

The Integration of Smaller Economies into the FTAA

Frank J. Garcia*

I. Introduction.

Trade has always been about inequality among states. On the one hand, the theory of comparative advantage suggests that inequality in resource distribution is the *sine qua non* of trade in that it offers trading states the key opportunity to specialize.¹ There is a more troubling aspect, however, to the relationship between trade and inequality, in that richer and more highly-developed states are presented with numerous opportunities for outright predation and conquest,² as well as for the pursuit of other inherently self-serving policies such as mercantilism,³ in their trade relations with the less-developed world.

* Associate Professor, Florida State University College of Law. The author would like to thank Professor Joseph Norton for the invitation to speak at the symposium. The author also thanks symposium participants for their helpful comments and questions. The author would like to acknowledge the able research assistance of Ani Majuni and Sandra Upegui. Research for this article was supported by a grant from the Florida State University College of Law.

1. See DAVID RICARDO, PRINCIPLES OF POLITICAL ECONOMY AND TAXATION 93 (1891) (explaining that the operation of comparative advantage depends on efficient use of "the *peculiar* powers bestowed by nature" on a particular state) (emphasis supplied); see also PAUL A. SAMUELSON, ECONOMICS 668 (1973) (noting that the starting point for comparative advantage is diversity in conditions of production between different countries).

2. In his seminal work, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, Adam Smith writes:

Folly and injustice seem to have been the principles which presided over and directed the first project of establishing [the American] colonies; the folly of hunting after gold and silver mines, and the injustice of coveting the possession of a country whose harmless natives, far from having ever injured the people of Europe, had received the first adventurers with every mark of kindness and hospitality. . . . [I]t was not the wisdom and policy, but the disorder and injustice of the European governments which peopled and cultivated America.

ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 350-51 (Kathryn Sutherland ed., 1993).

3. See *id.* at 351-52.

When [the North and South American colonies] were effectuated, and had become so considerable as to attract the attention of the mother country, the first regulations which she made with regard to them had always in view to secure to herself the monopoly of their commerce; to confine their market, and to enlarge her own at their expense, and, consequently, rather to damp and discourage, than to quicken and forward the course of their prosperity.

Id.

In this century, largely as a result of post-war decolonization,⁴ the role of inequality in economic relations has become a focus of international economic law.⁵ Confronted since the early days of decolonization with increasingly unacceptable terms of trade for their primary product exports⁶ and high tariff barriers to their manufactured goods,⁷ developing countries were presented in the immediate post-war period with the problematic option of working through systems such as the GATT,⁸ whose rules were largely written by the advanced industrialized countries,⁹ or of attempting to develop other effective economic fora for their concerns. Despite their initial attempts to influence world trade rules through the Havana Charter negotiations, frustration with the resulting GATT system, its domination by industrialized countries and slow rate of change, led many developing countries to minimize their involvement in the GATT and embark upon large-scale multilateral attempts at systemic reform through institutions such as the U.N. Conference on Trade and Development,¹⁰ under the umbrella concept of a New International

4. See Kele Onyejekwe, *International Law of Trade Preferences: Emanations from the European Union and the United States*, 26 ST. MARY'S L.J. 425, 429 (1995) ("As developing countries emerged from colonialism, they called for a new world economic order, complaining that the international economic order had effectively undermined their development efforts.").
5. See generally *id.* (surveying the history of the international economic law of development, built around the concept of trade preferences); see also Robert E. Hudec, *GATT and the Developing Countries*, 1992 COLUM. BUS. L. REV. 67 (1992).
6. See JOHN MADELEY, *TRADE AND THE POOR* 34 (1992) (real prices for major commodity exports have fallen steadily since 1960, with an acceleration in the rate of decline in the 1980s).
7. See *id.* at 57 (citing relatively higher tariffs against developing country manufactured goods).
8. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT];
 [M]ost of the developing countries joined the GATT at a time in their history when they were largely suspicious of being integrated into the world economy. Most of them saw liberalization, and the subsequent opening up of their economies to capital and goods from the developed world, as a move that would heighten the inequalities that already existed in their international economic relations.
 Kofi Oteng Kofuor, *From GATT to the WTO: The Developing Countries and the Reform of the Procedures for the Settlement of International Trade Disputes*, 31 J. WORLD TRADE 117, 120 (1997).
9. See, e.g., Ndiva Kofele-Kale, *The Principle of Preferential Treatment in the Law of GATT: Toward Achieving the Objective of an Equitable World Trade System*, 18 CAL. W. INT'L L.J. 291, 294-95 (1987-88) ("For the last four decades GATT has provided the legal framework within which most international trade between [developing countries] and [industrialized countries] has occurred. Throughout this period [developing countries] have consistently voiced their disaffection with the GATT system of world trade. This perception of GATT as being unresponsive to the economic needs of [developing countries] is symptomatic of a more general dissatisfaction with traditional international law which the [developing countries] view as the normative product of Eurocentric civilization and which, for most of its existence, has served as the 'white man's law' and not as the Law of Nations." (footnotes omitted)).
10. See JOHN H. JACKSON, *THE WORLD TRADING SYSTEM* 275 (1989) (noting that "a number of developing countries, dismayed with rules that had evolved [at the Havana conference], opted to stay out of the GATT system for years."); see also Onyejekwe, *supra* note 4, at 446 ("Developing countries, frustrated with the gradualism of the GATT, looked elsewhere for progress. They turned to the UNCTAD."). Developing countries continued to maintain some pressure in GATT for increased recognition of their needs, centered around the principle of special and differential treatment. See Hudec, *supra* note 5.

Economic Order (NIEO).¹¹ Attempts to restructure large-small economy trade relationships through framework treaties or initiatives taken as part of the NIEO, however, have been largely ineffective in addressing developing country concerns.¹² As a result, developing countries have again shifted their focus away from the U.N. system and towards the GATT/WTO system¹³ with some success.¹⁴ Nevertheless, smaller economies continue to be particularly vulnerable to the adverse effects of free trade.¹⁵

This article will examine the problem of inequality as it relates to the integration of the so-called "small economies" of the western hemisphere¹⁶ into an eventual Free Trade Area of the Americas (FTAA).¹⁷ In particular, this article will focus on the proposals developed by the

11. The New International Economic Order (NIEO), was a movement among developing countries within the United Nations to force a shift in international economic relations away from structurally disadvantageous policies towards a more equitable relationship between developed and developing countries. See *Declaration on the Establishment of a New International Economic Order*, G.A. Res. 3201, U.N. GAOR, 6th Sess., Supp. No. 1, at 3, U.N. Doc. A/9559 (1974), reprinted in 13 I.L.M. 715; see generally IGNAZ SEIDL-HOHENVELDERN, *INTERNATIONAL ECONOMIC LAW* 3-9 (1992); Bartram S. Brown, *Developing Countries in the International Trade Order*, 14 N. ILL. U. L. REV. 347 (1994).
12. Despite the adoption of the founding resolution and the *Charter of Economic Rights and Duties of States*, G.A. Res. 3281, U.N. GAOR, 7th Sess., Supp. No. 1, at 50, U.N. Doc. A/9631 (1975), the movement and its parent organization, the UNCTAD, have been widely acknowledged as a failure. Madeley notes that "[t]he story of UNCTAD between 1964 and 1992 has been captioned by its initials," which also stand for "until the next conference try and delay" or "under no circumstances take any decisions." MADELEY, *supra* note 6, at 146. "Both sum up this trade and development organization sadly, but brilliantly." See also SEIDL-HOHENVELDERN, *supra* note 11, at 9 (noting that the NIEO cannot yet be said to be part of international economic law).
13. Along with this shift [towards open economies], developing countries have taken another step toward what developed countries have long demanded: active participation in trade negotiations in the [GATT]. Trade reforms have heightened the need for market access in a new range of products and increased their stakes in the system. To further these interests, developing countries have committed themselves, both individually and as members of coalitions, to the round of negotiations that began in Punta del Este in 1986, the Uruguay Round.
THE DEVELOPING COUNTRIES IN WORLD TRADE 2 (Diana Tussie & David Glover eds., 1993).
14. While the Uruguay Round has been criticized as inadequate or even regressive for developing countries, (see, e.g., Michael Rom, *Some Early Reflections on the Uruguay Round Agreement as Seen from the Viewpoint of a Developing Country*, 28 J. WORLD TRADE 5 (1994)), particular aspects of the WTO agreements, such as institutional reform and agreements in sectors such as agriculture, which are important to developing countries, suggest a more favorable prognosis. See Kofuor, *supra* note 8; see Note, *Developing Countries and Multilateral Trade Agreements: Law and the Promise of Development*, 108 HARV. L. REV. 1715 (1995).
15. See *infra* notes 24-31 and accompanying text.
16. See *infra* notes 21-23 and accompanying text.
17. The FTAA is the centerpiece of the hemispheric agenda announced at the Miami Summit of the Americas. See generally Andres Oppenheimer & Christopher Marquis, *Free Trade Giant Set in Motion*, MIAMI HERALD, Dec. 11, 1994, at 34A; John M. Goshko & Peter Behr, *Western Hemisphere Leaders Agree to Form Free Trade Zone*, WASH. POST, Dec. 11, 1994, at A1; David E. Sanger, *Chile is Admitted as North American Free Trade Partner*, N.Y. TIMES, Dec. 12, 1994, at A8. The signal accomplishment of the Miami Summit of the Americas in December of 1994 was the signing of the Declaration of Principles and Plan of Action by all thirty-four of the Summit participants. See *Declaration of Principles and Plan of Action*, 34 I.L.M. 808, 811 (1995) <http://www.ftaa-alca.org/EnglishVersion/miami_e.htm>. The Declaration contains four areas in which principles

Working Group on Smaller Economies (Working Group), one of a series of working groups established to define and develop the work program of the Summit negotiations.¹⁸ Since the Summit countries have initiated the negotiation phase of the FTAA at the Santiago Summit,¹⁹ and the Working Group has concluded its work,²⁰ it is time to begin to assess the achievements of the Working Group in view of its mandate, and to analyze what lies ahead for the integration of smaller economies in the FTAA. While the Working Group has set out several useful proposals facilitating effective participation by the hemisphere's smaller economies, the early and tentative stage of the FTAA negotiations has necessitated the postponement of more

-
- are enunciated and broad objectives identified: making democracy more effective and more widely participatory; promoting development primarily through free trade and investment and only secondarily through public aid; working at the margins on certain poverty and discrimination problems; and broadening hemispheric consensus regarding sustainable development principles in areas such as energy use and biodiversity. *See id.* The Plan of Action subdivides this into twenty-three subsidiary agendas, which include items ranging from specific commitments to ratify existing international instruments, to more general commitments that enact, for example, domestic policies in certain areas, to rather vague commitments to "support or strengthen" certain issues or systems of hemispheric concern. *See id.* Nevertheless, the centerpiece of this agenda is undeniably trade, an emphasis that has been viewed in different lights by commentators. *See, e.g.,* Stephen Lande & Nellis Crigler, *Consensus in the Americas: Free Trade by 2005*, BUS. MEXICO, Jan.-Feb. 1995 ("Hemispheric leaders succeeded in ensuring a meaningful Summit of the Americas by making trade the centerpiece of the historic December meeting"); *but see Summit of the Americas Questioned by Critics for 'Over-emphasis' on Free Trade*, NOTISUR-LATIN AM. POL. AFF., Dec. 16, 1994, available in 1994 WL 2244236 (Summit countries criticized for emphasis on free trade over other pressing issues facing the hemisphere and raised in the Summit documents). The Summit countries pledged "to begin immediately to construct the Free Trade Area of the Americas, in which barriers to trade and investment will be progressively eliminated," with negotiations to conclude "no later than 2005," and "concrete progress toward the attainment of this objective . . . by the end of this century." *Declaration of Principles and Plan of Action, supra*, at 811.
18. The Miami Declaration and Plan of Action envisioned a series of follow-up ministerials among the Summit countries, the first of which occurred in Denver in June, 1995. At the Denver Ministerial the Trade Ministers received preliminary reports on the status of the work being performed by the OAS and by the various trade and investment fora concerning current economic integration arrangements and established seven working groups to begin reviewing specific issues to be resolved in negotiating the FTAA. *See Trade Ministers' Conference Reinforces Commitment to Construct Hemispheric Free Trade Zone*, CHRON. OF LATIN AM. ECON. AFF., July 6, 1995, at 1, available in 1995 WL 2297474. These working groups cover market access, customs and rules of origin, investments, standards, sanitary measures, dumping and subsidies, and the effects of integration on smaller economies. *See id.* The groups were charged with developing actual proposals for FTAA negotiations in each of these areas and with presenting these proposals at the Cartagena Ministerial. *See Officials Urge Work Groups to Name Areas for First FTAA Results*, INSIDE NAFTA, Dec. 27, 1995, at 1, 19-91.
 19. *See Second Summit of the Americas, Santiago Declaration*, (April 19, 1998) <http://www.ftaa-alca.org/EnglishVersion/chile_e.htm>.
 20. Pursuant to the plan adopted in San Jose by hemispheric trade ministers, as endorsed by the Summit countries in the Santiago Summit, initiation of the FTAA negotiations involved a transition from a working group model to a negotiating group model. *See Ministerial Declaration of San Jose, Fourth Trade Ministerial Meeting, San Jose, Costa Rica*, Mar. 19, 1998 [hereinafter *Costa Rican Ministerial Declaration*], reprinted in *Americas Trade-Special Report*, Mar. 23, 1998, at 6-8, <http://www.ftaa-alca.org/EnglishVersion/costa_e.htm>.
-

substantive, controversial proposals until later in the process. Thus, the current prognosis for the success of smaller economies in the FTAA can only be one of guarded optimism.

II. The Problem of Inequality.

While inequalities among trading partners can be of many different sorts with different implications for their economic relationships, one way to begin analyzing the problem is to look at inequalities in "size."²¹ When considered from a variety of perspectives, most of the world's countries are small.²² The smallness of states entails a variety of political and economic consequences for the global order. From the point of view of trade, the most important form of "smallness" is economic. In other words, trade is concerned with small economies,²³ both the consequences of economic smallness for trade relations generally, and economic integration in particular.

A. ASYMMETRY AND ADJUSTMENT: TRADE PROBLEMS FACING SMALLER ECONOMIES.

Smaller economies share certain characteristics that make their participation in the international trading system riskier and more problematic. The Working Group's progress report on the integration of smaller economies lists a variety of economic factors, which together describe the special conditions affecting smaller economies as they participate in the global trading system.²⁴ These factors are: small size of population and territory; small size of GDP and GDP per capita; high dependence on external trade; high level of imports; high degree of vulnerability to fluctuation in world prices and demand for their exports; high dependence on

-
21. "A unique definition or concept of a small country does not exist." ORGANIZATION OF AMERICAN STATES TRADE UNIT, OBSERVATIONS ON SMALL ECONOMIES AND WESTERN HEMISPHERE ECONOMIC INTEGRATION 1 (1995) [hereinafter OAS Report on Small Economies]. Countries are classified according to a variety of categories by various international organizations for various purposes, with typical classifications focusing on per capita income levels, indicators of development status, and some set of indicators grouped according to the rubric "size." See *id.* Although development status, itself a controversial measurement, may be more common or familiar, size is the concept adopted by the Working Group in its deliberations, and so this article will follow that approach. While there is no necessary correlation between size, however measured, and levels of development, it can be said that many developing and least-developed countries exhibit the characteristics of a small economy and that small size is an additional complicating factor affecting a country's growth, policy options and development potential. *Overcoming Obstacles and Maximizing Opportunities: A Report by the Independent Group of Experts on Smaller Economies and Western Hemispheric Integration*, Mar. 1998, at 2; see Richard L. Bernal, *The Integration of Small Economies in the Free Trade Area of the Americas*, CSIS Policy Papers on the Americas, vol. IX, no. 1, 6-10 (1998).
 22. Looking at population alone, eighty-seven of the world's 193 states have a population of less than 5 million, fifty-eight under 2.5 million, and thirty-five less than 500,000 inhabitants. See Bernal, *supra* note 21, at 1 (citing *Small but Perfectly Formed*, *ECONOMIST*, Jan. 3, 1998, at 65).
 23. A wide variety of indicators, both quantitative and qualitative, have been employed in the attempt to define a small economy. Leading indicators are population, GNP or GDP, per capita income, land area, or some combination of factors. *Id.* at 2-8; see generally International Economic Assn., *ECONOMIC CONSEQUENCES OF THE SIZE OF NATIONS* (E.A.G. ROBINSON ed., 1960).
 24. *Report of the Working Group on Smaller Economies to the Vice Ministers*, Rio de Janeiro, April 14-17, 1997, reprinted in 4 *AMERICAS TRADE*, May 1, 1997, at 18, pt. I, § 2 [hereinafter Interim Report on Smaller Economies].
-

trade taxes for government revenues; limited human resources and technical expertise; high unit costs for infrastructure and public administration; relatively undiversified economic base; small size of domestic markets; heavy reliance on primary commodities; extreme vulnerability to external shocks; and vulnerability to natural disasters.²⁵

Central to these risks is the fact that smaller economies are generally more open, i.e., external transactions are large in relation to the total economic activity. Smaller economies rely more heavily on external trade than larger economies in order to compensate for problems of scale, such as a narrow range of national resources and the absence of certain types of production owing to the small size of the market.²⁶ A high degree of openness by itself is not a negative factor; however, when one considers this openness in connection with other factors common to smaller economies, such as a relatively undiversified economic base, a heavy reliance on primary product exports, and a public revenue system geared towards trade taxes, one can see the acute vulnerability of smaller economies to fluctuations in world prices for their principal exports and imports.

This particular vulnerability is part of a larger dynamic at work in the political economy of integration among unequal partners, described by Drache as the problems of asymmetry and adjustment.²⁷ The fundamental asymmetry in economic and other forms of power between large and small states leads to the distortion of trade flows, as the dominant partner succeeds in exporting more high-end goods to the smaller economies, and the smaller economy specializes further in resource extraction and sub-assembly work.²⁸ The adjustment burdens of restructuring numerous industrial sectors with varying degrees of competitiveness and over-employment, a difficult challenge in any trading system,²⁹ is particularly acute for the smaller economies, whose industries are generally not competitive. Those industries that survive do so with outside investment and technology and significant downsizing, leading to tremendous social pressures on domestic governments.³⁰ Overall, there is the real risk that the distribution of benefits and burdens within the integration system will be skewed in favor of the dominant party.³¹

25. *Id.*

26. In this hemisphere three of the largest countries in terms of territory (United States, Argentina, Brazil) are the least trade-dependent, and the largest in terms of territory, Canada, is one of the least open. In contrast, the Caribbean and Central American states are almost uniformly high in terms of trade openness. Bernal, *supra* note 21, at 5.

27. Daniel Drache, *Triple 'A' Trade: Asymmetry, Access and Adjustment, the Inflexible Limits of Trade Blocs*, in *ECONOMIC INTEGRATION BETWEEN UNEQUAL PARTNERS* 171 (Theodore Georgakopoulos et al. eds., 1994). Drache also discusses a third factor, increased market access, which he considers misleading insofar as it promises increased employment. *Id.* at 176. Since this problem is not unique to integration with smaller economies, it is not discussed further in this article.

28. *Id.* at 176.

29. *Id.* at 175.

30. *Id.* at 178-79. One result is that smaller economies are forced to alter their wage and price structures to match the interests of the dominant partners. Trade systems are at the forefront of efforts to substitute an efficiency-oriented, high employment model for the social welfare-oriented, full employment model, which has often guided the domestic policy of smaller and developing economies. *Id.* at 178-80. Without some sort of compensating regulatory and redistributive mechanism, trade systems cannot deliver on their promise of increased employment, less expensive goods and higher standards of well-being. *Id.* at 183.

31. *Id.* at 174. See also Frank J. Garcia, *NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession*, 35 VA. J. INT'L L. 539 (1995) (analyzing trade and investment distorting effects of certain integration patterns among unequal partners).

B. INEQUALITY AND TRADE LAW: RESPONDING TO ASYMMETRY
AND ADJUSTMENT PROBLEMS.

The primary legal and policy techniques utilized to address smaller economy concerns in trade and integration are the principle of special and differential treatment and the provision of financial and technical assistance. Together these techniques can be understood as a partial response to the challenges of asymmetry and adjustment outlined above.

1. *Special and differential treatment.*

The principle of "special and differential treatment" has been a cornerstone of trade between unequal partners since the late 1940s, when developing countries began pressing their case for more favorable trade rules.³² The principle of special and differential treatment recognizes that while the prosperity and development of smaller economies depends ultimately on trade openness, smaller economy industries are uniquely vulnerable to competition from older, more established and technologically advanced developed country industries.³³ Therefore, it has been recognized that in appropriate cases certain exceptions to trade liberalization rules, such as reciprocity of tariff obligations, could play an important role in responding to these asymmetry problems by eliminating trade barriers to smaller economy manufactured exports while retaining some protection for the domestic market.

Under the concept of special and differential treatment, developing countries benefit from two broad categories of measures: those providing special protection for developing country markets and those providing preferential access to developed country markets for developing country exports. Market protection mechanisms available in multilateral³⁴ and regional³⁵ trade agreements include non-reciprocity of tariff obliga-

32. See generally JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* ch. 25 (1969); Kofele-Kale, *supra* note 9.

33. Unrestricted competition in an unprotected developing country market would have severe effects on developing country employment and industrialization, ultimately working to the disadvantage even of export-oriented developed country industries, which need new markets for high-end consumer goods and capital goods.

34. In terms of the GATT, the principle is found primarily in Article XVIII and in Part IV. GATT, *supra* note 8. The WTO agreements as a whole (Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS-RESULTS OF THE URUGUAY ROUND Vol. 1 (1994), 33 I.L.M. 1125 (1994) [hereinafter WTO Agreements] incorporate numerous provisions based on the principle of special and differential treatment, well-summarized in ORGANIZATION OF AMERICAN STATES TRADE UNIT, *SPECIAL AND DIFFERENTIAL TREATMENT IN INTERNATIONAL TRADE* 7-18 (1996) [hereinafter OAS Report on Special and Differential Treatment]; see also Catherine Curtiss & Kathryn C. Atkinson, *United States-Latin American Trade Laws*, 21 N.C. J. INT'L L. & COM. REG. 111, 119-20 (1995).

35. Contemporary FTAs and other regional integration agreements, although premised on reciprocal trade liberalization, also often include market protection mechanisms, in that smaller economies are either permitted to undertake lower liberalization burdens, or are granted an extended transition period in which to implement mutual liberalization commitments. See OAS Report on Special and Differential Treatment, *supra* note 34, at 19-56 (summarizing incorporation of special and differential treatment in western hemisphere regional trade agreements).

tions,³⁶ different levels of liberalization commitments,³⁷ longer periods for implementing liberalization obligations,³⁸ expanded application of the infant industry exception,³⁹ and exceptions permitting broad application of quantitative restrictions.⁴⁰

Preferential access to developed country markets is the second broad component of the principle of special and differential treatment. Trade preferences can be accorded in a variety of ways, including unilateral preference programs,⁴¹ treaty-based preference agreements,⁴² and preferential mechanisms built into free trade agreements. By far, the most well-known unilateral preference program is the Generalized System of Preferences, established under the auspices and oversight of the GATT/WTO,⁴³ but implemented at the state level.⁴⁴ Other unilateral preference programs include the United States Caribbean Basin

-
36. Article XXXVI.8 of the GATT, added when Part IV was appended to the GATT in response to developing country initiatives in the mid 1960s, incorporates the principle of non-reciprocity of tariff commitments. GATT, *supra* note 8. It clearly recognizes that developed countries do not expect reciprocity of their tariff/NTB reduction commitments to developing countries. *Id.*
 37. The WTO Agreement on Agriculture, for example, envisages less severe cuts in subsidy levels by developing states and does not require cuts by the least developed countries. WTO Agreements, *supra* note 34, at annex 1A.
 38. In the NAFTA, for example, although there is no express differentiation of Parties according to levels of development and although liberalization is premised on reciprocity of obligations, it can be said overall that as a result of the negotiation process Mexico was granted longer time periods for implementing its liberalization commitments over more sectors and with regard to more products. North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 605 (1993) [hereinafter NAFTA].
 39. Under GATT Article XVIII, developing countries meeting the criteria set out in the article can take advantage of a number of market protection mechanisms. GATT, *supra* note 8. Part A of Article XVIII permits developing countries to negotiate an increase in bound tariff rates in order to protect an infant industry. *Id.*
 40. Developing countries were also granted an exception from the general prohibition in GATT Article XI against quantitative restrictions. *Id.* Under Part B of Article XVIII, qualifying developing countries are permitted to more liberally employ quantitative restrictions in cases of balance of payments difficulties. *Id.*
 41. These programs are unilateral in that they are not based on mutual treaty obligations but on the largesse of the country offering the trade preference, which generally takes the form of mutual negotiations enacted through a statute of the country offering the benefit. They are preference programs, not free trade programs, because they generally offer duty-free, or reduced duty, treatment to only a subset of a beneficiary's exports, and these concessions are usually not reciprocal.
 42. Unilateral preference agreements are essentially unilateral preferences, which are the subject of a bilateral treaty rather than a unilateral program; therefore, they are more stable and conducive to long-term investment in that they are not as easily canceled by the granting state as unilateral programs are. In this hemisphere, the United States has generally followed a policy emphasizing unilateral programs over mutually binding commitments. James R. Holbein & Gary Carpentier, *Trade Agreements and Dispute Settlement Mechanisms in the Western Hemisphere*, 25 CASE W. RES. J. INT'L L. 531, 565 (1993).
 43. See generally Onyejekwe, *supra* note 4, at 446-67; Kofele-Kale, *supra* note 9, at 299-304.
 44. The U.S. Generalized System of Preferences, Title V of the Trade Act of 1974 (codified as amended at 19 U.S.C. § 2461 (1998)), provides the Executive branch with discretion to award duty-free treatment to certain developing country exports that meet program criteria. See U.S. Int'l Trade Comm'n, Pub. No. 2894, *The Year in Trade: Operation of the Trade Agreements Program, 1994*, at 126 (1995).
-

Initiative (CBI) and the Andean Trade Preference Act (ATPA),⁴⁵ and Canada's CARIBCAN.⁴⁶ Treaty-based preference agreements include the Latin American Integration Association (LAIA),⁴⁷ which establishes a basic framework of regional concessions and the infrastructure for negotiation of FTAs among its members,⁴⁸ and CARICOM's preference agreements with Venezuela⁴⁹ and with Colombia.⁵⁰ Finally, the preferential access component of the principle of special and differential treatment can also be recognized to a limited

-
45. Together the ATPA and CBI programs provide the best access into the U.S. market short of NAFTA membership. In 1994, 18.3 percent of total CBI imports and 11.6 percent of total ATPA imports enjoyed duty-free treatment under their respective programs, as compared to 3 percent of all U.S. imports under the GSP program. *Id.* at 126-29, tables 5-2, 5-4, 5-5. Treatment under the CBI and ATPA programs is more favorable because more products qualify for preferential treatment than under the GSP program, and these programs do not contain "competitive needs" exclusions, provisions found in the GSP statute for excluding certain goods on the basis of the competitiveness of the product or country of origin. *See* JOHN H. JACKSON ET AL., *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 1131 (1995). Although the CBI and ATPA may lack competitive needs exclusions, many of their most competitive products are automatically ineligible for preferential treatment.
 46. As with the U.S. CBI program, the CARIBCAN program eliminates duties on all beneficiary products except the most competitive, including leather goods, textiles and apparel, and footwear. ORGANIZATION OF AMERICAN STATES TRADE UNIT, *TOWARD FREE TRADE IN THE AMERICAS* 29 (June 1995) [hereinafter *Toward Free Trade*]. Excluded goods are eligible for reduced tariff rates under Canada's GSP-equivalent. *Id.*
 47. Members include Argentina, Brazil, Chile, Mexico, Paraguay, Peru, and Uruguay, plus Colombia, Ecuador, Venezuela, and Bolivia. LAIA, formed in 1980 to succeed the LAFTA as the "umbrella" association for Latin American integration, was designed to foster the regional development and creation of a Latin American customs union, but LAIA does not itself seek to become a FTA or CU. Loren S. Weisenfeld, *Introduction to Treaty of Montevideo Establishing the LAIA*, in *BASIC DOCUMENTS OF INTERNATIONAL ECONOMIC LAW* 543 (Stephen Zamora & Ronald A. Brand eds., 1990); GARY CLYDE HUFBAUER & JEFFREY SCHOTT, *WESTERN HEMISPHERE ECONOMIC INTEGRATION* 270 (1994).
 48. LAIA establishes three types of tariff concessions among its members: an across-the-board regional tariff preference scheme giving percentage reductions in national tariffs, graduated by the grantor and grantee's level of development; special non-reciprocal preferences for LDCs; and the negotiation of special concession agreements, limited preferences granted to another country or set of countries. G. POPE ATKINS, *LATIN AMERICA IN THE INTERNATIONAL POLITICAL SYSTEM* 188 (3d ed. 1995); Kenneth Abbott & Gregory W. Bowman, *Economic Integration in the Americas: "A Work in Progress,"* 14 *Nw. J. INT'L L. & BUS.* 493, 497-98 (1994). These arrangements are supported by "complementation agreements," creating sectoral free trade to benefit intra-industry specialization within regions and a special intra-regional import credit arrangement to reduce need for foreign capital in intra-regional trade. *See generally* Daniel M. Ferrere, *New Trends in Latin American Foreign Trade: The LAIA and Its Work*, 19 *INT'L LAW* 933 (1985).
 49. *See* *Toward Free Trade*, *supra* note 46, at 29. After five years the parties will begin negotiations to make the agreement reciprocal, at which point it will become a FTA. The Agreement with Venezuela, signed October, 1992, provides duty-free access for some CARICOM exports into Venezuela.
 50. The Agreement with Colombia, signed in July, 1994, provides immediate duty-free treatment for eighty-six percent of Colombia's CARICOM imports. *See id.* The percentage will increase to ninety by January, 1998. *See id.* The parties will negotiate over further preferences and reciprocal concessions from the largest Caribbean countries. *See id.*
-

extent in free trade agreements despite the fact that such agreements envision some form of preferential access to all members of the integration scheme.⁵¹

2. Assistance Programs.

Economic assistance in the form of direct development aid, indirect development aid, facilitation of private investment flows, and the provision of technical assistance, is the second critical component in strategies to deal with adjustment and asymmetry problems in unequal partner trade. In the face of significant adjustment problems, one often finds some combination of direct financial assistance, facilitation of private investment and technology transfers, and technical assistance programs, supported by the positive transition delays effected by special and differential treatment.

Economic assistance programs can involve both direct and indirect wealth transfers. Direct wealth transfers typically involve intergovernmental grants, while indirect wealth transfers can involve funds transferred to, and disbursed by, a regional development bank.⁵² Indirect wealth transfers can also be accomplished through the facilitation of private transfers in the form of foreign direct and portfolio investment. Finally, assistance programs can also focus on the provision of technical assistance and financial support for technical assistance, rather than on monetary transfers.

III. The FTAA and the Problem of Inequality.

By any measure, this hemisphere contains a large preponderance of small economies.⁵³ In terms of population, of the thirty-four summit countries,⁵⁴ nine account for nearly nine-

51. For smaller economies that become members, access is of course preferential in comparison to non-members. Even in the case of non-members that are beneficiaries of unilateral preference programs, the treatment of smaller economy members is still preferential, in that it will usually grant even better treatment across a wider spectrum of exports and, most importantly, will be in the form of a binding treaty obligation and not a discretionary program. With respect to the other members, treatment is still preferential in that, despite the general expectation of mutuality in trade liberalization, the smaller economy member will often be granted longer periods in which to implement equivalent levels of liberalization obligations.

52. See generally ANNE O. KRUEGER, ECONOMIC POLICIES AT CROSS PURPOSES: THE UNITED STATES AND DEVELOPING COUNTRIES 64-67 (1993) (surveying definitional problems in assessing foreign aid) (reviewed in 27 GEO. WASH. J. INT'L L. & ECON. 288).

53. The Working Group has taken the position that self-selection is the appropriate principle to follow in identifying smaller economies in the Summit process. This is consistent with the approach taken in the GATT/WTO system, in which countries are allowed to self-select their own appropriate development status, with LDC status available only to countries with a per capita income of under 1000 U.S. dollars. Bernal, *supra* note 21, at 3. Nevertheless, in its analysis of the status of smaller economies, the Working Group did identify population, land size, and GDP as rough indicators of an economy's human, land, and capital resources. Interim Report on Smaller Economies, *supra* note 24, at 3.

54. Summit countries include Antigua & Barbuda, Argentina, Barbados, Bahamas, Brazil, Bolivia, Belize, Costa Rica, Canada, Colombia, Chile, Dominia, Dominican Republic, El Salvador, Ecuador, Guyana, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts & Nevis, St. Vincent & the Grenadines, St. Lucia, Suriname, Trinidad & Tobago, Uruguay, the United States, and Venezuela. See Bernal, *supra* note 21, at 18.

ty percent of the hemisphere's population.⁵⁵ In terms of land area, the five largest countries account for over eighty-two percent of the hemisphere's land territory, and the ten largest account for over ninety-five percent.⁵⁶ In terms of GDP, the two largest countries together account for a whopping eighty-five percent of the hemisphere's GDP.⁵⁷

Moreover, the disparity in size is remarkable. The largest population is over 6,000 times larger than the smallest population.⁵⁸ The state with the largest territory, Canada, is over 30,000 times larger than the aggregate of the fifteen smallest.⁵⁹ The largest economy, that of the United States, is ten times larger than the next largest economy, Canada, and is over 850 times larger than the aggregate GDP of the ten smallest countries.⁶⁰

Together these three indicators paint a relatively consistent picture: within this hemisphere countries that are small in population and land size are generally also small in terms of GDP. Moreover, the relative disparities in all three indicators between the greater and the lesser economies are pronounced. When one considers the unique risks smaller economies face in trade, discussed above, this adds up to a significant problem for FTAA negotiators with profound implications for trade and integration in this hemisphere.

The challenge of creating a hemispheric integration system in the face of the disparities among the hemisphere's countries was recognized by Summit participants. The Declaration of Principles highlights the complex and unprecedented nature of the undertaking "particularly in view of the wide differences in the levels of development and the size of the economies existing in our hemisphere."⁶¹ The Plan of Action commits Summit participants to "facilitate the integration of the smaller economies and increase their level of development."⁶²

A. THE WORKING GROUP ON SMALLER ECONOMIES.

The Working Group was formed at the Denver Ministerial in June, 1995, and charged at the Cartagena Ministerial of March, 1996, with the responsibility of identifying and assessing the factors affecting the participation of smaller economies in the FTAA and in the expansion of trade and investment expected throughout the hemisphere as a result. The principal elements of the work program of the Working Group involved the preparation and adoption of several studies and reports, in which it was assisted by the OAS Special Trade Unit, the IADB, and the UN ECLAC.

First, the Working Group was commissioned to prepare a comparative evaluation of the treatment of smaller economies in international and regional integration systems.

55. The United States, Brazil, Mexico, Colombia, Argentina, Canada, Peru, Venezuela, and Chile. *See id.*

56. The five largest are Canada, the United States, Brazil, Argentina, and Mexico. To those are added Peru, Colombia, Bolivia, Venezuela, and Chile to make the ten largest in terms of land mass. *See id.*

57. The United States and Canada. *See id.* at 19 (citing World Bank and IADB data in 1990 U.S. dollars normalized for exchange rate fluctuations).

58. The United States had 263 million inhabitants to the 40,000 of St. Kitts & Nevis. *See id.* at 18 (citing 1995 data).

59. *See id.* (table).

60. *Id.* (table).

61. *Declaration of Principles and Plan of Action*, *supra* note 17, at 812.

62. *Id.*

This was carried out by the OAS in its report entitled "Special and Differential Treatment in International Trade."⁶³ Second, the Working Group was to identify the characteristics of smaller economies that could affect effective FTAA participation. This analysis was also supported by the OAS, and reported in its "Observations on Small Economies and Western Hemisphere Economic Integration."⁶⁴ Third, the Working Group was to evaluate the effect of an economy's size on trade liberalization and economic growth. This was carried out by the staff of the World Bank and published in its report "Small Economies: Trade Liberalization, Trade Preferences and Growth."⁶⁵ Fourth, the Working Group was to identify specific problems faced by smaller economies that might affect their integration into the FTAA, such as technical barriers to trade, lack of transparency, inadequate resources, lack of infrastructure and transport, trade tax dependence, external debt, and smaller enterprises. This aspect of the Working Group work program was supported by the UN ECLAC, which promulgated its findings in two reports: "Factors Affecting the Participation of Caribbean Countries in the FTAA" and "Characteristics of the Central American Countries and the Dominican Republic That Could Affect Their Participation in the FTAA."⁶⁶ Fifth, the Working Group was to examine domestic opportunities to facilitate the integration of smaller economies and increase their level of development, such as internal adjustments, which ECLAC reported on in "Internal Policy Measures to Facilitate the Integration of SEs into the FTAA,"⁶⁷ and mechanisms and measures in the integration process itself, such as the pace of the process, reported on by the OAS in "Mechanisms and Measures to Facilitate the Participation of SEs in the FTAA."⁶⁸ The Working Group was also to evaluate the particular technical assistance requirements of smaller economies, which appear in a report by the SELA, "Profile of Technical Cooperation Programme for Small Economies."⁶⁹ Finally, the Working Group examined the need for, and feasibility of, a regional integration fund, as set forth in a paper prepared for the Working Group by ECLAC.⁷⁰

Together these reports constitute a rich literature and database on the opportunities and challenges for integration of smaller economies into the FTAA and represent an important achievement of the Working Group. It is reasonable to expect that out of these studies will come the concrete policy proposals affecting smaller economy integration to be formulated throughout the FTAA Negotiation Groups. In the meantime, the Working Group itself developed a series of recommendations for structuring the FTAA negotiation process in view of smaller economy concerns, and it is to this aspect of the Working Group's work program that this article now turns.

63. OAS Report on Special and Differential Treatment, *supra* note 34.

64. OAS Report on Small Economies, *supra* note 21.

65. World Bank, Small Economies: Trade Liberalization, Trade Preferences and Growth, 12/1/95, cited in Bernal, *supra* note 21, at 11 n.36.

66. *Id.* at 11 n.37.

67. *Id.* at 11 n.38.

68. OAS Trade Unit Studies, March 1998.

69. Interim Report on Smaller Economies, *supra* note 24, at 18 n.1.

70. *A Regional Integration Fund of the Free Trade Area of the Americas*, U.N. Economic Commission for Latin American Countries, U.N. Doc. LC/R.1738 (1998) [hereinafter *Regional Integration Fund Report*].

B. THE WORKING GROUP'S WORK PRODUCT.

The Working Group's interim and final reports adopt the various reports and studies mentioned above and incorporate their findings, together with the deliberations of the Working Group,⁷¹ into an overall program to facilitate the integration of smaller economies into the FTAA. This program consists of three principal elements: (1) recommendations concerning the negotiation of the FTAA; (2) recommendations involving the limited incorporation of the principle of special and differential treatment to address smaller economy asymmetry concerns through FTAA provisions; and (3) recommendations strongly endorsing the adjustment needs of smaller economies with regard to technical assistance, but giving weak to no support for financial assistance addressing other aspects of the smaller economy adjustment problem. Several key elements of this program were incorporated into the San Jose Ministerial Declaration arising from the Costa Rican Ministerial, and to a lesser extent the Santiago Declaration of the Santiago Summit, and thereby into the negotiating structure and objectives of the FTAA.

1. *Rio Interim Report.*

The Interim Report delivered to the hemisphere's trade vice-ministers at the Rio vice-ministerial meeting contains a variety of findings and policy recommendations concerning the place of smaller economies in the FTAA process. The Interim Report begins with a brief analysis of the characteristics of smaller economies, focusing on population size, land mass, and GDP per capita.⁷² Employing these characteristics, the Interim Report finds that as many as twenty-four hemispheric countries manifest one or more of these characteristics.⁷³ Given the nature and extent of the factors adversely affecting the participation of smaller economies in international trade, the conclusion is that a significant number of the Summit countries face an extensive array of hurdles in successfully participating in the FTAA.

The Interim Report goes on to address these hurdles through a series of recommended measures to be adopted in the negotiation and implementation of the FTAA. In terms of negotiation the key recommendations are, first, that smaller economies be able to negotiate as a group in order to pool scarce human and material resources⁷⁴ and second, that the need for special assistance on the part of smaller economies with respect to issues under negotiation be formally recognized and continue to be served by the Tripartite Committee (OAS, IADB, ECLAC) or some other appropriate FTAA mechanism.⁷⁵

-
71. The Working Group met eight times between August 1995 and September 1997 under the chairmanship of Jamaica and the leadership of the Hon. Dr. Richard Bernal, Ambassador of Jamaica to the United States, a long-time student of smaller economy integration. See, e.g., Richard Bernal, *Regional Trade Arrangements in the Western Hemisphere*, 8 AM. U. J. INT'L L. & POL'Y 683 (1993).
 72. These characteristics are discussed in further detail in Bernal, *supra* note 21.
 73. Interim Report on Smaller Economies, *supra* note 24, at 18, para. 1.
 74. This recommendation does not appear to have been directly addressed in any of the ministerial declarations although provision is made for group negotiation by members of regional integration units. It may be that such participation by regional groupings containing a preponderance of smaller economies, such as CACM and CARICOM, would accomplish much of the same purpose. Alternatively, it may be that the hemisphere's smaller economies should form a "G-24" for consultation or negotiation as a group.
 75. See *infra* note 90 and accompanying text (regarding disposition of this issue).
-

The balance of the Interim Report consists, broadly speaking, of two types of recommendations: measures to enable smaller economies to take full advantage of the FTAA's economic opportunities; and measures to facilitate the participation of smaller economies in the FTAA negotiation process and treaty regime.⁷⁶ It is within this portion of the Interim Report that one finds limited endorsement of the principles of special and differential treatment and adjustment assistance.

Steps enabling full utilization of FTAA economic opportunities include the implementation by smaller economies of appropriate internal legal and policy adjustments as early as possible;⁷⁷ however, the primary focus of the Interim Report is on recognition of the broad systemic need on the part of smaller economies for technical assistance in the implementation of such adjustments, and at all stages of the formulation and implementation of FTAA norms.⁷⁸ As a response, the Working Group recommends an obligation on the part of other FTAA countries to provide such assistance as they can and to include the need for such assistance in the work program of each FTAA negotiating group.⁷⁹

In order to facilitate the participation of smaller economies in the FTAA negotiations and the appropriate regard for smaller economy needs in the resulting FTAA treaty, the Working Group recommends the inclusion of specific asymmetry and adjustment issues in the agenda of each Negotiation Group and specific asymmetry and adjustment measures throughout relevant provisions of the FTAA. Suggested provisions include the following: technical assistance in areas such as intellectual property and technical standards; simple and transparent rules of origin and customs documents; longer implementation periods for trade liberalization commitments; the possibility of implementation of certain obligations, such as technical standards, at regional or subregional levels to save resources; and a general effort to reduce transition costs and minimize internal dislocation in smaller economies.

2. *The Final Report.*

The Working Group's Final Report to the trade ministers of the Summit countries was adopted at the eighth and final meeting of the Working Group in Mexico City in mid-October, 1997.⁸⁰ This report does not focus as directly on the asymmetry and adjustment issues treated in the Interim Report, but rather on recommendations for the

76. This distinction, found in the Interim Report, is not always clear in its application.

77. Interim Report on Smaller Economies, *supra* note 24, para. 7.

78. In particular, proposals for negotiation and construction of the FTAA should take into account the need of smaller economies for technical assistance and cooperation on developing appropriate legislation, strengthening national institutions/agencies, human resource training, and public workshops on WTO and FTAA issues and on intellectual property and technical standards issues. *Id.* para. 9.

79. *Id.* paras. 7-9.

80. Summary of the Eighth Meeting of the Working Group on Smaller Economies, Oct. 14-16, 1997, reprinted in 4 AM. TRADE, Oct. 30, 1997, at 5-6 [hereinafter Final Report on Smaller Economies].

negotiation process.⁸¹ The adjustment issue was raised quite directly, however, during consideration of a World Bank report on the Regional Integration Fund, which analyzed the need for funding sources for technical assistance and technical assistance-related adjustment measures.⁸² The Regional Integration Fund Report appears to have engendered some controversy, and the Working Group referred the matter to the vice-ministerial level for further work on the technical and "political" levels.⁸³

The balance of the Final Report concerns objectives and principles to guide the negotiations. The Report recounts several "Principles to Guide Negotiations," drawn from the Miami Declaration and other Summit documents. Together these principles call for negotiating groups that operate in a transparent manner on a consensus principle and aim at a WTO-consistent single-undertaking approach to negotiation that should be open to participation by all thirty-four countries either individually or in regional groups.⁸⁴ In particular, the Final Report calls for "special attention . . . to the needs, economic conditions and opportunities of the smaller economies to ensure their full participation in the FTAA process."⁸⁵

The Final Report also suggests several forms in which this "special attention" could take shape in the approach to negotiating the FTAA. The principle recommendation is that the Summit countries form a Consultative Group on Smaller Economies (the "Consultative Group"), as a forum for participation by smaller economies in many aspects of the negotiation and as an oversight body with regard to smaller economy concerns in the negotiations as a whole. This approach must be understood in connection with the second recommendation, that smaller economy issues be incorporated into the mandate of the Trade Negotiations Committee created to take overall responsibility for the negotiation process. Thus the concerns of smaller economies would be part of the responsibility of the main body charged with conduct and oversight of the negotiation process, and there would be a special consultative body for developing smaller economy policies and positions, channeling these to the Trade Negotiations Committee and monitoring the negotiations for issues of smaller economy concern.⁸⁶

-
81. The first part of the Final Report on Smaller Economies consists of the reception and debate of several of the reports commissioned by the Working Group, including reports by the panel of independent experts on Overcoming Obstacles and Maximizing Opportunities and the OAS report on Mechanisms and Measures to Facilitate Participation of Smaller Economies in FTAA, together with a review of various other OAS, IDB and SELA activities related to technical assistance. In the first part of the report the Working Group also adopted a position on the issue of definitions of smaller economies, opting for self-identification in lieu of a controlling definition. *Id.*
82. Regional Integration Fund Report, *supra* note 70. The report does not treat in detail a mechanism for development assistance outside of the technical assistance area, arguing that such aid should be funneled through established financial institutions. *Id.* at 7.
83. Final Report on Smaller Economies, *supra* note 80, paras. 6-10. Reference for further work at "an appropriate political level" reflects the controversy over direct aid programs, even where such aid is clearly tied to technical assistance.
84. *Id.* pt. II.ii.
85. *Id.* pt. II.ii.(7).
86. Not surprisingly, the Working Group concluded that the recommendation of specific mechanisms was premature and involved the resolution of political questions; further elaboration was referred to the vice ministerial level in connection with future FTAA structural decisions.
-

3. Summary.

The Working Group's programmatic recommendations thus incorporate, albeit on a limited basis, the principles of special and differential treatment and adjustment assistance as key components of a program to address the asymmetry and adjustment concerns of smaller economies participating in the FTAA process.

The Interim Report adopts the principle of special and differential treatment, but with regard to longer implementation periods and not to different levels of obligation. This is consistent with the trend in the NAFTA and other contemporary North-South integration schemes towards reciprocity of obligations.⁸⁷

The Interim Report also recognizes the adjustment difficulties faced by smaller economies, but in a more ambiguous manner. Although the Interim Report sounds a clear call for broad, systemic technical assistance, the Final Report leaves unresolved the critical issue of a Regional Integration Fund, a key element of North-South integration.

Finally, on a structural level the Final Report recommends the incorporation of smaller economy concerns as part of the charge of the Trade Negotiations Committee, and the formation of the Consultative Group as a forum for smaller economy participation, formulation of a common position, and as an institutionalized form of input into the Trade Negotiations Committee and the negotiating groups in general.

C. WORKING GROUP RECOMMENDATIONS INCORPORATED INTO THE FTAA NEGOTIATIONS.

1. Costa Rica.

At the Costa Rica Ministerial, Summit country trade ministers adopted the Working Group's two principal recommendations. Smaller economy issues were specifically incorporated into the agenda for the Trade Negotiations Committee structure adopted at that ministerial,⁸⁸ and the ministers agreed to the formation of the Consultative Group.⁸⁹

The Working Group was successful in addressing several key asymmetry concerns through incorporation of critical elements of the special and differential treatment principle into the negotiating objectives of key negotiating groups. For example, in the objectives for the Market Access Group, the market protection element of special and differential treatment is recognized in the provision for negotiation of different trade liberalization timetables. Moreover, the facilitation of smaller economy integration and full participation in negotiation are specifically listed as objectives.⁹⁰

In the area of services, the objectives of the Services Group are silent on the issue of special and differential treatment, no doubt because of the acute sensitivity of this sector for developed country services exporters, and smaller economies concerned over the loss of any nascent services industry. Nevertheless, the stated objectives for this group do at least include that the Group ensure the integration of smaller economies into the FTAA

87. See *supra* text accompanying notes 35 and 38.

88. *Costa Rican Ministerial Declaration*, *supra* note 20, para. 10.

89. *Id.* para. 13.

90. *Costa Rican Ministerial Declaration*, *supra* note 20, at annex II.

process.⁹¹ The possibility is left open for some sort of non-reciprocity in the levels of services sector liberalization commitments as in the NAFTA.⁹²

Finally, the objectives for the Negotiating Group on Agriculture incorporate by reference those of the Market Access Group, thus including the key market protection principle of differential implementation periods in this area of critical concern to smaller economies.⁹³ Moreover, the objectives for the Agriculture Group specifically cite the importance of ensuring the nondiscriminatory application of sanitary and phytosanitary measures in accordance with the WTO SPS Agreement, an important market access issue for smaller economies in view of the fact that SPS measures are often applied as non-tariff barriers against their agricultural exports.⁹⁴

The Working Group had limited success in incorporating the technical assistance aspect of the adjustment issue into the FTAA negotiation process. Although technical assistance needs were not addressed directly in any of the general provisions of the San Jose Declaration or the specific negotiating objectives listed for the Negotiating Groups, the San Jose Declaration does affirm that the Negotiating Groups shall be guided by the general principles and objectives for negotiation of the FTAA listed in Annex I to the Declaration, which include the call for systemic inclusion of technical assistance needs in the work of all negotiating groups.⁹⁵ The Working Group also succeeded in securing continued technical assistance from Tripartite Committee organs, as requested in the Rio Progress Report, which had been the subject of some controversy.⁹⁶

The one glaring omission from the San Jose Declaration is any mention of a Regional Integration Fund, as debated by the Working Group. It appears likely that, as the issue was referred to the vice-ministerial level for further work "at an appropriate political level,"⁹⁷ such work had simply not advanced to the consensus stage in time for inclusion in the San Jose Declaration. Moreover, there is no mention of a negotiating group or special committee to focus on the formation of such a fund.

2. *Santiago Summit.*

The Santiago Summit added little to the program established by the San Jose Declaration in the way of substance regarding the concerns of the smaller economies. The key accomplishment is the inclusion of language highlighting the situation of the hemisphere's "most vulnerable countries" throughout the negotiation process.

91. *Id.*

92. For the patchy web of services commitments negotiated under the NAFTA services chapter see NAFTA, *supra* note 38, at chs. 12, 14 and related annexes.

93. *Costa Rican Ministerial Declaration*, *supra* note 20, at annex II.

94. *Id.*

95. *Id.* at annex I, General Principle (h)(i).

96. Interim Report on Smaller Economies, *supra* note 24, at 17.

97. See *supra* note 70 and accompanying text.

IV. Conclusion.

The main accomplishment of the Working Group consists of its success in ensuring that smaller economy issues remain on the radar screen throughout the FTAA negotiation process. This has been achieved through incorporation of smaller economy concerns into the Trade Negotiations Committee agenda and the formation of the Consultative Group, as set out in the San Jose Declaration. Substantively, the Working Group attained limited success in addressing the asymmetry and adjustment concerns of smaller economies through incorporation of these concerns in the negotiation objectives of the Negotiating Groups. Asymmetry problems are addressed principally through recognition that different timetables for implementation of liberalization commitments is an appropriate mechanism for integration among the hemisphere's unequal partners, thus incorporating a key element of the special and differential treatment principle. Beyond this, however, there is little mention of market protection mechanisms, except for the possibility that in the services sector non-reciprocity will be observed as it was in the NAFTA. Likewise, there is little mention of the market access needs of smaller economies beyond the general objective of smaller economy integration, except for the mention of elimination of the use of sanitary and phytosanitary measures as non-tariff barriers against smaller economy agricultural exports.

In terms of the adjustment needs of smaller economies, the need for technical assistance has clearly been recognized, even if it received scant attention in the main text of the San Jose Declaration. There is no agreement, however, on the necessity for a financial assistance component or even on the financial assistance necessary to support technical assistance measures, and there is no provision made for the formal negotiation of such a mechanism.⁹⁸

In addition to the incorporation of these substantive points in the San Jose Declaration, the work of the Working Group remains a vital resource for the formulation by the Consultative Group of substantive policy recommendations to be incorporated by the Trade Negotiations Committee. In this regard, the Working Group's sponsorship and adoption of the many OAS, World Bank, ECLAC, and SELA studies and reports will be particularly useful.

The ultimate success of the Working Group must await the elaboration of specific substantive commitments incorporating Working Group proposals at the Negotiating Group level, which will depend in part on the effectiveness of the Consultative Group. It is critical for the Consultative Group to stay actively involved in all negotiation groups in which key smaller economy issues will be raised, such as market access (ensuring differential treatment and access for key exports such as agricultural products and competitive manufactured goods), investment (adequate prudential safeguards), and services (differential treatment in services liberalization).⁹⁹

98. Presumably the final investment and intellectual property provisions of the FTAA will reflect the NAFTA approach and will facilitate private movement of capital and technology, but it is unlikely that private capital will be adequate or appropriate to meet all assistance needs.

99. The Consultative Group's initial work program, which is unfortunately very general in nature, can be found in *Americas Trade-Special Report*, July 1, 1998, at 5-6.

In particular, the Consultative Group must focus on the implementation of a Regional Integration Fund. As noted, this is not part of the agenda of any specific negotiating group,¹⁰⁰ and to date the issue has not been raised at the negotiating level by any Summit state.¹⁰¹ Nevertheless, there is reason to hope that the issue will resurface at an appropriate point, as at least the CARICOM states remain committed to fuller discussion of the needs and principles underlying such a fund, even if the resulting mechanism is not in formal terms a regional integration fund.¹⁰²

It is to be hoped that the issue of a regional integration fund receives serious attention from the hemisphere's larger more developed economies, as some form of development assistance would be powerful "glue" for the FTAA process, both symbolically and realistically.¹⁰³ Significant North-South public-wealth transfers are not politically popular in the North, and hence are not likely to play a large role in easing the process of FTAA integration across development inequalities.¹⁰⁴ Nevertheless, the need for financial assistance as part of economic integration between countries of unequal development will not go away simply because the political will for significant wealth transfers is absent in the North.¹⁰⁵

100. See *supra* note 24 and accompanying text.

101. Letter from the Hon. Dr. Richard L. Bernal to Prof. Frank J. Garcia (Mar. 2, 1999) (on file with author).

102. *Id.*

103. Existing levels of public assistance through the Inter-American Development Bank and World Bank total only approximately one percent of the region's GDP on an annual basis. HUFBAUER & SCHOTT, *supra* note 47, at 67.

104. See *id.* at 16 (U.S. budget deficit and domestic spending obligations precluded large scale financial assistance to Latin America as part of the Enterprise for the Americas Initiative, which is the policy "grandparent" of the FTAA). See also *Declaration of Principles and Plan of Action*, *supra* note 17 (Summit countries endorse trade and investment over public aid).

105. See Helen E. Hartnell, Association Agreements Between the EC and Central and Eastern European States, Address Before the First European Regional Conference 10 (Oct. 3, 1993) (on file with author) (financial assistance from the EC continues to be an important priority for Central and Eastern European associated states).

