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OPEN REGIONALISM IN LATIN AMERICA: AN APPRAISAL

Mauricio Baquero-Herrera*

I. INTRODUCTION

REGIONAL Integration in Latin America comprises four important features, which can be described as the granting of differential treatment and preferences, politically led processes, highly institutionalised structures and forums, and antithetic positions towards external markets. These qualities have played a key role in the successes and failures of the diverse schemes established within the region. Differential treatment is considered not only a peculiarity, but also a principle of economic integration in the region. It may, however, create complexities and bring about weakness and legal uncertainty. Political direction could become political intrusion. Institutions, structures, and forums may turn dysfunctional, and external relations could be based on policies that leave the region vulnerable to external shocks.

These core aspects of South-South Latin American integration are embodied within the definition of open regionalism, a policy upon which countries have relied since the mid 1990s. A decade after being implemented, its purpose is far from being reached. There is a need to articulate the various regional, sub-regional, trilateral, and bilateral treaties in order to direct open regionalism towards more effective multilateralism. The evolution and dynamism of the process have produced a complex network of bodies, institutions, and organs, all of which have lost their influence in procuring the required convergence, coordination, and cooperation.

By reexamining the Latin American and the Caribbean integration framework, and by correcting the weaknesses present in the features considered, the region as a bloc will find a balanced immersion in the global economy. In order to discuss these issues, the article is divided into five sections. The first four identify, describe, and evaluate each one of the

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qualities present in the South-South Regional Integration processes in Latin America, considering their interdependence with the concept of open regionalism. Section V summarizes and provides some concluding remarks.

II. OPEN REGIONALISM AND THE MAIN FEATURES OF THE REGIONAL INTEGRATION PROCESSES IN LATIN AMERICA

Regional integration is not a novel concept in Latin America. Prominent citizens and statesmen had already discussed the prospect of integrating the nations of the southern part of the continent during the first decades of the nineteenth century. Latin American integration was the unfinished political dream of “El Libertador,” Simon Bolivar, after emancipating Andean countries from Spanish rule between 1817 and 1820. Although not ultimately successful, Bolivar moved towards the accomplishment of this aim by inviting neighboring heads of state to meet in Panama to consider the creation of a Confederation of States.

The first attempt to establish a free trade area among the countries in South America was proposed in 1889 at the First International Conference of the American States. Diverse approaches have been applied to obtain the desired goal of sustained development through economic integration. After more than three decades of regional, sub-regional and bilateral efforts, differential treatment, politically led processes, highly institutionalized structures and forums, and antithetic positions towards external markets are regarded as the main features of regional integration in Latin America.

In addition, open regionalism is the principle upon which different models of regional integration in developing countries, such us the Asia-Pacific Economic Cooperation and the six arrangements actually in

2. See art. 2 of the unsigned Treaty for perpetual unity, league and confederation of the Latin American Countries or the Amphictyonic Congress of Panama, 1824, quoted in PERMANENT SECRETARIAT OF THE LATIN AMERICAN ECONOMIC SYSTEM, GUIDE TO LATIN AMERICAN AND CARIBBEAN INTEGRATION 2001 4 (2001), available at http://lanic.utexas.edu/~sela/AA2K1/ENG/docs/Integra/SPDi5-01/SPDi5-01.htm [hereinafter GUIDE].
3. Id.
4. Id. at 5; see also Rubens Antonio Barbosa GCVO, The Evolution of the Integration Process in South America, in THE MERCOSUR CODES xi (Marta Haines Ferrari ed., 2000).
5. The Asia-Pacific Economic Cooperation (APEC) was established in 1989. APEC's twenty-one Member Economies are Australia; Brunei Darussalam; Canada; Chile; People's Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Republic of the Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; the United States; and Viet Nam. Asia-Pacific Economic Cooperation, About APEC, http://www.apec.org/apec/about_apec.html (last visited Oct. 5, 2005).
place in Latin America and the Caribbean, have carried out economic integration. Different attempts to define open regionalism have been made. Some conceive open regionalism as the reduction in barriers on imports from non-member countries as a consequence of the liberalization of trade among members. Others go beyond trade liberalization and associate open regionalism with social access.

Bergsten proposes five possible definitions for open regionalism: (1) open membership in the regional arrangement; (2) unconditional most-favoured-nation (MFN) treatment by which trade liberalization would be extended unconditionally to all of the members' trading partners, with no new preferences or discrimination created; (3) conditional MFN, under which a group would offer to generalize its reductions of barriers to all non-members that agreed to take similar steps; (4) global liberalization, meaning continuous reduction of barriers on a global basis while pursuing each group's regional goals; and (5) trade facilitation through non-tariff and non-border reforms.

This article in turn considers open regionalism from the perspective introduced by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) in the mid 1990s. It was a response to the changes towards regional integration in the early 1990s. Although the policy of import substitution, which it advocated in the 1960s, was left aside, ECLAC continued to provide guidance to the process of economic integration within the context of openness in which all economies of the region were involved. As stated by ECLAC, open regionalism is a process of growing economic interdependence at the regional level, promoted both by preferential integration agreements and by other policies in a context of liberalization and deregulation, geared to-

6. They are the Latin American Integration Association (regional); the Central American Integration System (sub-regional); the Central American Common Market (sub-regional); the Caribbean Community and Common Market (sub-regional); the Andean Community (sub-regional, countries located in the North Cone of South America); and the Common Market of the South (sub-regional, countries located in the North Cone of South America).


10. ECLAC is the United Nations Economic Commission for Latin America and the Caribbean. Its Spanish acronym is CEPAL. ECLAC has developed its own school of thought that was extremely influential within the region during the 1950s and 1960s. Its historical structuralism was based on the ideas and work of Raul Prebisch, Celso Furtado, and Jorge Ahumada, among others. See ECLAC, About ECLAC: The Institution, http://www.eclac.org (last visited Oct. 5, 2005); see also Bela Balassa, Regional Integration and Trade Liberalization in Latin America, 10 J. COMMON MKT STUD. 58, 59-60 (1971) [hereinafter Balassa, Regional Integration]
wards enhancing the competitiveness of the countries of the region and, in so far as possible, constituting the building blocks for a more open and transparent international economy.\(^\text{11}\)

Open regionalism contains two antithetical propositions.\(^\text{12}\) On the one hand, it advocates regional integration as opposed to multilateral or global integration. Regionalism implies certain preferences among the members and a degree of protection against non-members. On the other hand, it proposes openness to other countries, blocs, and economies through different means, among them, multilateralism. This two-fold definition implies an enormous degree of multiple interactions: first, those within the region, sub-regions, and bilateral arrangements and second, those outside the region, sub-regions, and other arrangements that could be negotiated and agreed in blocs or individually.\(^\text{13}\) There is a high degree of difficulty in finding the right balance among the particular concerns and interest of the member countries of the region or sub-regions, and those of the region as a whole, in the negotiations with other countries and blocs.

The following sections analyze the contents of the proposed definition against the four features identified along the historical development of the South-South regional and sub-regional integration in Latin America.

### III. DIFFERENTIAL TREATMENT AND PREFERENCES

The principle of differential treatment, aimed at balancing the asymmetries present among the countries in the area, has been introduced in almost all South-South agreements in the region. Small and middle size countries react against arrangements that do not consider their different levels of development.

The Latin America Free Trade Association (LAFTA) was the first regional attempt to attain economic integration,\(^\text{14}\) created with the aim of

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establishing a regional free trade area.\textsuperscript{15} It involved countries with diverse levels of development, size, and political interests. Argentina, Mexico, and Brazil, as the most industrialized countries within the area, had a clear interest in securing a wider market for their products, while smaller and underdeveloped countries focused on creating industrial development.\textsuperscript{16} This imbalance in the 1960 Treaty of Montevideo was perceived as a disadvantage to the less industrialized countries of the region, as the promised benefits failed to reach all countries involved.\textsuperscript{17} As the market forces allocated resources to the countries with important levels of industrial development less developed countries in the area found themselves in an unsustainable situation.\textsuperscript{18} Then, they began to spill over.\textsuperscript{19}

Sub-regional agreements appeared in the late 1960s and early 1970s as the reaction of small countries against the effects brought upon them by LAFTA. The Andean Pact\textsuperscript{20} and the Caribbean Community and Common Market\textsuperscript{21} (CARICOM) were established. These agreements, as op-

\textsuperscript{16} MT60, supra note 14, at arts. 1-2.
\textsuperscript{17} Barbosa, supra note 4, at xiv; see also Miguel S Wionczek, The Rise and the Decline of Latin America Economic Integration, 9 J. COMMON MKT. STUD. 49, 59 (1970).
\textsuperscript{20} The following explanation of the concept of “spill-over” is found in William P. Avery & James D. Chochrane, Subregional Integration in Latin America: The Andean Common Market, 11 J. COMMON MKT. STUD. 85, 86 n.3 (1972) [hereinafter Avery & Chochrane, Subregional Integration]:

Moving to a higher level of integration in order to overcome dissatisfaction is termed “spill-over” in the neo-functionalist theory of regional integration. The “spill-over” concept describes a situation in which dissatisfaction, fear, concern, or unfulfilled aspirations at one level of integration or with integration in one economic sector leads the participants, or a segment of them, to expand the scope or level of integration, or both, in order to fulfill aspirations, or overcome dissatisfaction, fear, or concern.
\textsuperscript{21} The Cartagena Agreement was signed in 1969, setting up the Andean Group or Pacto Andino, with the aim of creating a customs union. The Andean Community and the Andean Integration System started operating in 1997 when the Protocol of Trujillo (1996) started to apply. See Andean Community, Who Are We?, http://www.comunidadandina.org/ingles/who.htm.
\textsuperscript{21} CARICOM is a customs union established in 1973, set up between Antigua and Bermuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. See CARICOM, The Caribbean Community, http://www.caricom.org/jsp/community/community-index.jsp?menu=community.
posed to LAFTA, were composed of a more homogeneous grouping of countries, territorially linked and with related types of economies.\textsuperscript{22}

In 1965, upon the request of the Chilean President, four economists presented the Proposals for the Creation of the Latin American Common Market.\textsuperscript{23} They pointed out the need for preferential attention to less developed countries within the region. Raul Prebish stated that the success of integration depends on all the countries effectively having an equal opportunity to benefit from the establishment of a common market. The relatively less developed countries therefore require preferential attention and special treatment, particularly in three fundamental areas: regional trade policy, technical and financial assistance and investment policy.\textsuperscript{24}

Accordingly, the Cartagena Agreement conceded special treatment to relatively less developed Andean countries such as Bolivia and Ecuador.\textsuperscript{25} Differentiated treatment according to levels of development is also established in CARICOM.\textsuperscript{26}

As for the region, a new agreement, the Montevideo Treaty of 1980 (MT80), was signed.\textsuperscript{27} Still in force today, it is aimed at establishing a common market through the creation of an Area of Economic Preferences instead of by a Free Trade Area.\textsuperscript{28} More than a trade regime, the Treaty created an association, the Latin American Integration Association (LAIA), which gathers bilateral agreements and sub-regional systems under a single set of rules, comprising certain tariff and negotiation aspects. By fostering the development of sub-regional groups and the signing of bilateral or trilateral agreements among its members, the MT80 has become a legal framework, and LAIA an institutional reference, for the regional integration process.\textsuperscript{29} Differential treatment is established as a principle within the Treaty.\textsuperscript{30}

\begin{itemize}
\item \textsuperscript{22} See Avery & Cochrane, Subregional Integration, supra note 19, at 102; see also Germánico Salgado Peña Herrera, Viable Integration and the Economic Co-Operation Problems of the Developing World, Part II, 19 J. COMMON MKT. STUD. 175, 186 (1980); Middlebrook, supra note 17, at 65.
\item \textsuperscript{23} Document: Proposals for the Creation of the Latin American Common Market, 6 J. COMMON MKT. STUD. 175, 83-110 (1966).
\item \textsuperscript{24} Id.; see also Raul Prebish Et Al., Hacia La Integración Acelerada De América Latina [Moving Towards an Accelerated Integration in Latin America] 32 (1965).
\item \textsuperscript{25} Middlebrook, supra note 17, at 64-65; Avery & Cochrane, Subregional Integration, supra note 19, at 85-102.
\item \textsuperscript{27} Treaty of Montevideo, Aug. 12, 1980, 1329 U.N.T.S. 225 [hereinafter MT80]. MT80 ceases LAFTA and establishes the Latin American Integration Association, made up of the same eleven countries that set up or joined LAFTA. In article 5, the Member Countries determined to charge each other lower tariffs than those applicable to non-members. In this sense, it is a Preferential Trade Agreement.
\item \textsuperscript{28} See Barbosa, supra note 4, at xvi.
\item \textsuperscript{29} Id. at xvi; GUIDE, supra note 2, at 62-67.
\item \textsuperscript{30} Others such as pluralism (MT80 article 3(a)), convergence (MT80 article 3(b)), flexibility (MT80 article 3(c)), and multiplicity (MT80 article 3(e)) were also in-
\end{itemize}
Other arrangements, such as the Central American Common Market, MERCOSUR, and the Group of Three, do not formally contemplate differentiated treatment among its member countries on the basis of their level of development. But preferential treatment is granted either through the treatment of tariffs or considerations established in further Protocols, as is the case in MERCOSUR (Ouro Preto 1994). To sum up, the lack of differential treatment marked the end of the first regional approach, encouraged sub-regional arrangements, and promoted the creation of a zone of economic preferences.

As advocated by ECLAC, open regionalism promotes economic interdependence at the regional level through preferential integration agreements. "What differentiates open regionalism from trade liberalization and non-discriminatory export promotion is that it includes a preferential element, which is reflected in integration agreements and reinforced by the geographical closeness and cultural affinity of the countries of the region." ECLAC recognizes the reality of the general application of the policies based on trade liberalization throughout the region as a consequence of the external debt crisis. Its view today stresses that open regionalism should take into consideration the problem of equality of opportunities for all countries to obtain the benefits of integration. In this sense, it proposes on the one hand a gradual and progressive tariff reduction process to ease the adjustment of production activities in countries or sectors considered to be less capable of competing within an enhanced market. On the other hand, it considers the adoption of agreements on special treatment for less developed countries. In addition, it argues that integration in some cases could be facilitated without the need for discriminatory or special measures (i.e., avoiding severe rules of origin or including clauses that enable the greatest number of members to accede to existing agreements). In this manner, sustainable development, balancing economic growth with environmental preservation, and social equity will be achieved.

As a consequence, countries unilaterally or through bilateral, sub-regional, and regional agreements, have become more open to other markets in the region. But this openness finds Latin American countries engaged in treaties of a different nature and scope. The variety of concessions granted to members and to non-members generates great complexity. It may restrain trade and bring about legal uncertainty, as articulation and convergence have not been attained.

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32. Open Regionalism, supra note 11.
33. Id.
A. Complexity: The Damaging Effect of the Latin American Area of Economic Preferences

The LAIA establishes an area of economic preferences, comprised of three different mechanisms: (1) a regional tariff preference that member countries reciprocally grant to each other; (2) regional scope agreements in which all member countries participate; and (3) partial scope agreements in which all member countries do not participate and that exclusively bind the signatory member countries or those who may wish to adhere to them.34

Taking into consideration the economic-structural characteristics of the countries, and with the purpose of applying the differential treatments foreseen in the MT80, LAIA members are considered as follows: countries at a relatively less advanced stage of economic development (Bolivia, Ecuador, and Paraguay); intermediate developed countries (Chile, Colombia, Peru, Uruguay, and Venezuela); and other member countries (Argentina, Brazil, and Mexico). Uruguay is “granted an exceptional treatment more favourable than that accorded to the other intermediate developed countries.”35

B. Mechanisms Used to Grant Differential Treatment and Preferences Among the LAIA Members

1. Regional Scope Agreements36

There are seven regional scope agreements signed by all LAIA member countries. They are displayed in Table I section A. Article 18 of the MT80 requires member countries to “approve negotiated lists of preferable industrial products originating from each relatively less developed country . . . .”37 A “total elimination of customs duties and other restrictions [would] be accorded, without reciprocity . . . .”38

In compliance with this article, member countries opened their markets to a wide range of products originating from Bolivia, Ecuador, and Paraguay, entirely lifting customs duties and other restrictions on specific products, beginning on April 30, 1983. These regional scope agreements are classified by LAIA as Market-Opening Lists (AR.AM) and numbered AR.AM No. 1 (Bolivia), AR.AM No. 2 (Ecuador), and AR.AM No.3 (Paraguay).39

The fourth regional scope agreement is the Regional Tariff Preference Agreement (AR.PAR No. 4). The Regional Tariff Preference (PAR) is

34. MT80, supra note 27, at art. 4; Wionczek, supra note 16, at 163.
35. MT80, supra note 27, at res. 6.
36. The objectives and provisions of the treaty apply to these agreements. They may refer to the same matters and include those instruments foreseen for the partial scope agreements. Id. at art. 6
37. Id. at art. 18.
38. Id.
established in article 5 of the MT80. PAR is determined “according to the relative economic development of each country, in conformity with Resolution 6 of the Council of Ministers” as described above.\(^\text{40}\) PAR applies to the entire tariff universe, except for a list of products determined by each country. Through this general mechanism member countries grant, on a reciprocal basis, a reduction of the rate of duties levied on imports from third countries on the importation of products originated in their own countries. “The current basic level of PAR is of 20 [percent].”\(^\text{41}\) The other three regional scope agreements are related to scientific and technological cooperation (Frame Agreement AR.CYT No. 6); exchange of goods and cooperation in cultural, educational, and scientific matters (Agreement AR.CEYC No. 7); and the Free Agreement to Trade Promotion by overcoming Technical Barriers to Trade (Agreement AR.OTC No. 8).

2. Partial Scope Agreements

The aim of these partial scope agreements (AAP)\(^\text{42}\) is to create the conditions necessary to deepen the regional integration process by their progressive multilateralization.\(^\text{43}\) They “may refer to trade, economic complementation, agriculture, trade promotion, or adopt other modalities[,]” taking into consideration, among others, “scientific and technological cooperation, tourism promotion and preservation of the environment.”\(^\text{44}\)

Partial scope agreements are governed by the following general rules: they are open to accession to the other member countries, prior to negotiation; they “contain clauses promoting convergence in order that their benefits reach all member countries” and other Latin American countries; and they “include differential treatments depending on the three categories of countries recognized by” the members.\(^\text{45}\)

“Partial Scope Agreements among member countries have been the instrument to consolidate and deepen their trade relations. It is the will of the participants that determine both scope and intensity.”\(^\text{46}\) But this mechanism led to a plethora of agreements and differential treatments that should be consolidated by implementing the mechanisms of convergence provided in the MT80. Tables I, sections B, C, and D and Table II all contain partial scope agreements in force at the time of writing.

\(^{40}\) Id.
\(^{41}\) Id.
\(^{42}\) MT80, supra note 27, at arts. 9-14.
\(^{43}\) Id. at art. 7.
\(^{44}\) Id. at arts. 8, 14.
\(^{45}\) Id. at art. 9. They may also include, among others, specific rules regarding origin, safeguard clauses, non-tariff restrictions, withdrawal of concessions, re-negotiation of concessions, denouncement, and coordination and harmonization of policies. Tariff reductions may be applied to the same products or tariff sub-items and on the basis of a percentage rebate regarding the tariffs applied to imports originating from non-participating countries.
\(^{46}\) Guide, supra note 2, at 65.
MERCOSUR and the Andean Community are sub-regional arrangements that comprise almost all LAIA members (except from Mexico and Cuba). The LAIA members have reached several agreements aimed at the establishment of a free trade area. Thus, the secretaries of such sub-regional arrangements and that of the LAIA should coordinate and cooperate in order to consolidate all of these partial scope agreements. Each one of them has a list of products, and each determines certain rules to apply the preferences granted. Goods have to be identified according to the national, sub-regional, and regional nomenclatures and compared with the unilateral, bilateral, partial scope, sub-regional, and regional preferences actually in force and granted by the countries in the region. This complexity is certainly not the best incentive for entrepreneurs and indeed creates legal uncertainty.

There are six different types of partial scope agreements: Renegotiation Agreements (AAP.PR), displayed in Table I, B; Commercial Agreements (AAP.C), Table I, C; Agricultural (AAP.AG), Table I, D; Trade Promotion (AAP.PC), Table I, E; Economic Complementation (AAP.CE), Table II; and other Partial Scope Agreements, also in Table II.

AAP.PR's "compile the results of the renegotiation of the preferences granted in past negotiations . . . ." These agreements are referred to as the historic patrimony of the LAIA. Of the original forty agreements in force by the end of the 1980s, only seven are currently in force. AAP.Cs "are strictly commercial agreements and their scope is restricted to some productive sectors." Currently there are only two commercial agreements in force, out of a total of twenty-seven signed during the first decade of the MT80.

AAP.AG's are partial scope agreements negotiated under article 12 of the MT80, and are aimed at promoting and regulating intra-regional trade of agricultural and livestock products. They should take into account the participating countries' socio-economic characteristics of production, establishing flexible mechanisms. "These agreements may refer to specific products or groups of products, and may be based on temporary, seasonal, per quota or mixed concessions, or on contracts between State or para-State organizations." AAP.PC's "refer to non-tariff matters and tend to promote intrarregional [sic] trade flows."

The following table shows all Regional Scope agreements actually in force and the four forms of regional scope agreements described above (i.e., AAP.PR, AAP.C, AAP.AG, and AAP.PC).

47. LAIA Agreements, supra note 39.
48. Id.
49. Id.
50. Id.
51. MT80, supra note 27, at art. 12.
52. Id. at art. 13.
Table I: Regional Scope Agreements and Some Partial Scope Agreements under the LAIA^53

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A. Regional Scope Agreements
- ARAM No.1 Market Opening Agreement in favour of Bolivia
- ARAM No.2 Market Opening Agreement in favour of Ecuador
- ARAM No.3 Market Opening Agreement in favour of Paraguay
- AR.PAR Regional Tariff Preference
- AR.CYT Scientific and Technological Cooperation (Frame Agreement) No information available on the year of signature, prior 1985
- AR.CAYC Exchange of Goods and Cooperation in Cultural, Educational and Scientific Matters
- AR.OTC Trade Promotion by Overcoming Technical Barriers to Trade

B. Partial Scope Agreements: Renegotiation Agreements
- AAP.R Additional or adopting protocol

C. Partial Scope Agreements Commercial
- AAP.C No 5 Preferences to Chemical Industry
- AAP.C No 13 Preferences to Industrial Sector

D. Partial Scope Agreements Agricultural
- AAP.AG Subscribed under Article 12 MT80

E. Partial Scope Agreements Trade Promotion
- AAP.PC Subscribed under Article 13 MT80
The remaining partial scope agreements are the Economic Complementa-
tion Agreements and other modalities of the partial scope agree-
ments. They are contained in Table II. “Economic complementation
agreements [AAP.CE] are aimed, among other objectives, to promote
maximum utilization of production factors, stimulate economic comple-
mentation, ensure equitable conditions for competition, facilitate entry of
products into the international market, and encourage the balanced and
harmonious development of member countries.”

Besides the sub-regional schemes of integration (the Andean Commu-
nity and MERCOSUR), there are nine agreements of economic comple-
mentation that determine the creation of free trade areas among
signatories. These are Chile-Venezuela (AAP.CE No. 23 FTA 1993),
Chile-Colombia (AAP.CE No. 24 FTA 1993), Bolivia-Mexico (AAP.CE
No. 31 FTA 1994), Chile-Ecuador (AAP.CE No. 32 FTA 1994), Colom-
bia-Mexico-Venezuela, the Group of Tree (AAP.CE No. 33 FTA (G-3)
1994), MERCOSUR-Chile (AAP.CE No. 35 FTA-MS 1994), MERCOSUR-Bolivia
(AAP.CE No. 36 FTA-MS 1996), Chile-Peru (AAP.CE No. 38 FTA 1998) and Chile-Mexico (AAP.CE No. 41 FTA
1998).

There are other economic complementation agreements. MERCOSUR-Mexico (AAP.CE No. 54 FTA-MS-m 2002) establishes the
framework for a free trade area. The Andean Community and
MERCOSUR signed a partial scope agreement under article 14 MT80
(AAP.A14TM/11 F-FTA 1998). It is aimed at establishing the frame for
a future free trade area. Through several economic complementation
agreements, these two sub-regional agreements have been building up an
important South American bloc (AAP.CE No. 48 tFTA-MS 2000,
AAP.CE No. 56 tFTA-MS 2002, and the recent AAP.CE No. 59 tFTA-
MS 2003).

Other modalities of partial scope agreements are established under ar-
ticle 14 of the MT80. They “regulate specific matters concerning tariff
preferences . . . .” It may require cooperation actions aimed at “crea-
ting favourable conditions for the exchange of goods and services, such as
transport and tourism, for the protection of the environment, the optimal
use of road infrastructure, [or] the overcoming of technical barriers to
trade . . . .”

54. MT80, supra note 27, at art. 11.
55. LAIA Agreements, supra note 39.
56. Id.
57. Id.
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<th>Argentina</th>
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<td>Economic Complementation creating MERCOSUR</td>
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<td>AAP CE N° FTA-MS</td>
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<td>AAP CE N° FTA-MS-MS</td>
<td>Economic Complementation Agreement towards a FTA between some Andean countries and MERCOSUR</td>
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<td>AAP CE N° FTA-MS-as</td>
<td>Economic Complementation Agreement comprising a FTA between a single country and MERCOSUR related to automotive sector</td>
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<td>AAP CE N° FTA-MS-m</td>
<td>Economic Complementation Agreement comprising a frame for a FTA between a single country and MERCOSUR</td>
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<td>AAP.A14TM</td>
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<td>AAP.A14TM/11 F-FTA</td>
<td>Framework of the future Free Trade Area between Andean Community and Mercosur</td>
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<td>AAP.A14TM/12 + CACM 1998</td>
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Table III shows nineteen partial scope agreements actually in force (AAP.A25 TM) that some LAIA member countries signed with other Latin American non-member countries and areas of integration. 59 According to article 19 of MT80, the preferences granted in these agreements are automatically extended to the countries of relatively less economic development within the LAIA. 60

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59. MT80, supra note 27, at art. 25.
60. Id. at art. 19.
Table III: Partial Scope Agreements with Non-Members under LAIA

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<th>Guatemala</th>
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AAP.A25TM Subscribed under Article 25 MT80

Finally, to further illustrate the complexity generated by the integration euphoria of the 1990s, the Inter American Development Bank (IDB) created this graphic, which they call the spaghetti bowl of Latin American Regional Integration.\textsuperscript{62} It only takes into account trade agreements signed and under negotiation in the Americas. It does not consider the bulk of the regional or partial scope agreements signed under the LAIA's framework referred to in the last sections and compiled in Tables I, II, and III.

Figure 1. The IDB's Spaghetti Bowl of Latin American Regional Integration\textsuperscript{63}

Overall, differential treatment and economic preferences certainly mean complexity. They are important tools for economic development and integration. Notwithstanding their importance, the lack of convergence among this kaleidoscope of obligations and preferences makes it


\textsuperscript{63} Inter-American Development Bank, http://www.iadb.org/.
difficult for the actors of integration to fully understand their implications and scope.

3. Politically Led Process

Open regionalism is also based on ECLAC's view that "unilateral, regional and multilateral liberalization processes can all build upon one another provided that Governments have a clear picture of the interests at stake." The construction of building blocks for a more open and transparent international economy necessarily requires the leadership of the governments.

The Latin American integration processes also rely on the political will of the local governments. Regional integration is formally reached through international conventions signed by the heads of state of the participating countries. The institutions created in order to implement what has been agreed upon depend entirely on the will of local governments.

Latin American constitutions present a tendency towards what is called _Presidencialismo_, defined as the inclination to grant enormous powers to the presidents of the nations and to require little accountability. This propensity was very strong within Latin American democracies during the 1970s and 1980s. During this period military dictatorships also appeared in the region. The propensity started to decrease, however, in the 1990s but tended to reappear from time to time (i.e., Peru under Fujimori and Venezuela under Chavez Frias).

As for integration, governments lead or undermine the process according to their ideological tendencies and the pressures of the local interest groups. This happens due to the actual structure of the different sub-regional and regional schemes. Even in cases where there is a governing supranational law, on occasion governments still find it difficult to comply when political circumstances force them to make determinations that protect local interest to the detriment of those of the sub-region. As a consequence, they relax the scope of their commitments and tend to defy the sanctity of the decisions of the supranational bodies, in accordance with their national concerns.

LAFTA, for instance, faced serious obstacles in this regard, such as the instability and heterogeneity of political regimes (military dictatorships in Argentina, Uruguay, and Chile, as well as Brazil) and conflicts between members (Ecuador and Peru) struck the region during the 1960s and 1970s. Ruptures and distancing were the result of episodes of authoritarianism within the region. At that time, changes in governments meant changes in the policies towards sub-regional or regional integration.

64. Secretariat of ECLAC, *Globalization and Regionalization: A View from Latin America and the Caribbean*, 58 CAPITULOS DEL SELA 51, 63-64 (2000) (discussing the implications of open regionalism to the governments within of the region).
As for the Andean process of integration, Andean presidents have played an important role. The leadership of the Andean presidents has moved the Andean scheme forward in times of crisis or has detained it when external shocks, lack of understanding, or the protection of domestic interests made it necessary. Their involvement has been core in shaping and reshaping the sub-regional scheme. Conversely, the strong politicization of the Andean bodies was considered one of the causes of its failure at the end of the 1970s. Apart from the different political structures of the members, which became a problem after 1973, governments disrupted the methods of distributing costs and benefits within the bodies of the Andean Pact. By taking advantage of the weakness of its structure and the lack of supranational authority, the manifestation of the political will of the parties was needed in each instance of the process. Due to the remaining politicization of the actual Andean bodies and institutions, the Andean Integration System is highly vulnerable to external shocks such as political changes and misunderstanding among member countries.

Overall, regional integration in Latin America can be regarded as a mere action driven by the governments and the institutions established through the integration treaties. In many ways, it has been a top-down process that, until recently, had not taken into account the private actors within the local economies.

ECLAC's hopes for a coordinated and articulated function of the overall regional integration process are far from attained. Particularly during the last five years, the simultaneous negotiations within sub-regional, regional, hemispheric, and multilateral forums have placed considerable demands on the Latin American countries.

The general impression that emerges is one of governments that are not ready to understand the complexity of the web of treaties created during the last decade, or their implications. They do not have a coherent game plan to defend their local interests, let alone those of the sub-regions and the region as a whole. This is worsened by the natural tendency of politicians to assess social and economic phenomena with a shortsighted vision and shallow approach. As a result, it is more difficult to find a comprehensive and thorough solution to the challenges of integration in the context of globalization.

In addition, governments in the region and in the sub-regions (primarily within the Andean Community) do not share the same visions and interests. As the process has taken more than a decade, its continuity has been affected by the changes in the heads of state and their respective

68. Id.
69. Id.
70. Id.
international policies. The economic crises still striking the region have weakened the quality and ability of the negotiators, and have left the institutions (i.e., the Latin America Economic System (SELA), the LAIA, and the Sub-regional Secretariats) with limited technical and financial resources in charge of coordinating integration.

IV. HIGHLY INSTITUTIONALIZED STRUCTURES AND FORUMS

Open regionalism advocates the construction of building blocks aimed at procuring a balanced immersion within the global economy. Consequently, ECLAC's approach poses the challenge of balancing the forces and local interests towards regional integration and global economic immersion.72 Following Tussie, open regionalism seems to be conducive to more effective multilateralism.73 An adequate response to this undertaking implies a certain degree of institutionalism.

The following section introduces both the institutional structures of the six integration schemes in Latin America and the Caribbean, and the group of institutions and bodies created with the aim of coordinating and cooperating with the processes of economic integration. After a decade of open regionalism these organs and bodies present a high degree of institutional fatigue, duplicity of functions, lack of identity, and shortfall of resources. Unless these institutions are rearranged and modernized, the immersion of the region as a bloc in the global economy will face serious difficulties.

A. INSTITUTIONAL STRUCTURES

South-South Regional Integration in Latin America has produced a complex web of institutions and bodies entrusted with different tasks and responsibilities within the region and the sub-regions. The following is a summarized review of the different institutions acting within the structure of the six schemes currently in place, including Central America and the Caribbean. It takes into consideration the major bodies with political and executive leadership. Equally, it considers the technical bodies or secretariats. It does not, however, refer to jurisdictional, parliamentary, or consultative bodies and financial institutions, which are present in almost all arrangements.

At the end of this section there are two tables that help to correlate and explain, at a glance, the density of the several bodies, organs, and

73. "A new multilateralism can emerge from the regional units with countries having a first direct say at the regional rather than multilateral level, as they do now, where power asymmetries are wide and affinities limited." Diana Tussie, Multilateralism's New Approach in the Global Economy, 53 CAPITULOS DEL SELA 29, 43, 45 (1998).
institutions actually in place. Table IV(A) contains the institutions referred to in this section. Table IV(B) includes those that are not. Vacchino and Noto compiled the information and prepared these two tables for the Permanent Secretariat of SELA.  

1. Latin American Integration Association

The LAIA has a flexible and relatively small institutional organization in comparison to the sub-regional schemes. It is established in chapter VI (articles 28-42) of the MT80. The political bodies of the LAIA are: (1) the Council of Ministers of Foreign Affairs acting as the supreme body of the LAIA, comprised of the Ministers of Foreign Affairs of the member countries; (2) the Evaluation and Convergence Conference composed of Plenipotentiaries of member countries; and (3) the Committee of Representatives, which is the permanent body of the LAIA. The technical body of the LAIA is the General Secretariat.

2. Central American Integration System

The Tegucigalpa Protocol created the Central American Integration System (SICA) in 1991. The governments of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama compose the SICA. Belize joined in 2000. The SICA contains the following organs: the Presidential Meeting, as the supreme body of the System; the Council of Ministers (the Council of Ministers of Foreign Affairs acting as an organ for coordination and direction); the Executive Committee; and the General Secretariat.

3. Central American Common Market

The General Treaty on Central American Economic Integration between Guatemala, El Salvador, Honduras, and Nicaragua was signed in

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74. The Permanent Secretariat of SELA incorporated these tables into its Proposals for a Regional Integration Articulation and Convergence Program, 67 CAPITULOS DEL SELA (2003).
75. MT80, supra note 27, at art. 28.
76. Id. at arts. 30-32, 43. The Council of Ministers of Foreign Affairs shall adopt whatever decisions may correspond to the higher governing policy of the economic integration process. Its powers are described in article 30.
77. Id. at arts. 33-34, 43. Its powers are established in article 33.
78. Id. at arts. 35-37, 43. Its powers and duties are determined in article 35.
79. Id. at arts. 29, 38-41.
81. Id. at art. 1.
82. Id. at Instrument of Accession.
83. Id. at arts. 12-15. Article 15 defines the activities and scope of the Meeting.
84. Id. at arts. 16-23.
85. Id. at arts. 23, 24.
1960.87 Costa Rica joined later in 1962.88 The organs and bodies of the Treaty are established in chapter IX (articles XX-XXIV). “The Central American Economic Council [is] composed of the Ministers of Economic Affairs of the several Contracting Parties . . . .”89 The Executive Council, consisting of one titular official appointed by each Contracting Party, was established “[f]or the purpose of applying and administering the present Treaty and of undertaking all the negotiations and work designed to give practical effect to the Central American Economic union . . . .”90 A Permanent Secretariat was also instituted.91

4. The Caribbean Community and Common Market

The revised Treaty of Chaguaramas established the Caribbean Community, including the common market.92 It was signed by Barbados, Jamaica, Guyana, and Trinidad and Tobago, and came into effect on August 1, 1973.93 Another eleven Caribbean territories joined later.94 Although the Bahamas became the thirteenth Member State of the Community on July 4, 1983, it is not a member of the Common Market.95

The principal organs of the Community96 are the Conference of Heads of Government acting as the supreme organ of the Community,97 and the Community Council of Ministers.98 The councils for Finance and Planning,99 Trade and Economic Development,100 Foreign and Community Relations,101 and Human and Social Development102 all assist the principal organs. The Secretariat is the principal administrative organ of the Community.103

5. The Andean Community

The 1996 Trujillo Protocol introduced changes to the 1969 Cartagena
Agreement. This Protocol created the Andean Community, and established the Andean Integration System to promote effective coordination between its component bodies and institutions.

“The Andean Presidential Council is the highest-level body . . . made up of the Heads of State of the Member Countries. . . .” The Andean Council of Ministers of Foreign Affairs is the political leadership body, comprised of the Ministers of Foreign Affairs of the Member Countries. The Andean Community Commission is the main policy-making body, encompassing a plenipotentiary representative from the governments of each of the Member Countries. The General Secretariat of the Andean Community is the executive body of the system.

6. The Common Market of the South

The 1994 Protocol of Ouro Preto modified the 1991 Treaty of Asuncion and established the structure of Mercosur. The highest organ is the Council of the Common Market. It involves the “Ministers for Foreign Affairs and the Ministers of the Economy of the States Parties, or their equivalents.” “The Common Market Group is the executive organ,” consisting of four members “who must include representatives of the Ministries of Foreign Affairs, the Ministries of the Economy (or their equivalents) and the Central Banks.” The Mercosur Trade Commission is responsible for assisting the Common Market Group. It provides support by monitoring the “application of the common trade policy instruments agreed by the States Parties in connection with the operation of the customs union . . .” It also follows up and reviews questions and “issues relating to common trade policies, intra-Mercosur trade[,] and [trade with] third countries.” These three are inter-governmental organs with decision-making powers.

“The Joint Parliamentary Commission is the organ representing the parliaments of the States Parties within Mercosur.” The Economic-Social Consultative Forum represents the economic and social sectors.

105. Id. at arts. 11-14.
106. Id. at arts. 15-20.
107. Id. at arts. 21-28.
108. Id. at arts. 29-39.
110. Id. at art. 3.
111. Id. at arts. 3-9.
112. Id. at art. 10.
113. Id. at art. 11.
114. Id. at art. 16.
115. Protocol of Ouro Preto, supra note 109, at art. 16.
116. Id.
117. Id. at art. 2.
118. Id. at art. 22.
119. Id. at arts. 28-30.
The Mercosur Administrative Secretariat provides administrative support.120 These three institutions are also part of the institutional structure of Mercosur.121

As shown in Table IV(A), all six major bodies with political, executive, or technical leadership in the six regional or sub-regional arrangements have a major, if not total, dependency on the governments of each country member. The Ministers of Foreign Affairs are entrusted with important powers and duties. Civil society and private entrepreneurs take little part in the processes.

120. Id. at arts. 31-33.
121. Protocol of Ouro Preto, supra note 109, at art. 1.
Table IV(A): Comparative Table of Integration Arrangements in Latin America and the Caribbean

<table>
<thead>
<tr>
<th>Bodies</th>
<th>ALADI</th>
<th>Andean Community of Nations</th>
<th>Central America Integration System</th>
<th>CARICOM</th>
<th>MERCOSUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major body/Political leadership</td>
<td></td>
<td>Andean Presidential Council</td>
<td>SICA</td>
<td>CARICOM</td>
<td>Summit of MERCOSUR Presidents</td>
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<tr>
<td>(Presidential level)</td>
<td></td>
<td></td>
<td>MCCA</td>
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<td>Conference Table</td>
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<tr>
<td>(Ministerial level)</td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Council of Ministers of Foreign Affairs</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Executive leadership/Adoption of norms</td>
<td></td>
<td>Andean Council of Ministers of Foreign Affairs</td>
<td>Council of Ministers of Economic Integration</td>
<td>Council of Community's Ministers</td>
<td>Common Market Council</td>
</tr>
<tr>
<td>(Ministerial level)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sectoral leadership (Ministerial level)</td>
<td></td>
<td>Joint meetings, Commission and sectoral ministers</td>
<td>Council of Ministers</td>
<td>Trade and Economic Development Council</td>
<td>Sectoral Ministerial Meetings</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Sectoral Council of Ministers of Economic Integration</td>
<td>Foreign Relations and Community Council</td>
<td></td>
</tr>
<tr>
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<td></td>
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<td>Social and Human Development Council</td>
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<td></td>
<td>Planning and Finance Council</td>
<td></td>
</tr>
<tr>
<td>Executive body (Government representatives)</td>
<td>Committee of representatives</td>
<td>Andean Community Commission</td>
<td>Executive Committee</td>
<td>Executive Committee of Economic Integration</td>
<td>Common Market group</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Permanente Secretariat (Technical body)</td>
<td>General Secretariat</td>
<td>General Secretariat of the Andean Community</td>
<td>General Secretariat of the Central American Integration System (SG-SICA)</td>
<td>Central American Economic Integration Secretariat (SIECA)</td>
<td>Secretariat of the Community</td>
</tr>
<tr>
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<td></td>
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<td>Administrative Secretariat</td>
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Table IV(B): Comparative Table of Integration Arrangements in Latin America and the Caribbean

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<tr>
<th>Bodies</th>
<th>ALADI</th>
<th>Andean Community of Nations</th>
<th>Central America Integration System</th>
<th>CARICOM</th>
<th>MERCOSUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign trade negotiations</td>
<td></td>
<td></td>
<td>Central American Integration System</td>
<td>Caribbean Justice</td>
<td></td>
</tr>
<tr>
<td>Jurisdictional body</td>
<td></td>
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<td></td>
<td>Court</td>
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</tr>
<tr>
<td>Parliamentary body</td>
<td></td>
<td></td>
<td></td>
<td>Assembly of Community's Parliament</td>
<td></td>
</tr>
<tr>
<td>Economic and social consultative body</td>
<td>Business Advisory Council</td>
<td>Andean Business Consultative Council</td>
<td>Consultation Council</td>
<td>Economic Integration Consultative Council</td>
<td>Economic and Social Consultative Forum</td>
</tr>
<tr>
<td>Financial institution</td>
<td></td>
<td>Latin American Reserves Fund (FLAR)</td>
<td>Central American Bank of Economic Integration (BCIE)</td>
<td>Caribbean Development Bank</td>
<td>FONPLATA</td>
</tr>
</tbody>
</table>

IV(A) and (B) prepared by Juan Mario Vaccino and Gerardo Noto.122

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122. Tables taken from Permanent Secretariat of SELA, Propuestas para un programa de articulación y convergencia de la integración regional (Proposals for a Regional Integration Articulation and Convergence Program), 67 CAPITULOS DEL SELA (Jan.-June 2003). FONPLATA does not belong to MERCOSUR. It was created earlier by specific agreement, however its member countries coincide fully with those of MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay are Member States of MERCOSUR, while Bolivia is an Associated State).
B. Institutions Created or Acting with the Aim of Promoting Articulation, Coordination, Cooperation, and Convergence within the Region

Parallel to the structures, institutions, bodies, and organs which comprise the different schemes, organizations already in place, such as the LAIA and the ECLAC, have been entrusted or established with the aim of promoting articulation, coordination, cooperation, and convergence in the region. Some of them have technical purposes. Others are political arrangements. All in all, and due to the increasing tendency to negotiate and establish North-South agreements, some of these South-South institutions seem to be losing their identity and function.

1. Latin American Integration Association

According to its nature, the LAIA is an institution created to promote cooperation and convergence. The kaleidoscope of regional scope agreements, partial scope agreements, renegotiation agreements, commercial, agricultural, trade promotion, and agreements with non-members, considered above, is the consequence of the intense activity of its member countries.

As stated before, article three of the MT80 establishes, among others, the principle of convergence upon which member countries would obtain a progressive multilateralization of the various partial scope agreements by means of periodical negotiations. In this sense it is clear that, under the LAIA’s framework, a complex web of concessions and obligations were created, the Treaty provides for its convergence. Therefore, the LAIA is called to promote this process through the activities and powers of the Council of Ministers of Foreign Affairs and the Evaluation and Convergence Conference. As already pointed out above, the Ministers of Foreign Affairs have a place and important responsibilities not only within the LAIA, but also in other sub-regional arrangements such as the Andean Community or MERCOSUR—member countries that form part of the Association. This circumstance should create the conditions for articulation, cooperation, and coordination. But important work still needs to be carried out in this regard.

2. United Nations Economic Commission for Latin America and the Caribbean

When considering not only the early stages but also the complete process of regional integration in Latin America, it is essential to refer to the comprehensive, influential and, in some cases, the criticized work of ECLAC. ECLAC “is one of the five regional commissions of the

123. The United Nations Economic and Social Council through Resolution 106 (VI), dated February 25, 1948, originally established it. Caribbean countries were included later on by Resolution 1984/67, dated July 27, 1984, changing its name to the Economic Commission for Latin America and the Caribbean (ECLAC). For more information on the ECLAC see ECLAC, About ECLAC: The Institution,
United Nations." The Commission "was founded for the purposes of contributing to the economic development of Latin America, coordinating actions directed towards this end, and reinforcing economic relationships among the countries and with the other nations of the world." "The promotion of the region's social development was later included among its primary objectives."

ECLAC, as a United Nations institution, is independent from all regional and sub-regional arrangements. It still plays a key role in the region, not only by providing assistance and meaningful research, but also by proposing policies aimed at gaining sustainable and balanced development for the Latin American countries.

3. The Latin American Economic System

In 1975, the heads of state present at the Panama Convention considered it "imperative to promote greater unity among Latin American countries . . . ." They found it essential to carry out concerted actions in the field of intra-regional economic and social cooperation. At the same time, it was considered fundamental to "increase the bargaining power of the region and to ensure that Latin America occupie[d] its rightful position in the international community."

To that end, they established SELA as a "permanent regional body for consultation, coordination, cooperation and joint economic and social promotion . . . ." SELA has two fundamental purposes: (1) to promote intra-regional cooperation in order to accelerate the economic and social development of its members and (2) to provide a permanent system of consultation and coordination for the adoption of common positions and strategies on economic and social matters in international bodies and forums as well as before third countries and groups of countries.

This institution provides important research and is a core forum for discussion among its members. CAPITULOS is a serious publication that offers meaningful contributions to scholars and the public in general. But as a consequence of the establishment of additional forums such as the Group of Rio, its influence in the region has been undermined.

http://www.eclac.org (last visited Oct. 5, 2005); see also Balassa, Regional Integration, supra 10, at 59-60.
124. ECLAC, supra note 123.
125. Id.
126. Id.
128. Id.
129. Id. at art. 2.
130. Id. at art. 3.
The Convention Establishing the Association of Caribbean States (ACS) was signed on July 24, 1994 in Cartagena de Indias, Colombia, with the aim of promoting consultation, cooperation, and concerted action among all the countries of the Caribbean. It comprises twenty-five member States as follows: Antigua and Barbuda, Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Venezuela. There are also two associate members: the Kingdom of the Netherlands (on behalf of Aruba), and France (on behalf of French Guiana, Guadeloupe, and Martinique). Eight other non-independent Caribbean countries are eligible for associate membership.

Among other activities, the Association promotes gradually and progressively among its members . . . (a) economic integration, including the liberalization of trade, investment, transportation and other related areas; (b) discussion on matters of common interest for the purpose of facilitating active and coordinated participation by the region in the various multilateral fora; . . . (f) consultation, cooperation and concerted action in such other areas as may be agreed upon.

The Rio Group, created in 1986, is the Permanent Mechanism of Political Consultation and Coordination. The members of this group are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Honduras, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela, and Guyana, on behalf of CARICOM. The Mechanism is “the result of the fusion of the Contadora Group (Mexico, Colombia, Venezuela and Panama) and the Support Group (Argentina, Brazil, Uruguay and Peru), which met previously to analyze and propose solutions to the political crises in Central America.”

The Declaration of Rio de Janeiro (1986) established the main objectives of the Group, as follows: (1) to expand and systematize political cooperation among the member states; (2) to examine international issues that may be of interest and coordinate common positions on these

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133. Id. at annex 1.
134. Id. at annex 11.
135. Id. at art. III, sec. 2.
137. Id.
138. Id.
issues; (3) to promote more efficient operation and coordination of Latin American cooperation and integration organizations; (4) to present appropriate solutions to the problems and conflicts affecting the region; (5) to provide momentum, through dialogue and cooperation, to the initiatives and actions undertaken to improve inter-American relations; and (6) to explore jointly new fields of cooperation that enhance economic, social, scientific, and technological development.139

In March 1999, member countries signed the Veracruz Act, assessing, among other issues, those related to regional institutionalism and regional integration.140

In relation to regional institutionalism, the heads of state pointed out the need for enhancing efficiency, avoiding duplication of efforts and procuring effective use of the resources available.141 Due to the new perspectives regarding hemispheric integration, they considered it important to strengthen cooperation and coordination mechanisms, aiming at rationalizing the functioning of the different regional organisms.142

The Rio Group is also conducive to harmonious development, and considers regional integration as a core political commitment and supports all integration processes of regional, sub-regional, multilateral, and bilateral scope, based upon the principle of open regionalism.143

Table V relates all countries which compose Central America, the Caribbean, and South America to the regional or sub-regional South-South agreements to which they belong, such as LAIA, MERCOSUR, the Andean Community, SICA, the Central American Common Market, and CARICOM. At the same time, it features the institutions set up and aimed at coordinating and cooperating in regional or sub-regional economic integration. To that end, it first displays technical institutions such as ECLAC and SELA. Third, it shows the political organizations created with the purpose of enhancing cooperation and coordination among the countries in the region, such as the ACS and the Rio Group.

The effect of this tendency towards setting up heavy institutionalized schemes is two-fold. On the one hand, the propensity towards crowded internal structures present among the various arrangements creates bureaucracy and does not allow enough room for convergence. On the other hand, governments seek other forums different from those already created within the regions or sub-regions, thus duplicating efforts and inefficiently using resources.

It is argued that Latin American South-South regional integration has been a politically led process. All major schemes have been either affected by the lack of commitment of the governments involved or

139. Id.
141. Id.
142. Id.
143. Id.
boosted in periods of integration euphoria. As can be derived from the
different institutional structures, the leadership of the different processes
has been placed on the Presidents or the Ministers of Foreign Affairs of
the member countries. In this sense, articulation, convergence, coopera-
tion, and coordination should come from the governments, as it has been
a top-down process.

The lack of a clear, concerted, and committed external policy among
the governments of the region and within the sub-regional arrangements
constitutes one of the main causes of the dysfunctional operation of their
institutional networks.
Table V: Central American, Caribbean and South American countries and Their Participation in Regional, Sub-Regional and Other Institutions

<table>
<thead>
<tr>
<th>Country</th>
<th>LAIA</th>
<th>MERCOSUR</th>
<th>ANDEAN COMMUNITY</th>
<th>SICA</th>
<th>MCCA</th>
<th>CARICOM</th>
<th>ECLAC</th>
<th>SELA</th>
<th>ACS</th>
<th>RIO GROUP</th>
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<tr>
<td>Argentina</td>
<td>MT80</td>
<td>Treaty of Asuncion</td>
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<td></td>
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<td>Panama Convention</td>
<td>Convention 1994</td>
<td>Support Group</td>
</tr>
<tr>
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<td>Panama Convention</td>
<td>Support Group</td>
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</tr>
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<td>Panama Convention</td>
<td>Rio 1986</td>
<td></td>
</tr>
<tr>
<td>Uruguay</td>
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<td>Panama Convention</td>
<td>Support Group</td>
<td></td>
</tr>
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<td>MT80</td>
<td>Cartagena Agreement</td>
<td></td>
<td></td>
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<td></td>
<td>As UN Member</td>
<td>Panama Convention</td>
<td>Rio 1986</td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>MT80</td>
<td>Cartagena Agreement</td>
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<td>As UN Member</td>
<td>Panama Convention</td>
<td>Convention 1994</td>
<td>Contadora Group</td>
</tr>
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<td>Panama Convention</td>
<td>Rio 1986</td>
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<td>Convention 1994</td>
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<td>Panama Convention</td>
<td>Convention 1994</td>
<td>Rio 1986</td>
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<td>Cartagena 2000</td>
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<td>Panama Convention</td>
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144. Table created by author.
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<td>Panama Convention</td>
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<td>Panama Convention</td>
<td>Convention 1994</td>
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<td>Antigua and Barbuda</td>
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<td>St. Kitts and Nevis</td>
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</tr>
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<td>St. Vincent and the Grenadines</td>
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<td>Monserrat</td>
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</tr>
<tr>
<td>France on behalf of French Guiana, Guadalup and Martinica</td>
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</tbody>
</table>
V. ANTITHETIC POLICIES AND POSITIONS TOWARDS EXTERNAL MARKETS

A. FROM IMPORT-SUBSTITUTION POLICIES TO NEO-LIBERAL POLICIES AND STILL FRAGILE

ECLAC's definition sustains that open regionalism promotes economic interdependence at the regional level through various policies in a context of liberalization and deregulation, geared towards enhancing the competitiveness of the countries of the region. The early regional integration and sub-regional attempts (i.e., LAFTA and the Andean Pact) were conducted within the framework of the import substitution industrialization policy. By impeding manufactured imports through the establishment of high tariffs on them, it was expected that member countries would develop their own industries, thereby reducing their dependency on industrialized countries. Production sharing arrangements were also put in place, dividing the production process across the region. As local markets became too small for the production, regional integration was required in order to allow for economies of scale, creating larger markets for regionally manufactured products.

Notwithstanding the import substitution model, countries continued to rely on exports of primary products. Even though the composition of imports changed, the quantity as a whole did not diminish. At the same time, the industrialization process was based on strongly protected national markets that generated interest groups in national economies opposed to opening up the local markets to other countries in the region. As a result, countries started to present imbalances in the external sector that were resolved through external financing. The availability of Euro Dollars, as a consequence of the boom in the oil industry in the 1970s, triggered unprecedented external borrowing from Latin American countries. It negatively affected the whole region when policies of developed countries changed in order to control their internal economy.
inflation.\textsuperscript{153} The increasingly onerous financial conditions forced the countries to create surpluses in order to service the external debt by contracting imports, therefore closing their markets to other countries.\textsuperscript{154}

These international economic factors, as well as the first petroleum crisis in 1978 and the increasing external debt of the Latin American countries, made the economies of the region more dependent on international markets. This escalating reliance on external funding and the consequent external debt crisis of the 1980s changed the attitudes of these countries towards regional integration.\textsuperscript{155}

On August 20, 1982, Mexico announced the unilateral suspension of principal payments on its foreign debt. Then, the external debt crisis started. International lenders immediately issued new loans and rescheduled the private sector’s current obligations and official debts.\textsuperscript{156}

The rescheduling of official debt was managed through the so-called Paris Club,\textsuperscript{157} which usually required the acceptance of an International Monetary Fund (IMF) structural adjustment program before rescheduling. The same was applied to the rescheduling of commercial debt. The IMF started to play a supervisory role, conditioning its loans both on the commitment of new funds from commercial banks and on the economic policy reform of the debtors.\textsuperscript{158}

The IMF reform programs\textsuperscript{159} were aimed at generating enough resources to allow debtors to pay back international loans. Apart from reducing the size and role of local governments, IMF structural adjustments were also focused on curtailing protectionism, in contrast to the Washington consensus by which "economic growth is promoted through unilateral tariff cuts and reduction in import restrictions."\textsuperscript{160}

The structural reforms implemented were based on policies that clashed with those supporting the regional and sub-regional integration schemes in place at that time, and induced a general non-compliance with

\begin{itemize}
  \item \textsuperscript{154} Guide, \textit{supra} note 2, at 8.
  \item \textsuperscript{155} Barbosa, \textit{supra} note 4, at xiv.
  \item \textsuperscript{157} \textit{Id.} It meets any time a rescheduling of official debt is needed. As its members are the major creditors of the requesting nation, it has no fixed members, no office, and no administrative bodies. \textit{Id.} at 30
  \item \textsuperscript{158} \textit{Id.} at 31.
  \item \textsuperscript{159} According to Buckley, policies proposed included:
    \begin{itemize}
      \item reductions in the budget deficit to limit inflation, local interest rates and the need for foreign borrowing;
      \item limits on domestic credit expansion to control inflation;
      \item exchange rate devaluations to discourage imports and encourage exports; and
      \item limits on borrowing consistent with the debtor’s capacity to pay.
    \end{itemize}
    Other structural adjustment[s] . . . included (i) higher income and sales taxes, (ii) higher charges for state-produced goods and services such as electricity and water, (iii) privatization of state-owned companies, (iv) deregulation of the labour market, and (v) reform of tariffs and import quota regimes. \textit{Id.} at 32
  \item \textsuperscript{160} \textit{Id.}
\end{itemize}
the sub-regional or bilateral obligations.\textsuperscript{161} For some commentators, the eighties constituted the lost decade for integration.\textsuperscript{162} As the sub-regional integration effort seemed meaningless, member countries opted for a pragmatic approach, easing the obligations for which they had originally contracted.\textsuperscript{163}

The end of the Cold War in 1989 brought fears within the region that international capital flows might be allocated in the former Soviet countries. Therefore, it was essential for all Latin American economies to participate and be competitive in the world economy.\textsuperscript{164} Neo-liberal policies introduced in the domestic context geared up to the opening of the Latin American markets,\textsuperscript{165} eliminating the anti-exportation bias inherent to the inward-oriented industrial development strategies.\textsuperscript{166}

The lost decade of the 1980s, instead of ending the ongoing process of regional and sub-regional integration, encouraged it under new policies that promoted the opening of the markets to foreign trade. The resultant need to do so invigorated integration schemes during the 1990s.

This new regionalism\textsuperscript{167} is based upon a different policy framework that promotes open and competitive private market-based economies within a democratic institutional setting. It involves the following premises:

Deepening grade liberalisation and lock-in reforms, market driven and attraction of foreign direct investment, creating and diversifying trade and dynamic productive transformation, geopolitics, institutional modernisation and enhanced regional co-operation. At the same time, it applies simple liberalisation programs, irreversible commitments, GATT/WTO rules of liberalisation, it is highly reciprocal and uses automatic schedules to liberalise trade with limited

\textsuperscript{161} A report by the Board of the Cartagena Agreement at that time points out that today the Andean Group is being subjected to adverse forces that significantly hold back its progress and seriously jeopardize the community structures built with so much effort. Currently there are problems in the field of trade liberalization, difficulties that prevent the industrialization programmes from being implemented, lack of definition on issues like the common external tariff[,] and many instances where the commitments made in the field of legal regulations have not been fulfilled.

\textsuperscript{162} Id.; see also Barbosa, supra note 4, at xviii.

\textsuperscript{163} GUIDE, supra note 2, at 45; see also Barbosa, supra note 4, at xi-xii.

\textsuperscript{164} GUIDE, supra note 2, at 8-9; see also Bela Balassa, The Process of Industrial Development and Alternative Development Strategies, in 141 ESSAYS IN INTERNATIONAL FINANCE, 6-12 (1980).


\textsuperscript{166} See OPEN REGIONALISM, supra note 11.

\textsuperscript{167} See Devlin & Estevadeordal, New Regionalism, supra note 17.
negative lists.\textsuperscript{168}

As countries in the region shared the same market-oriented economic policies, "the impact of concessions given to each other was not very different from the concessions given to third countries."\textsuperscript{169} Consequently, bilateral and trilateral arrangements appeared, as did several preferential trading arrangements.\textsuperscript{170} As referenced above, the partial scope agreements provided for in the MT80 brought about MERCOSUR.\textsuperscript{171} Reciprocal free trade areas were negotiated mainly by Chile and among sub-regional schemes. The establishment of the Treaty on Free Trade between Colombia, Mexico, and Venezuela is another example.\textsuperscript{172} It allowed the establishment of North-South agreements such as the North American Free Trade Agreement (NAFTA) and the consequent Free Trade Agreement signed by the United States and Chile.\textsuperscript{173} Furthermore, South-South agreements started to shake as a consequence of the negotiations towards the establishment of the Free Trade Area of the Americas.

The inward-looking model, which tried to protect the region from external pressures and allow it immersion in the international economy of the time, was strongly affected by, and failed due to, among other factors, the external debt crises. An antithetic outward-oriented strategy was embraced and is currently in place. As a result of the economic liberalization and structural adjustment programs, and the tremendous effect of neo-liberal policies on the approach of the countries towards regional integration, a worrying degree of vulnerability from external forces is still present in all schemes.

The mid and late 1990s witnessed the Tequila crisis of 1994 ("the first time that Latin America experienced an important impact generated by financial globalization"),\textsuperscript{174} the transnationalization of finance, the tele-information revolution, the Asian (1997) and Russian (1998) crises, and also the Brazil and Argentenean crises (starting in 1999). All of them


\textsuperscript{169} \textit{GUIDE}, supra note 2, at 24.

\textsuperscript{170} Id.

\textsuperscript{171} \textit{See Open Regionalism, supra note 11; see also Thomas Andrew O'keefe, Latin American Trade Agreements} (2001).

\textsuperscript{172} \textit{See Treaty on Free Trade, Colomb.-Venez.-Mex., Jan. 1, 1995, available at} \url{http://www.sice.oas.org/Trade/G3_E/G3E_TOC.asp}.

\textsuperscript{173} \textit{See Free Trade Agreement, U.S.-Chile, June 6, 2003, available at} \url{http://www.sice.oas.org/Trade/chiuse_e/chiusaind_e.asp}.

\textsuperscript{174} Juan F. Rojas Penso, \textit{The Effects of the Crisis on Integration}, 57 \textit{CAPITULOS DEL SELA} 33, 33 (1999).
evidenced the fragility of the region from externalities.\textsuperscript{175}

Notwithstanding the structural and second generation reforms placed in the region, the impact of the circumstances affecting the international economy and the local economic crisis led ECLAC again to speak of the lost half decade of the Latin American and Caribbean region.\textsuperscript{176} Until recently, sub-regions such as MERCOSUR and the Andean Community had started to work on the establishment of harmonized macroeconomic policies, particularly exchange, financial, and fiscal policies. To sum up, regional integration in Latin America has been based on policies that underlined trade in goods and did not prepare the region for the changes and effects of the international economy, leaving it vulnerable to external factors.

B. ARE THE ECONOMIES IN THE REGION REALLY OPEN?

In order to assess the question concerning the degree of openness of the economies of the region, this section compares the twelve LAIA country members during the period in which open regionalism has been in place. To that end, it adopts the Index of Economic Freedom issued by The Heritage Foundation and The Wall Street Journal.\textsuperscript{177} The Index uses a methodology that measures the degree of economic freedom in a considerable number of countries around the globe.\textsuperscript{178}

According to the Index, economic freedom is defined as “the absence of government coercion or constraint on the production, distribution, or consumption of goods and services beyond the extent necessary for citizens to protect and maintain liberty itself.”\textsuperscript{179} To measure economic freedom and rate each country, the authors of the Index established ten broad categories or factors of economic freedom, which are weighted equally.

These categories are trade policy, fiscal burden of government, government intervention in the economy, monetary policy, capital flows and foreign investment, banking and finance, wages and prices, property rights, regulation, and informal market activity. Each factor is graded according to a unique scale that runs from one to five. A score of one signifies an economic environment or set of policies that are most conducive to eco-

\begin{flushleft}
\textsuperscript{175} See SELA & AECI, The Economic Labyrinth: The Agenda of Latin America and the Caribbean to Cope with the International Financial Crisis (1999).


\textsuperscript{177} For more information, see The Heritage Foundation, http://www.heritage.org/research/features/index/ (last visited Oct. 5, 2005).


\textsuperscript{179} Id. at 50.
\end{flushleft}
nomic freedom. A score of five signifies a set of policies that are least conducive to economic freedom. The four broad categories of economic freedom in the Index are as follows: Free—countries with an average overall score of 1.99 or less; Mostly Free—countries with an average overall score of 2.00 to 2.99; Mostly Unfree—countries with an average overall score of 3.00 to 3.99; and Repressed—countries with an average overall score of 4.00 or higher.

Table VI shows the overall score of the LAIA member countries during the last ten years. Chile is the single country in the region which has scored (in 2002 and 2004) within the category of those regarded as Free countries by the Index. Chile is a member of none of the sub-regional arrangements in Latin America, as it adopted an independent model of development. The country has engaged individually in numerous trade treaties not only with countries in the region, but also with the United States. In this sense, the Index reflects the effects of the coherent external policy of the country and the implementation of the reforms required to immerse Chile in the global economy. But the average score of the last ten years reveals it as a Mostly Free country.

The first four countries within the table comprise MERCOSUR. Argentina and Uruguay present an average that define them as Mostly Free countries, whereas Brazil and Paraguay are among those regarded as Mostly Unfree countries by the Index. During the last three years all these countries have presented a tendency to increase their score that reveals an inclination to close their markets. In contrast, the other MERCOSUR member countries (except Paraguay) display an overall tendency towards opening their markets, as can be seen by comparing their score in 1995 with the average score of the last ten years.

The next five countries encompass the Andean Community. Two members, Bolivia and Peru, are considered among the Mostly Free countries according to the average of the last ten years. Colombia, Ecuador, and Venezuela rank as Mostly Unfree countries. Mexico, being a member of NAFTA, registers an average that categorizes it as a Mostly Unfree country. Only during the last three years has its score defined Mexico as a Mostly Free country. But there is a slight tendency towards increasing the score.
Table VI Overall Score

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<td>4.88</td>
<td>4.43</td>
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</table>

Table VII displays the first one of the ten categories or factors included in the Index, as it is considered a key factor in measuring economic freedom: the trade policy. \(^{181}\) "The trade policy score is based on a country's weighted average tariff rate—weighted by imports from the country's trading partners. The higher the rate, the worse (or higher) the score." \(^{182}\)

A score of one indicates that the level of protectionism is Very Low, with the weighted average tariff rate less than or equal to 4 percent. With a score of two, the level of protectionism is Low, with a weighted-average tariff rate is greater than 4 percent but less than or equal to 9 percent. As for scores of three, the level of protectionism is Moderate, and the weighted average tariff rate is greater than 9 percent but less than or equal to 14 percent. For scores of four, the level of protectionism is High, with the weighted average tariff rate is greater than 14 percent but less than or equal to 19 percent. Finally, with a score of five the level of protectionism is Very High as the weighted average tariff rate is greater than 19 percent.

Comparing the level of protectionism as it was evaluated in 1995 to the average of each country during the last ten years reveals that all countries except for Bolivia register a reduction in the score. It indicates an overall tendency towards reducing protectionism. During the last three years, however, the inclination of the countries has been either to preserve the level of protectionism in place in 2002 or to augment it. Argentina, Brazil, Paraguay, Ecuador, Venezuela, Chile, and Mexico kept the same score. Bolivia, Colombia, and Peru, all members of the Andean Community, increased it.

When examining the countries according to the sub-regional schemes, the biggest countries within MERCOSUR display a tendency towards

\(^{180}\) Index of Economic Freedom 2004, supra note 178.

\(^{181}\) Id. at 52-53.

\(^{182}\) Id. at 52.
high protectionism. Argentina fluctuates between moderate and high scores whereas Brazil ranks among high and very high protectionism. On the contrary, the smallest countries are disposed towards low protectionism. The same score found in 1995 is present in all countries in 2002. Except Uruguay, whose average declined one point in 2004, the other three MERCOSUR countries have the same score.

The principle of open regionalism relies primarily on the fact that countries open their markets to trade with both members and non-members. The Index shows that the actual level of protectionism is the same as the one registered in 1995. Therefore, the Index suggests that open regionalism has made little impact in the sub-region during the last ten years as far as trade policy is concerned.

In the case of the Andean Community, member countries show an overall reduction in the score, when comparing the average of the last ten years with that registered in 1995. Bolivia increased its score, as in 1995 it ranked Low in protectionism, but it has moved to Moderate within the last two years. Colombia, Ecuador, and Venezuela are countries inclined to preserve the same level of protectionism recorded by the Index in 1995. Peru, which scored Very High on the scale in 1995, reached a Low level for three years (1998-2000). But its tendency during the last four years is for a High level of protectionism. As evidenced in the MERCOSUR countries and based on the Index, trade policy in the Andean countries does not reflect the effects that the implementation of open regionalism should produce.

Chile registers an important reduction of its position on the scale. In 1995 its level of protectionism was considered High. Since 1997 it has recorded a Low level. The results are in accordance with the market-oriented strategy of the country. Mexico has also decreased its score from Moderate (1995) to Low (1999), excepting year 2000 when it ranked High, returning to Low again the following year.
Table VII: Trade Policy Score\textsuperscript{183}

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</table>

After more than a decade of implementing policies and carrying out structural reforms it seems that Latin American economies are not that open, and integration with countries and schemes out of the region have not yet been accomplished. Furthermore, there is a threatening tendency towards protectionism with a certain degree of political populism that may hinder the real efforts towards South-South and North-South integration.

VI. CONCLUDING REMARKS

The propagation of regional, sub-regional, and bilateral treaties, institutions, and arrangements has responded to the valid aspiration of the Latin American and Caribbean countries to explore the structures and policies which better suit and represent the needs of their overall population and interest groups.

This article has discussed South-South Latin American regionalism from the perspective of its main features and their correlation with open regionalism. Granting differential treatment and preferences has brought about complexity, confusion, and legal uncertainty in the region. At the same time, integration being a politically led process, political intrusion, lack of understanding, improvisation, and incoherent strategies have affected the process of integration as a whole, as the structures created to implement it depend entirely on the political will of the governments.

Equally, the heavily institutionalized structures and forums have become dysfunctional. As Latin American regionalism has the propensity towards crowded internal structures, bureaucracy is a damaging consequence. In addition, governments seek forums different from those already created within the regions or sub-regions. This duplicates efforts and makes inefficient use of the limited resources. Furthermore, regional

\textsuperscript{183} INDEX OF ECONOMIC FREEDOM 2004, supra note 178.
integration in Latin America has been based on policies that underlined trade in goods and do not prepare the region for the changes and effects of the international economy, leaving it defenseless against external factors.

As the definition of open regionalism contains the features present in the Latin American processes of integration, their weaknesses affect not only the region but also its relationships with other countries and blocs. Regional Integration in Latin America is akin to an organic process. Its common elements interact together affecting each other organically; therefore, all must be fine-tuned. By strengthening countries' weaknesses, open regionalism will contribute to the construction of building blocks aimed at procuring a balanced immersion within the global economy.

In this regard, there is a need to articulate the various regional, subregional, trilateral, and bilateral treaties in order to direct open regionalism towards more effective multilateralism. Convergence should be attained through the different mechanisms established within LAIA and by the political will of the governments of the member countries, aimed at clarifying and establishing a common treatment of the products within the region, bearing in mind the principle of differential treatment. The implementation of the agreed Free Trade Area between the Andean Community and MERCOSUR should end the complexity created by the Regional and partial scope agreements actually in force.

The recent developments within the region and the negotiations towards a hemispheric agreement require the governments to use, sustain, modernize, and consolidate the regional institutions, bodies, and organs in charge of providing articulation and coordination. It implies a serious effort of coordination among domestic government officials, decision-making bodies, and organs of consultation.

The evolution and dynamism of the process have produced a complex network of bodies, institutions, and organs, which have lost their influence in procuring the required convergence, coordination, and cooperation. By re-examining the Latin American and the Caribbean integration framework and correcting the weaknesses present in the features discussed, the region as a bloc will find a balanced immersion in the global economy. As all this requires a major political commitment, much work needs to be done in order to put pressure on the Latin American governments to plan, carry out, and comply with the reforms needed.