador and Peru. The Colombian officials also noted that the appointment of Myles Frechette, a U.S. official with a strong trade policy background, to be the next U.S. Ambassador to Colombia, was an indication that the U.S. was serious in trying to negotiate an intellectual property protection agreement with Colombia, as well as one on investment.[66]

3. Peru Regains Foreign Investment Preference in Restructuring and Privatization Program

Foreign investment in Peru has increased dramatically due to the country's radical economic restructuring program, the implementation of Latin America's widest-reaching privatization program, and recent political stability.[67] As of May 1994, US $1.69 billion in foreign investments have been registered with the government's foreign investment and technology commission, known by the Spanish acronym CONITE, the majority of which have been centered on the key mining and petroleum industries.[68] The other major sources of capital are investments in the Peruvian capital markets, which have amounted to more than US $500 million in foreign money invested on the Lima Stock Exchange, and the US $2.02 billion that Telefonica de Espana, the Spanish telecommunications leader, offered during a privatization auction for the Peruvian telephone system, that as of May 1994 had not yet been registered.[69] The privatization program leapt forward in May 1994 with the sale of the Centromin mining/smelting complex, the largest in Peru, for almost US $300 million. Other privatizations scheduled for late 1994 include ElectroLima, the state electricity firm supplying the Peruvian capital; Petroperu, the government's petroleum monopoly; and InterBanc, the state-owned financial and banking entity.[70] The Peruvian government has signed more than 20 bilateral and multilateral agreements guaranteeing the safety of foreign investment in Peru in the past year, a confidence-building gesture that Peruvian officials assert should convince the international business community of the government's seriousness. Peru's reinsertion into the financial community has been met with enthusiasm, and foreign officials have noted that Peru currently enjoys the highest growth rate in Latin America.[71]

65. *Id.*
66. *Id.*
67. 11 Int'l Trade Rep. (BNA) No. 17, p. 654.
68. Int'l Trade Rep., *supra* note 67, at 654.
69. *Id.*
70. *Id.*
71. *Id.*