



Toward Free Trade *in the* Americas

JOSÉ M. SALAZAR-XIRINACHS

MARYSE ROBERT
editors

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Foreword

DURING the past five years, the Organization of American States (OAS) has been closely involved, through its Trade Unit, in trade policy and economic integration issues in the Western Hemisphere. An important part of the work of the Trade Unit is to provide technical and analytical support to the negotiations for the establishment of the Free Trade Area of the Americas (FTAA) and to develop technical cooperation activities for countries of the region. In performing this mission, and in reflecting on its own experience, the team of experts at the Trade Unit has in recent years produced a significant number of contributions to the analysis of trade issues, including several books and numerous studies.

This is the third volume produced by the Trade Unit and published jointly with the Brookings Institution Press. The first, *Trade Rules in the Making: Challenges in Regional and Multilateral Negotiations*, edited by Miguel Rodríguez, Patrick Low, and Barbara Kotschwar and published in 1999, contains a series of articles written by Trade Unit staff and other recognized experts on issues related to the consistency of regional agreements, in particular the FTAA, with the World Trade Organization.

The second volume, *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*, edited by Sherry Stephenson, deputy director of the Trade Unit, and published in 2000, discusses the challenges of liberalizing, integrating, and reforming trade in services in the Western Hemisphere. Although much has been written about services trade negotiations at the multilateral level, this volume represents a pioneering effort

by distinguished experts in the field to analyze the linkages between the multilateral, regional (FTAA), and subregional (MERCOSUR, the Caribbean, the Central American Common Market, the Andean Community, and the North American Free Trade Agreement) approaches to services trade liberalization.

The purpose of the present volume, edited by José Manuel Salazar-Xirinachs and Maryse Robert, respectively director and senior trade specialist at the Trade Unit, is to describe and analyze recent trends, current developments, and future prospects of trade agreements and integration efforts among countries of the Western Hemisphere at the turn of the century.

One of the most radical and positive changes in the Americas during the 1990s was the reorientation and revitalization of countries' trade policy. This volume describes and analyzes these changes, distinguishing three spheres in which the forms of interdependence between countries in the hemisphere have been redefined. The first sphere pertains to business activities, as reflected in trade and investment flows between countries of the Americas and with the rest of the world. The second sphere relates to the new web of trade agreements. These new agreements are not only broader in terms of the issues they cover and deeper in terms of their market access provisions, but also more effective in integrating markets, since they touch upon various forms of domestic regulation excluded from international commitments in the past. Finally, going beyond the strictly economic incentives for economic integration, a number of chapters in this book analyze the new political and collective security rationale that also drives the integration process, particularly within the framework of the inter-American system and the Summit of the Americas process.

It should be noted that the editors and authors of this book relied on a common methodology in describing recent trends and current developments of existing trade agreements and in analyzing the various functional areas of trade negotiations. This common structure makes this book especially useful as a basic reference tool. It not only provides an overview of integration processes in the Americas as of the year 2001, but also identifies areas of convergence and divergence among the various trade agreements and enumerates the main challenges faced for the entire spectrum of issues under consideration in trade negotiations, in particular the FTAA.

The General Secretariat of the Organization of American States takes great pleasure in presenting this book, which is being published simultaneously in English and Spanish. We trust it will prove useful for trade

negotiators, entrepreneurs, members of the academic community, students, and more generally, the various sectors of society interested in the complex realities and challenges of trade policy and negotiations in the Americas at the turn of the century.

César Gaviria
Secretary General
Organization of American States

Acknowledgments

The publication of this book is very much the result of a team effort by the members of the OAS Trade Unit. Their commitment and enthusiasm for this volume, published simultaneously in English and Spanish, made the realization of this project possible. We are particularly indebted to all the contributors for taking the time from their busy schedule to bring us a comprehensive overview of the progress to date in moving toward free trade in the Americas.

Karsten Steinfatt deserves our deepest gratitude for his professionalism and dedication to this project. He edited numerous chapters of the book and coordinated with us the publication of this volume from beginning to end. We are also grateful to Sherry Stephenson, Theresa Wetter, and César Parga for reviewing several chapters and providing helpful comments, and to Francisco Coves, Ivonne Zúniga, and Sandra Burns for their invaluable assistance in all other aspects of this project.

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Finally, we would like to emphasize that neither the Organization of American States nor its member states are accountable for any errors, omissions, or statements made in this book. This responsibility lies with the editors and authors of this volume.

Toward Free Trade in the Americas

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JOSÉ MANUEL SALAZAR-XIRINACHS
MARYSE ROBERT

1

Introduction

Latin America and the Caribbean experienced nothing less than an economic revolution in the 1990s. The market-oriented reforms that these countries had begun to implement in the mid-1980s helped revitalize their economies, led to more sustainable growth, and reshaped the network of economic relations among them. As unilateral trade liberalization measures have become firmly entrenched and countries have achieved greater economic stability, a new framework within which to conduct regional trade and investment relations has gradually been established. Along with North America, Latin America and the Caribbean have negotiated modern free trade agreements that go beyond the elimination of tariffs and nontariff barriers in goods to include provisions on services, investment, intellectual property, government procurement, and dispute settlement; and they have entered into deeper and wider forms of integration at the subregional level. Both the North American Free Trade Agreement (NAFTA) and the Common Market of the South (MERCOSUR) were created in the 1990s, and the average tariff for Latin America and the Caribbean has been reduced from around 35 percent in the early 1990s to approximately 10 percent today.

Trade liberalization was further enhanced when the thirty-four democratically elected governments of the hemisphere met at the First Summit

of the Americas held in Miami in December 1994 and agreed to start working toward the creation of the Free Trade Area of the Americas (FTAA) in which barriers to trade and investment among the participating countries will be progressively eliminated. The decision to conclude negotiations no later than 2005 is a clear sign of a firm commitment to trade liberalization.

This book is about the changes in trade policies and regimes in the Americas during the 1990s. The objective of *Toward Free Trade in the Americas* is to take stock of the progress to date in advancing free trade in the region. The volume examines trade flows between countries within regional groupings and between members of different subregional arrangements, and it discusses the relative importance of trade in services in the Western Hemisphere and the substantial increase in foreign direct investment flows to the Americas. It describes the main characteristics of the trade arrangements signed between countries of the hemisphere and explores the development of trade rules in these arrangements, as well as the areas of convergence and divergence, and the main challenges faced in the FTAA negotiations. Finally, the book reports on the recent developments in the construction of the Free Trade Area of the Americas and concludes with a discussion on the noneconomic dimension of interdependence in the hemisphere. This book shows that interdependence among the countries of the Americas has increased in three related realms: business activities as reflected in trade and investment flows; legal commitments and regulatory frameworks necessary to implement a free trade regime; and what could be called strategic interdependence.

More specifically, the book is organized in four parts. Part one reviews the main trends in trade and investment flows in the Americas, in general and by subregion. Structural changes in trade and investment flows have been closely associated not only with trade liberalization and economic reforms, but also with a new phenomenon in the area of trade negotiations: the expansion of international positive rule-making and its incorporation into domestic legislation. Part two covers all the trade agreements signed between countries in the Americas. It describes their origin (history and membership) and institutional framework, provides a brief history of their main obligations, and discusses the latest developments as of December 2000, including a description of negotiations in progress. Trade agreements are grouped according to the following typology: customs unions (Central American Common Market; Andean Community; Caribbean Community and Common Market, or CARICOM; and MERCOSUR), free trade agreements (NAFTA and other free trade agreements), and nonreciprocal preferential trade agreements (Caribbean Basin Initiative, the Andean Trade Preference

Act, CARIBCAN, CARICOM-Colombia, and CARICOM-Venezuela) and partial-scope agreements (negotiated under the framework of the Latin American Integration Association, or ALADI, in Spanish) (table 1-1).

Part three examines the evolution, current situation, and main challenges in key disciplines covered by all the trade arrangements described in part two. The discipline areas include trade in goods and agriculture, which covers issues such as tariffs and nontariff barriers, rules of origin, and safeguard measures; standards and technical barriers to trade; services; investment; intellectual property rights; competition policy; government procurement; and dispute settlement. Each chapter in part three of this volume identifies the main challenges for hemispheric free trade in its respective issue area.

Two areas are worth highlighting here. In the area of services, more and more countries are recognizing the importance of an efficient service sector for growth and economic development. As a result no fewer than fourteen agreements negotiated in the 1990s between countries of the region have incorporated rules, disciplines, and mechanisms to advance toward liberalization of the services sectors. Even though the approach used to negotiate liberalization varies among some agreements, there are important commonalities in the normative content of these instruments. In addition, a majority of them have ambitious objectives that go well beyond the goals contemplated in the World Trade Organization's General Agreement on Trade in Services, either because they contain more strict disciplines or because they aim at a more extensive degree of liberalization.

The modern trade agreements negotiated in the 1990s have also incorporated investment disciplines with many common elements. Like traditional agreements in this field, they seek to strengthen the standards of protection to investments and investors and provide an effective dispute settlement mechanism between the investor and the state in which the investment is located. A growing number of the agreements signed in the 1990s go beyond this objective, however, and recognize a "right of establishment" for the investor. In so doing they incorporate a market access component that was not present in previous agreements. Together with the growing number of bilateral investment treaties in force in the region, these new agreements have formed an extensive normative network among countries in the Americas in an area where multilateral disciplines have yet to be negotiated.

In addition to services and investment, the other positive rule-making areas covered in individual chapters are trade in goods and agriculture, standards and technical barriers to trade, intellectual property rights,

Table 1-1. *Customs Unions and Free Trade Agreements in the Western Hemisphere*

<i>Agreement</i>	<i>Signed</i>	<i>Entered into force</i>
<i>Customs unions</i>		
Andean Community	May 26, 1969 ^a	Oct. 16, 1969
CARICOM (Caribbean Community and Common Market) ^b	July 4, 1973	Aug. 1, 1973
CACM (Central American Common Market)	Dec. 13, 1960	June 4, 1961 ^c
MERCOSUR (Common Market of the South) ^d	March 26, 1991	Jan. 1, 1995
<i>Free trade agreements</i>		
NAFTA (North American Free Trade Agreement) ^e	Dec. 17, 1992	Jan. 1, 1994
Costa Rica-Mexico	April 15, 1994	Jan. 1, 1995
Group of Three (Colombia, Mexico, Venezuela)	June 13, 1994 ^f	Jan. 1, 1995
Bolivia-Mexico	Sept. 10, 1994	Jan. 1, 1995
Canada-Chile	Dec. 5, 1996	July 5, 1997
Mexico-Nicaragua	Dec. 18, 1997	July 1, 1998
Central America-Dominican Republic	April 16, 1998 ^g	...
Chile-Mexico	April 17, 1998 ^h	Aug. 1, 1999
CARICOM-Dominican Republic	Aug. 22, 1998 ⁱ	...
Central America-Chile	Oct. 18, 1999 ^j	...
Mexico-Northern Triangle (El Salvador, Guatemala, Honduras)	June 29, 2000	...
Andean Community-MERCOSUR	In negotiation	...
Central America-Panama	In negotiation	...
Chile-United States	In negotiation	...
Costa Rica-Canada	In negotiation	...
Mexico-Ecuador	In negotiation	...
Mexico-Panama	In negotiation	...
Mexico-Peru	In negotiation	...
Mexico-Trinidad and Tobago	In negotiation	...

a. With the signing of the Trujillo Protocol in 1996 and the Sucre Protocol in 1997, the five Andean countries—Bolivia, Colombia, Ecuador, Peru, and Venezuela—restructured and revitalized their regional integration efforts under the name Andean Community.

b. The members of the Caribbean Community are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Montserrat (an overseas territory of the United Kingdom). The Bahamas is a member of the Caribbean Community, though not the Common Market. Haiti will become the fifteenth member of CARICOM once it deposits its instruments of accession with the group's secretary general. The British Virgin Islands and the Turks and Caicos Islands count as associate members of CARICOM.

competition policy, government procurement, and dispute settlement. The detailed analyses in these chapters of each subject area paint a complete picture of the legal and rule-based dimension of interdependence in the Western Hemisphere.

Part four contains an overview of the progress achieved in the FTAA negotiations between April 1998, when these negotiations were launched at the Summit of the Americas in Santiago, and early 2001 as heads of state and government prepare to meet again in Quebec City in April 2001. It argues that even though the main benefits of the FTAA will not accrue to countries until this agreement comes into effect, the FTAA negotiating process has already generated a number of important benefits or positive externalities. Part four also argues that the challenge of the next four years will be to maintain the momentum driving the negotiations forward and to continue to narrow the various negotiating positions so that common ground is reached and a "clean" text is achieved in all areas. Equally important is the need to address the institutional issues required for the agreement to become operational. A major change of gear in the negotiations is envisaged the moment countries decide to initiate market access negotiations for both goods and services.

Part four also examines the different components of the complex new matrix of interdependence that characterizes international relations among the countries of the Americas. The new agenda of hemispheric cooperation

c. The agreement entered into force on this date for El Salvador, Guatemala, and Nicaragua; on April 27, 1962, for Honduras; and on September 23, 1963, for Costa Rica. With the signing of the Tegucigalpa Protocol in 1991 and the Guatemala Protocol in 1996, the countries of the Central American Common Market—El Salvador, Costa Rica, Guatemala, Honduras, and Nicaragua—restructured and revitalized their regional integration efforts.

d. The members are Argentina, Brazil, Paraguay, and Uruguay.

e. Before signing NAFTA, Canada and the United States had concluded the Canada-U.S. Free Trade Agreement, which entered into force on January 1, 1989.

f. Chapters III (national treatment and market access for goods), IV (automotive sector), V (Sec. A) (agricultural sector), VI (rules of origin), VIII (safeguards), IX (unfair practices in international trade), XVI (state enterprises), and XVIII (intellectual property) do not apply between Colombia and Venezuela. See Article 103 (1) of the agreement.

g. This agreement applies bilaterally between each Central American country and the Dominican Republic.

h. On September 22, 1991, Chile and Mexico had signed a free trade agreement within the framework of the Latin American Integration Association (ALADI).

i. A protocol to implement the agreement was signed on April 28, 2000.

j. This agreement applies bilaterally between each Central American country and Chile.

promoted by the Summit of the Americas process and by the inter-American system on issues that range from the protection of democracy and human rights to the fight against corruption and drug trafficking add an element of rationality and commitment, not only economic, but also political and strategic to economic integration processes in general and to the FTAA negotiations in particular. Thus these negotiations not only are different in some fundamental ways from the WTO process, but they also are advancing in a very different political context in terms of systemic interdependencies, cooperative initiatives among the eventual partners, and institutional instrumentalities. They are part of the broader strategic agenda of hemispheric cooperation as well as of the general legal architecture of the inter-American system. Among other points, it is argued that this strategic agenda provides opportunities for the creation of the Free Trade Area of the Americas, for buttressing its rationale, and for building support for it—opportunities that are not present in other trade forums.

PART I

*Trade and
Investment Flows:
Hemispheric Trends*