The Andean Community: Reaching out to Bolivar's Dream

Maria Angelica Espinosa
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Maria Angélica Espinosa*

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I. Introduction

To any fellow Latin American (especially to a Bolivian, a Colombian, a Venezuelan, a Peruvian, or an Ecuadorian), the mention of Simon Bolivar's name echoes a feeling of familiar pride and historic nostalgia for a lost ideal. The fundamentals of the integration process in Latin America were Simon Bolivar's (El Libertador) political and social dreams. He thought of a unified Latin America as a powerful political unit, to not only guard citizens from the dangers of foreign powers, but to also promote a sound dispute resolution process within the integration of those countries. Regardless of the unsuccessful projects, from the Confederation to La Gran Colombia (the unification of Colombia, Venezuela, and Ecuador into one solid entity), his ideas stuck with the people in charge and with the masses that followed. There were numerous attempts for an integration process at the time, but, instead of a political one, the countries have since then taken the path of the economy to ensure the dream comes true.

The world and the continent in the last decades have undergone fundamental changes. The globalization process in the economy and in society is a reality and another

* J.D. Candidate 2002, Southern Methodist University Dedman School of Law, Dallas, Texas; LL.B. 2000 University of Los Andes, Bogota, Colombia; LL.M. (International Law) 2001, Southern Methodist University Dedman School of Law, Dallas, Texas.
natural phenomenon that is a given at this time. The global imperative is driven by a confluence of different forces, from the governmental policies to the forces of technological change, especially in the fields of transportation, communications, and new methods of production. The vanishing of communism and the veneration of a capitalist society are elements of a worldwide culture. It is within this "globalization" process that all the countries are seeking alliances in order to intertwine their trade and cooperate in political and social issues that arise within their interaction. Economic blocks are the order of the day, and the integration process is evolving toward an open spectrum of exchange in goods and services. The barrier of sovereignty has diminished as different countries are involved in each other's policies with the multiple regional, sub-regional, and bilateral agreements. In this context, the North American Free Trade Agreement (NAFTA), Mercado del Cono Sur (MERCOSUR), Central American Common Market (CACM), the Group of Three (G-3), and the Andean Community have developed agreements of trade between countries and have become an issue to be addressed when attempting to form a global economy.

Among new trade pacts being signed, revitalization of some old ones, and extension of others to reach new associates among the different continents, the rise of trade agreements in Latin America must be given due attention. It is also of primary importance to understand what regional integration means and why it has become the trend during the last decade. Regional and subregional integration are primarily instruments to achieve economic improvements in developing countries. It is intended to facilitate structural change by promoting economic diversification through industrialization. No countries in Latin America have decided to stand on their own. Trade agreements are a condition precedent to that of achieving effective competitiveness, increase gaining power in foreign markets, and attracting new investments. To understand integration at a regional level, let us differentiate between a free trade agreement and a more developed customs union. The first establishes a non-tariff regime among the contracting parties, though each one of them has its own policy when dealing with the rest of the world. A customs union, on the other hand, provides the creation of a common tariff for the goods and services.

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services entering the union outside the members. It is the latter for which the Andean Community longs.\(^7\)

The aim of this article is to focus on the establishment and achievements of the Andean Community, its current agreement with some MERCOSUR countries, and a glimpse at its impact on the Free Trade Agreement of the Americas.

**II. Latin American Integration: The Andean Community**

A. **Historical Context and Evolution**

The Andean Community is a subregional organization created in 1969, with Colombia, Bolivia, Peru, Chile, and Ecuador as its members.\(^8\) This union became possible under the Latin America Free Commerce Association (ALALC) Resolutions 202 and 203 that regulate the basis for a trade agreement among the members. By 1973, Colombia, Bolivia, Peru, and Ecuador were following import substitution and protectionism as trade strategies (strategies that contradict the initiatives of the newly-elected Chilean government who initiated a trade liberalization process).

Chile followed the path less traveled by Latin American countries. For decades, Chile lived with nationalization and big governments carried on by the bureaucracy, which impacted investment. Furthermore, state over-regulation, interventionism, and the productive process of the state-owned enterprises are inefficient. Chile started a trade liberalization process that focused on reform for the private sector participation in the economy, accomplished by a series of privatizations of Chilean state-owned enterprises. Pursuant to irreconcilable differences with the Andean Community directives, Chile withdrew from its participation in the Community in 1976.\(^9\) However, five members still existed because Venezuela had already joined the Andean Community consolidating their integration in a closer geographical context.

The Andean Community’s objective is to establish and promote economic development of the members. This is accomplished through economic, as well as social, integration. The Community seeks to increase its bargaining power in the international economy and to strengthen the subregional solidarity with the final purpose of procuring better living for the inhabitants of the subregion.\(^10\)

Through its evolution, the members opted for an alternative to underdevelopment. They understand that integration is not just an economic process; it is also a social and cultural venture. The subregional integration has expanded the scope of a free trade agreement going beyond the traditional issues of tariff and non-tariff barriers. From the

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7. For discussions on levels of economic integration, see Ali M. El-Agraa et al., *Economic Integration Worldwide* (St. Martin’s Press 1997).
8. For more information, visit the Andean Community web page available at http://www.comunidadandina.org.
9. Chile withdrew from the Andean Pact in 1976, as a consequence of the Resolution 102 adopted by the Cartagena Agreement Commission, because of the different political views of this member regarding the economic model; the four members left favored a protectionist model, while Chile favored a more liberal one.
beginning, it has addressed education and labor integration, as well as established a forum for dispute resolution within the community. It was with this one objective in mind that in 1983 the Andean Court of Justice was implemented.

B. The Drawbacks and the Revitalization

Notwithstanding the attempts to achieve an international projection, the close economy and protectionism that underlie the Andean Community directives held it back. There was a new economical reality in the world that leaned toward liberalization in international commerce and foreign investment. The Andean members tried implementing it by making the foreign capital treatment more flexible. But the slow decision-making process, the breach of the obligations of the community, the lack of involvement of Bolivia, and the 1981 “war” between Ecuador and Peru forecast a negative outcome in the integration process.

To revitalize the process in 1987, the members enacted the Quito Protocol to provide the Community with a less rigid process than the one contained in the Cartagena Agreement. The modification to the Cartagena Agreement was a reality check for the members. In its development, different sectors of the civil society were involved: government, entrepreneurs, intellectuals, politicians, and working class people interested in the future of the Andean Community. This measure provided the fuel that the process needed to continue its course (no longer a stranger to the obstacles in sight).

After the Quito Protocol adoption, there was a need for new compromises for divesting goods of tariff barriers and enacting a common tariff, rules of origin, etc., in order to be in tune with the reality of the development of the international community. In this context, the Andean Community adopted Decision 330 in 1992, which opened the commerce by eliminating subsidies and incentives of the intraregional exports, stripping the trade policy of government interventionism and giving it an air of equality and free trade among the entrepreneurs of each country. However, as anticipated, the process had its obstacles.

14. Notwithstanding the difficulties pointed out, the Andean Community progressed in three aspects during this period. It consolidated its technological policy, with the approval of the Industrial Property Directives, and it developed the first Andean Programs in Technological Development. It also approved the Petrochemical Industry program, Decision 91, and defined the Terrestrial System of Andean Roads.
16. The Andean Community members suffer the effects of the international financial crisis and the political adversities within each member; nonetheless, they maintain the course of the community.
In 1992, Peru's participation diminished because of a negative export/import rate related to the other Andean Community members. Due to its importation of tariff-free petroleum from Colombia and the lower price of industrial products coming from the members compared to its own, a noncompetitive market for Peru and no participation in the Free Trade Area until 1997 resulted. Still today, Peru is not included in the Common External Tariff that reduced duties on goods imported from third countries. Furthermore, Bolivia's obligations are not binding, which gives the whole process an air of instability and lack of commitment.

C. The Accomplishments

Regardless of the slow pace, and keeping in mind the ultimate goal (the common market), the Andean Community has characterized itself as the existence of well-developed communitarian institutions with supranational authority. Only well-established mechanisms and forums will allow it to grow into a common market and to achieve the unity required for facing the challenges of the international economy. Integration requires judicial, political, and technical bodies able to manage diverse issues and address the globalization process. Institutions do not have to guarantee the process per se but have to strengthen the position of the Andean Community in the world, with third parties giving stability to the obligations undertaken by it and providing certainty for investment. With this in mind, strengthening the Community's institutions was achieved in 1996 with the Trujillo Protocol, which establishes the Andean Presidential Council as the supreme administrative organ and the Andean Council of Foreign Ministers with normative, as well as supervisory, faculties. This protocol also provides for an Integrated System, in which all the organs will meet in order to determine the policies of the Community.

Additionally, the members enacted the Cochabamba Protocol in 1996 and the Sucre Protocol in 1997. The latter intends to consolidate the integration process by establishing programs to be developed among the members regarding liberalizing and promoting services. It further entrusts the Andean Council of Foreign Ministers with the function

19. Andean Community Decision 414 (1997), available at http://www.comunidadandina.org/normativa/dec/d414.htm. Peru reached an agreement with the other members of the Andean Community for its full incorporation into the Free Trade Area. In effect, the Commission, through Decision 414, approved a tariff reduction schedule that became operational on August 1, 1997 and will conclude in 2005.
20. Supranationality of the Andean Community decisions implied a direct applicability of the rule of law and a supremacy over national law declared in the Treaty Creating the Andean Court of Justice of the Agreement of Cartagena.
of developing an external common policy. On the other hand, the Cochabamba Proto-
col centers on strengthening and adapting the Andean Community Court of Justice by
widening its jurisdiction.\textsuperscript{23} The existence of a rule of law, based on legality and different
from that of the members that compose it, makes the legal process an integrated one.
Additionally, there are several rights of action that the members can follow to: void the
decisions that contradict the rule of law, punish breaches of the communitarian obliga-
tions, and guarantee a harmonious interpretation of the decisions and resolutions of the
administrative and normative bodies. The Cochabamba Protocol allows for the partici-
pation of private parties. Moreover, the Andean Community Court of Justice may serve
as an arbitrator to ensure proper interpretation and application of contracts and agree-
ments among the Integrated System bodies or with third parties. Private parties may also
seek arbitration before the Court or before the General Secretariat of the Community if
regarding technical aspects.

In spite of the obstacles that the Community has faced, amongst them the Peruvian
government's diminishing participation, the financial crisis undergone by the members,
the political conflicts that they are facing, and the historical problems between Colombia–
Venezuela, the members have still kept their agenda in mind and close at hand.

The results of a stable economy are reflected in its openness to the world and stability
of the fundamental indicators. One of the outstanding achievements within the Andean
Community is the growth in the Gross Domestic Product (GDP) by 746.69 percent,
which reflects the improvement in the income per household that grew five times from
U.S.$516 in 1970 to U.S.$2,681 in 1998. The exports to the world have also increased
considerably. They went from U.S.$5.38 million in 1970 to a high of U.S.$38.679 million
in 1998, which means that the exports to the world grew seven times in the thirty
years since the establishment of the Community. This shows that an increase of the sub-
regional exports to the world in 1990 accounted for 4.2 percent of the total exports to
the world and, in 1999, notwithstanding the economic crisis, it accounted for 9.1 percent
of the total.

In 1999, the Andean Community members enacted a Common External Tariff, thus achieving the transition from a Free Trade Agreement\textsuperscript{24} to a Customs Union.\textsuperscript{25}


\textsuperscript{24.} The Andean Free Trade Area has a characteristic that sets it aside from all other integration movements in the Americas today: all of the products in its tariff universe have been dereg-
ulated. Therefore, the List of Exceptions that is common to other integration systems does
not exist.

\textsuperscript{25.} The goal of liberalizing services by 2005 is also ambitious, but the provisions the Andean Community has adopted in that regard are among the hemisphere's most advanced, even
going beyond those of the FTAA. Alan Fairlie Reinoso, \textit{Peru's Open Regionalism and the
Andean Community} (Jan. 2001), available at http://www.comunidadandina.org/ingles/press/ alan23-1-01.htm (this article is a summary of the last chapter of a report about the Andean
Community prepared by the IDB and INTAL).
The liberalization of the transportation and communication services, the increase in manufactured goods exchange, and the increase of foreign investment were all results of the transition. Thus, the intracommunitarian exports grew forty-eight times, from U.S.$111 million in 1970 to U.S.$5.333 billion in 1999, which accounts for 13.78 percent of the total exports with other zones. The Andean market achieved great increments in the 1990s. The intraregional exchange of goods and services compared to the exchange with the rest of the world grew from 2 percent in 1970 to 14 percent in 1998. It is important to point out that the main exports in the intracommunitarian exchange had been manufactured goods (90 percent of the total exports), while the exports with the rest of the world constituted basic products.

Another indicator that must be taken into account is foreign investment that went from U.S.$3.4 million in 1970 to U.S.$29.83 million in 1997, which accounts for an increase of 777 percent from the enactment of the Cartagena Agreement almost three decades later earlier. Bolivia, Peru, and Colombia receive the majority of the direct investment due mainly to the privatizations process that the countries are carrying out with their states' own enterprises. Ecuador, even though it has not established a privatization process, has also been a recipient of large investments and has maintained its stability since 1993, oscillating between 2.5 percent and 3.2 percent of the GDP. With respect to transportation services, the aerial transport market within the region grew 400 percent, from 128 flights per week in 1970 to 500 in 1998. The destined cities tripled since 1991, and are not limited to capital cities. The terrestrial transport saw an increase in trucker companies from ten in 1987 to more than 100 by 1994. The elimination of the reserve seal in maritime transport reduced the cost and increased the frequency of trips and the number of companies providing the service.

The progress in imports/exports within the Community has become an incentive for the members to go forward. Regardless of the political and economic circumstances of the members, the Andean Community has achieved various accomplishments that reinforce its position as a strong initiative in Latin America, as the indicators mentioned above show. Nonetheless, it has not yet achieved the intracommunitarian exchange for which the members hope.


D. WHAT MUST BE ADDRESSED?

In 1999, the members agreed to achieve common market status by 2005. This agreement will include: free trade of goods and services, free flow of capital, and free mobility of people. This, however, is not an easy task. It will require the abolishment of any trade obstacles among the members and will require the perfection of the customs union and the adoption of a more efficient common external tariff. More importantly, all the Community members must be engaged full-time in this accord. If things go according to plan, strengthened by the members’ efforts, the common market will affect the development of the members’ economies and increase production and employment. If it turns out to be positive, the integration will result in a social, political, as well as economic, answer to the different crisis that each member faces.

Considering the social element, the Andean Presidents at the 1999 Cartagena Summit decided to put in place a social agenda that would center on the creation and promotion of jobs, education, health, and housing. It is important to keep in mind that despite the unit view that the international community may have of the countries that compose the Andean Community, each one is different and unique in history, culture, political issues, and economic status. As an example of this, one may suggest the “dollarization” of Ecuador’s economy, the political environment in Peru, the political and social conflicts in Colombia, and so on.

In order to form a real union between the members, the social agenda would have to be a central point in the debate for the future of the Community. Other factors that play an important role in the future of the integration process are associated with foreign investments. All the members will have to liberalize their foreign investment laws, even though their inherent political or economic struggles have held them back from capitalizing on normative innovations.

Additionally, these struggles impact the free movement of persons, with internal conflicts that some of the members, especially Colombia, face daily. Aside from Colombian violence, which everyone wants to see come to an end, there must be a total agreement between the members if Latin America is to become a social, economic, and political block. In this particular instance, Venezuela’s position of being the only member of the Community that requires its partners to obtain entry visas is not acceptable.

There is, however, another worry. If the free movement of labor is accomplished, the exodus of thousands of people from the Colombian job market will affect other markets. Due to Colombia’s internal political conflict, the members worry and wonder how much more forward they should go. An aspect that must be addressed by the Andean Community bodies is civil society participation. Lack of knowledge and involvement in

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the process is a deficit in the integration that has to be solved through the governmental, nongovernmental, and civil society organizations.32

Another important characteristic of the Andean Community is its intention to engage in negotiations as a block trying to reduce existing freelance agreements. In 1999, the members established the parameters for a common foreign policy33 that will enhance the position of the Community in Latin America, where democracy and implementation of the Andean Community's decisions are at its core. The Council of Foreign Ministers is in charge of such a task, giving it the faculties to suspend a member if the forum it uses to settle a dispute is not within the rights of action given by the Andean Community directives.

Some of the issues that the common foreign policy must address in the present circumstances involve drug trafficking, corruption, consolidation of the democratic process, and security in the members. Nowadays, the Community has a unison voice at the Free Trade Agreement of the Americas (FTAA) and in negotiations with MERCOSUR and the European Union.

E. CONCLUSION

The Andean Community countries have indeed kept their objectives. The level of welfare among the population has increased not only in the economical aspect, but also in the cultural and social one. The Community must continue to seek a sustained development by reinforcing equity and well being through economic integration. Not everything is an achievement as seen above; the community has faced a continuum of challenges but it is on the track of a true custom union.

With the Andean Community integration process charging ahead, the culmination of the Customs Union by 2005 and the full liberalization of services and markets, all with the main objective of achieving a Common Market on the horizon, can we proclaim that we are on the right track? Looking at the European experience,34 one has to look at the process with a positive attitude. The condition precedents are present, there are no tariff obstacles for goods and production factors, and there is a certain degree of harmonization among the members in economic policy. The reaffirmation of the Andean Community as a major negotiating block is inevitable. Its trade agreements with the European Union, CARICOM (the Caribbean Community), Panama, and the United States strengthen the Andean Community's position in the great global economy.

Summing up, the Andean Community has had many accomplishments so far. At the very least, it is more fully developed than the process of other Latin American blocks with which it is negotiating.35 Recently, the export/import rate has increased among the

34. The world's most advanced integration experience—that of Europe—was built up stage-by-stage, from the agreement on coal and steel and the customs union to the monetary union through the construction of the European social model and a Europe of European citizens. See Reinoso, supra note 25.
35. Id.
members, which was one of the main objectives of the integration since it has opened markets that were previously closed to each member of the Community. As a union, it has achieved an international presence that has allowed for several agreements with the world's most powerful economies. This could not have been done individually because of the lack of bargaining power and the weakness of each economy. It is important that the Community charge ahead and emphasize the social aspects that have developed so far, so as to not lose thirty years of hard work.

The desire for the process to succeed has broken down economic barriers and political schemes that have held the countries back. To maintain the path of success, the integration process must leave behind the negotiation table of the General Secretariat of the Andean Community and establish itself among the civil societies. It is they who will take advantage of the free flow of capital, goods, services, and people and who in each activity will enhance the economy of their countries. Without public opinion on its side and knowledge of the advantages for the entrepreneurs and people, the process may breed thousands of agreements among the countries and build a strong set of institutions that no one will access.

As Gustavo Magariños stated:

To judge an integration process, one must exercise a collective conscience test, in which everyone must participate, not only those who act or abstain to do so, also those who opinionate, because the latter ones assume a great responsibility in developing a critical function, and sometimes, not always, forget that is easier to criticize and comment on a novel than to write it. And all (the participants) are not just the governments, as institutional bodies titular of political responsibility that emanates of its own will expressed in the final and solemn act of the signing of a Treaty the International; all are also official employees of different levels, that they must carry out the necessary actions for the execution of the programs established, not with a nationalistic extreme criterion that makes of the negotiation a mere file to obtain an egoistic benefit for its country, but immense of the concept of which they are within a communitarian effort destined to put into operation a society of States governed by principles of fairness and mutual understanding; the technical and administrative employees of the Organization; who must extirpate of their daily activity all ingredient of comfortable bureaucracy to invigorate it with an almost messianic sense of the enterprise in which they have the privilege and the honor to participate; the industrialists who do not have to confuse their particular benefit, (notwithstanding its) legitimism, with the national interest and those who he corresponds to replace the philosophy of now by an exact conscience of which in integration he is called on to play and to exert an economic function of historical projection and deep social content; and finally, that which in different spheres, intellectual journalism circles, Universities, unions, etc., often conform that erratic, irregular, arbitrary and unreasonable inclined to commit errors, public opinion, frequently joined by myths and bad information and an innate resistance to the innovation but that, nevertheless, is equipped with an infinite wisdom to judge men and facts.36

III. Latin American Integration: The Andean Community and MERCOSUR

Since its inception in 1991, MERCOSUR\(^3\) has positioned itself right behind the European Union and NAFTA.\(^3\) \(^8\) Despite its recent formation, MERCOSUR, compared to the other trade agreements that exist within Latin America, has achieved recognition, stability, and support from the international economy. It is nothing to be startled by since it involves the two most powerful economies in South America: Brazil and Argentina. In its 10-year history, MERCOSUR has consolidated itself as a customs union. It has managed to eliminate most of the trade barriers in goods and services, it has procured the establishment of a common external tariff,\(^3\) \(^9\) and most interesting of all, MERCOSUR has developed its goals at a rapid pace, despite the historic rivalry of the members involved. Even without the variety of institutions of custom unions, like the European Union and the Andean Community, the minimalist approach of MERCOSUR has allowed it to distribute free flow of goods, services, people, and capital.\(^4\) \(^0\) Because of its position in the global economy and the positive comments received from the international community, an economic integration among this subregional community will hold an approximate 16,589,015 square kilometers and will house more than 331 million people. With US$1.3 million in commerce, MERCOSUR's progress constitutes a great forming block for the future of the individual economies within it, as well as for the whole region surrounding it. These characteristics also help to enhance the bargaining position of an important region in its future role in the FTAA and other economic agreements.

It is an ambitious process that will encircle almost all Hispanic South America\(^4\) \(^1\) and encompass nine different complementary economies. Trade between MERCOSUR and the Andean Community is significant. Together they exchanged a total US$5.82 million in the year 2000, an increase of 29.4 percent over 1999's results of US$4.5 million.\(^4\) \(^2\) The Andean Community exports to MERCOSUR account for 3.8 percent of the total FOB exports to the world, and its CIF imports conversely from MERCOSUR provided 7 percent of the Andean countries' total imports. A negative trade balance resulted for the Andean Community.\(^4\) \(^3\)


\(^39\). Otero-Lathrop, supra note 6, at 116.


\(^41\). The exception is Chile; it is an associate to MERCOSUR and has multiple bilateral agreements with most of the Andean Community members.


In 1998, the Andean Pact members and their MERCOSUR counterparts brought forward the Framework Agreement\(^4\) for the creation of a free trade agreement between the two sub-regional agreements, to be carried out in two phases. First, they will start with tariff preferences based on preferences already established among the countries that belong to each group and to which new products may be added, and then they will follow with a free trade agreement. Notwithstanding the initiation of the negotiation for tariff preferences and the multiple meetings, based on a negotiation formula product by product,\(^4\) the lack of community institutions in MERCOSUR jeopardizes a block-to-block economic integration. Since there is no body that can speak for its members and because its decisions have to be adopted by the domestic law before being effective,\(^4\) the agreement was not reached, but there was an extension of the pre-existing tariff preferences that kept the doors open for future negotiation.

The central point of the framework agreement is the Free Trade Agreement amongst the two organisms. It is important to understand, however, that in order to achieve the exchange rate wanted, the channels of access to each country (physical as well as political) must be open. South America lacks a key ingredient of integration: a well-developed transportation system in the region. Contrary to the European Union's superior train schedules and in-town transportation systems, members of the Andean Pact would have a really long and difficult trip to one of MERCOSUR's countries. This problem creates an obstacle to the integration, and it must be a primary focus in future negotiations.\(^4\) Transportation is not only expensive, but it is also a priced commodity, and South America lacks an efficient distribution method, which hinders countries from free trade and tourism. Additionally, the lack of judicial precedent in MERCOSUR, compared to the highly developed Andean Community bodies and its regulations, forces the need for an extensive rule of law to be established between the countries, and to make the integration possible in a legal framework.

In 1999, Brazil took the first baby step by individually cosigning with the Andean Community the Agreement for Economic Complementation.\(^4\) This stepping-stone in the path towards a free trade agreement in the South American region achieved the first phase of the Framework Agreement between Brazil, Colombia, Venezuela, Ecuador, and


\(^4\) See Interview, supra note 32.


\(^4\) The Andean Community has enacted, through Decisions 271 and 277, the 1990 Andean Road System that links up the member countries by means of a road network stretching over 378,000 kilometers. It also possesses more than 10,000 kilometers of railroads and a river network that interconnects some Amazon cities. Andean Community General Secretariat, available at http://www.comunidadandina.org/normativa/dec/d271.htm; http://www.comunidadandina.org/normativa/dec/d277.htm.

Peru.\textsuperscript{49} Argentina followed Brazil's example in 2000.\textsuperscript{50} These Agreements for Economic Complementation seek to abolish tariff and non-tariff obstacles to trade and they procure National Treatment consideration for the goods and services originated in the participant countries.\textsuperscript{51} They have created a dispute resolution process to resolve controversies, if they arise.\textsuperscript{52} These Agreements also leave the door open for the accession of Latin American members of the Latin American Integration Association (LAIA).\textsuperscript{53} Nowadays, the Andean Community is in the midst of starting negotiations with Uruguay and Paraguay.

The individual attempts of the MERCOSUR countries to develop agreements with the Andean Community are clear from the September 2000 meeting in Brazil. The whole region longs for a South American regional agreement. On September 1, 2000, after a meeting of the twelve presidents of the South American countries, the region concluded it necessary to create a South American agreement that longs for a convergence of the subregional trade agreements, which would encompass the status of communication, transportation, energy complementation, and political concert. If such an ideal integration takes place, the two\textsuperscript{54} sub-regional agreements will contribute to achieve stabilization of the members' economies and to take the first step to vanish unequal conditions and opportunities among the southern cone's countries. Drawing from the recent experiences with Argentina and Brazil, conditions seem favorable for continuing with negotiations on a block-by-block basis and moving ahead toward the formation of the South American Free Trade Area. It may take a little longer than scheduled, but a consolidated agreement should exist before the FTAA negotiations conclude in 2005.\textsuperscript{55}

Regardless of all the advantages that this integration brings to the region and to the Andean Community, as a way of expanding its market and enhancing its position in the economic world, it is necessary to take into account that integration also carries some disadvantages. In order to succeed in this enterprise and take advantage of the market, the Andean countries' economies must be able to compete with the southern neighbors. Due to the past economic crises in Brazil and Ecuador, it is necessary to be prepared—with integration come fewer obstacles for crisis to flow from market to market without shield.

MERCOSUR is just one of the agreements in which the Andean Community is involved. It is important to mention that the United States is the principal trading

\textsuperscript{49} Bolivia signed a Free Trade Agreement with MERCOSUR in December of 1996. Based on this Agreement (No. 36), Bolivia will continue to participate in the negotiations as an Andean Community member and will harmonize both agreements. The agreements are available at http://www.mercosur.com/es/info/acuerdo_mercosur_bolivia.jsp.

\textsuperscript{50} Acts, Declarations, and Agreements, supra note 48.

\textsuperscript{51} Partial Economic Complementation Accord between the Governments of Colombia, Ecuador, Peru, Venezuela, and Argentina, and the member countries of the Andean Community, art. 9, available at http://www.comunidadandina.org/ingles/who/crono.htm.

\textsuperscript{52} Id. ann. V.

\textsuperscript{53} Id. arts. 20–21.

\textsuperscript{54} I include Chile as part of MERCOSUR for economic reasons.

\textsuperscript{55} See Reinoso, supra note 25.
partner of the Andean Community, which is also involved in trade agreements with the European Union.

IV. The FTAA's Chance for Survival

In the last decade, the integration process in the Americas has witnessed a rapid pace in which subregional and bilateral agreements have developed. This process has as an ultimate goal the integration of the countries in the international economy and the building of a third trade block of the world. The process in which the Americas are involved is based on an open regionalism and the need for convergence of the several trade agreements between the parties. Open regionalism refers to a process that is intended to reconcile "the interdependence that stems from special, preferential agreements, and that which basically arises from the market signals that are produced by trade liberalization in general." What open regionalism seeks to accomplish is to make explicit integration policies compatible with, and complementary to, policies that enhance international competitiveness, and build a more open and transparent international economy. The agreements should tend to eliminate barriers and liberalize trade with third parties. In this context, the subregional and bilateral agreements are not just an end but also a path for hemispheric integration. The agreements strengthen the relations among the members and open commerce to the world.

In 1994, at the Miami Summit of the Americas, 34 countries agreed to the creation of the Free Trade Agreement of the Americas by 2005. This aspiration is a continuum of President George H. Bush's administration (Enterprise of the Americas Initiative (EAI)), which was designed to create a free trade zone extending from Anchorage to Tierra del Fuego. It was a direct precursor of NAFTA based on (1) reduction of trade barriers, (2) increase of investment into the region, and (3) debt relief. The EAI encouraged the rapid development of trade agreements in Latin America because it believed that these agreements would break down trade barriers among the Latin American countries before entering into negotiations with the United States.


59. See id.

60. See César Gaviria, Trade and Economic Integration in the Andean Region, in The Andean Community and the United States, Trade and Investment Relations in the 1990s (Miguel Rodríguez Mendoza, Patricia Correa and Barbara Kotschwar eds. 1998).


62. See id.
At this point in time, where the proliferation of trade agreements within Latin America is the agenda of the day, we must ask ourselves if the current agreements forecast the possibility of a future harmonization to achieve the most ambitious enterprise of the Free Trade Agreement of the Americas or are a mere obstacle to it. Is it ideal to think that with the majority of the Latin American countries involved in at least one form of trade agreement, be it free trade zones or custom unions, the path to the FTAA is clear? Nonetheless, the reality is much more complex than this. Each subregional, multilateral, and bilateral arrangement has been established to accomplish different goals without addressing the issues of the whole region. These tailored agreements have established their own laws and bodies that carry out the objectives of the members.

The Latin American Economic System has identified four categories of agreements in the Americas: free trade agreements, custom unions, free trade zones, and tariff preference agreements.63 Among the custom unions, we find the MERCOSUR, CARICOM, CACM, and the Andean Community. The free trade agreements include NAFTA, the G-3, and agreements between CARICOM and Venezuela, Venezuela and CACM, Bolivia and MERCOSUR, and Chile and MERCOSUR as free trade zones. Additionally, there are multiple bilateral agreements. Mexico's free trade agreements with Costa Rica and Bolivia and Chile's agreements with Mexico, Argentina, Venezuela, Bolivia, Ecuador, and Colombia are a few examples.

Because of the variety of associations and sub-regional integration to be achieved, the consummation of an FTAA could be more difficult than expected. Some of the agreements overlap and are developing at a different pace. Overlapping makes uncertain the schedules for tariff reduction, can create inconsistencies among the dispute resolution mechanisms, and makes difficult the implementation of rules of origin, increasing the likelihood of jurisdictional dispute.64

Additionally, the goals of Latin American countries and the United States are considerably different. While the United States has focused merely on the economic and trade aspects of the agreement,65 Latin American countries have tried to develop an integration process that encompasses a greater degree of cooperation than mere removal of tariff and non-tariff barriers to trade. Furthermore, some organizations with supra-national power and some without it can be significantly contradictory in terms.66 The legal developments in each agreement occur at a different pace and have unique goals in mind. An FTAA approach requires the elimination of legal, political, and economic obstacles, but the lack of coordination of the sub-regional agreements tends to eliminate the possibility of a harmonized movement towards the FTAA.

64. Otero-Lathrop, supra note 6, at 116.
66. This will constitute an accession process parallel to that of the eastern European countries in the European Union. See Frank J. Garcia, Americas Agreements: . . . An Interim Stage in Building the Free Trade Agreement of the Americas, 35 COLUM. J. TRANSNAT'L L. 63 (1997).
A. The Alternative to Accession

At first glance, the future of the integration process seems to reside in a political leadership that concentrates in an integrated center. This could be either NAFTA or MERCOSUR, since both involve the strongest economies in the Americas.67

With the enactment of NAFTA, President Bill Clinton’s administration stressed that it was only a milestone in the process to a regional integration.68 NAFTA has proven that power definitely lies in the destruction of all barriers, be they economic, political, or legal. NAFTA, of course, does not intend to abolish cultural dichotomies between the participating countries (the United States, Canada, and Mexico), nor does it seek total political equanimity between them. It is rather obvious that the United States, the world’s (and NAFTA’s) unchallenged economic superpower, has had an enormous role in the creation of this free trade agreement and will not relent its cause until most, if not all, American countries participate in a larger free trade agreement, the FTAA.

For a time, the possibility of accession to NAFTA and the possibility of this agreement as the vehicle to the FTAA69 seemed plausible, as Chile was preparing to join in. However, the negotiations did not come to the expected end and now, after negotiations have cooled off and U.S. passivity regarding the subject is evident, the FTAA process must realize that this path is a tedious one that imposes difficult standards to get in tune with the members. One alternative to building NAFTA as the centerfold of the process will be to negotiate an interim association stage in the FTAA process. One way to better coordinate the ongoing integration processes of the countries not yet ready for NAFTA accession70 is to build a pre-NAFTA relation with its members and work towards achieving the accession.

Additionally, with the rising of other Latin American trade blocks, NAFTA’s position as the master of ceremony could be taken. MERCOSUR exemplifies the potential rival of NAFTA, as shown by taking in Chile as an associate member.71 Furthermore, MERCOSUR has made Bolivia an associated member as well, building a new bridge between the countries.72 Mexico will become the third associate and the Andean Community will strengthen its relations with MERCOSUR and create the “super-block.”73

67. “Any attempt at economic integration will surely affect each of these existing regional groups, but it seems clear that the roles of NAFTA and MERCOSUR will not be ignored in the process. These two organizations are prominent in the current state of attempted economic integration, and some contend that one of these two groups will be the main vehicle through which the FTAA, and consequently a unified hemisphere, will be achieved.” Lisa Anderson, Comment, The Future of Hemispheric Free Trade: Towards a Unified Hemisphere? Hous. J. Int’l L. 635, 642 (1998) (citing James Stamps, Free Trade Area for the Americas: Chile is the Linchpin, Mex. Trade & L. Rep. (Oct. 1995)).
69. See O’Hop, supra note 61.
70. See id.
72. See Mario Osava, MERCOSUR: Integration Deepens, But Andean Expansion Stalls, Inter Press Serv., Dec. 12, 1996.
thus liberalizing trade between the South American countries, an important step in the road to the FTAA.

However, as NAFTA's standards for accession have proven burdensome, the MERCOSUR alternative is not without criticism. Notwithstanding economic success, MERCOSUR has not developed institutions and bodies to be the master of this enterprise. The region may be better off addressing the issue as one of integration, rather than one of accession to the dominant market forces in the hemisphere.

B. The Alternative of Convergence

To accomplish an FTAA, flexibility and convergence are the keys. The pending challenge of the open regionalism is to cause the convergence between the different schemes of integration. In the countries of this region, this task would move economies more toward open international trade, macroeconomic stability, competitiveness of its productive structures, and would reinforce the power of negotiation in an increasingly interdependent world.74

The convergence of the processes of sub-regional and bilateral integration towards a regional and soon hemispheric free trade zone, as proposed, has to advance in the commercial area, in the norms and instruments of commercial policy, and in other complementary areas. All the processes of integration are sustained in the final objective to converge towards hemispheric integration. Therefore, it is foreseeable to suppose that during the next years, an approach between the different schemes to integration will have to happen. In this sense, it is possible to affirm that the process of continental integration will advance, paralleled in the deepening of each sub-regional scheme, and in its mutual approach, and these will have a point of encounter in the FTAA.

Andean Community participation in the negotiations to create an FTAA bears witness to the efforts of Community member countries to coordinate their international trading relations more closely. Their active participation has elected them to important positions in the FTAA negotiating process, including three chairmanships and two vice-chairmanships of negotiating groups. Moreover, they now speak with a single voice in each negotiating group.75

The FTAA means a market of 780 million inhabitants, US$10 million of GDP (which accounts for one-third of the world's GDP), and more than 20 percent of global trade. In 1999, 65 percent of the Andean Community exports (FOB) were destined to FTAA countries and 60 percent of its imports (CIF) originated in the same FTAA market, the principal source of the economic trade of the Community.76 The Andean Community has realized the enormous value of this process and the meaning of it for the independent economies of the countries, thus charging with its institutional force to be sure that the FTAA is achieved.

With its agreements with MERCOSUR, the Andean Community will be sure to have
gained an enormous bargaining power when negotiating with the United States in the
FTAA framework. As such, they will have gained all the other custom unions and free
trade agreements within Latin America. This is not a David vs. Goliath economic battle
anymore, but “David” is still a long way from being a giant.

C. Conclusion

It is important to emphasize that in its infancy the FTAA would not promote a
free mobilization of people across borders. As mentioned before in the section on the
Andean Pact, a struggling economic nation would like to see the flight of citizens to
a more advanced nation. The FTAA's focus lies in the elimination of trade barriers. Its
message is primarily economic, and, as such, there must be a continuous agreement to
further struggling economies and promote the development of unexplored lands.

For the FTAA to work, there must be an agreement to not only develop legislation,
but to also create an enforcing agency that will see that legislation is consistently enforced.
One of the great South American legal problems is the lack of effective legislation.
Advanced laws are not often carried out. One of the main roles of the FTAA would be to
create a legal agency, without political creed or national affiliation, to enforce established
rules and laws.

A future FTAA would also benefit from unrivalled domestic and foreign imports.
The unifying economic power of all American countries would create a consistent system
of domestic imports and foreign exports to quench a need for internal sustenance and
external trade. An unchallenged economy based on the dollar would heighten the great
economic development of third world nations. It would also solidify the legal trading
structure among the FTAA countries.

As long as the FTAA does not seek to interfere with internal cultural and political
conflicts that do not affect the economic safety of the member countries, the multilateral
agreement has a great chance for survival and development. Were the members to seek
cultural and political identification along the board, were the members to seek cultural
unification within the block (which would entail the dismissal of cultural relativism),
were the members to go past economic realities and seek extra-financial requisites for
FTAA unity, then real misunderstandings and subsequent problems would probably arise.
Along with the internal correspondent agreements between NAFTA, the Andean Com-
munity, MERCOSUR, and the rest, the creation of the FTAA will without a doubt be a
tremendous undertaking. Strenuous, yet satisfying; risky, yet rewarding; these are some
of the adjectives that describe the creation of this future free trade agreement.

V. Conclusion

Evidently, the economic integration processes that Latin America, and particularly
the Andean Community are carrying out are quite considerable in size and scope. The
goal of establishing the Common Market by 2005 requires compromises from the mem-
ber countries and their political, religious, cultural, and economic ambassadors. With
the member countries’ current economic and political situations, it is hard to predict if
there will be a time extension for this ultimate goal. The development in the negotiations
with the MERCOSUR members brings a light on the horizon for increasing economic welfare, as well as attracting more investments and acquiring an extended market for products. One can just wonder if Bolivar's dream can come true now that the Americas are a long way from a well-established and developed free trade agreement. In the meantime, each member country will have to sacrifice and compromise because that is the price of union and the impulse of globalization.

The overlapping agreements between each of the member countries could play a substantial role in the slowdown of the FTAA's fruition. The fact that right now different American countries are involved in different trade agreements is a reality that the FTAA has to consider. A positive aspect of these starting agreements is the fact that the member countries are engaged in basic trade agreements. MERCOSUR and the Andean Community are small baby steps towards a great unification of all American nations. Within a great casserole of economic progress, the FTAA, if properly conducted, has the potential to create better independent states.