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LATIN AMERICAN ECONOMIC INTEGRATION

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LATIN AMERICAN FREE TRADE ASSOCIATION (LAFTA)

Ratification of the Protocol of Caracas. LAFTA will soon be faced with a number of complex juridical problems arising from the lack of ratifications to the Protocol of Caracas. The twelve-year period stipulated by the Montevideo Treaty for the free trade area to be brought under full operation expires December 31, 1973. But, since some of the objectives set forth therein have not been achieved as yet, the Protocol of Caracas—which can only enter into force when all LAFTA Member States have ratified it—has extended the time limit to 1980. To date, Colombia and Uruguay have failed to ratify the Protocol, and it is doubtful that they will do so, alleging the need for a complete revision of the objectives and mechanisms of the Association.

The foregoing raises a serious problem regarding the concessions granted to date, inasmuch as, juridically, it is doubtful that their validity will stand given the fact that, theoretically, trade is to be substantially free and the treaty will not contain built-in devices or procedures covering the granting of future concessions. The situation will be even more difficult as regards the complementation agreements, for the concessions

specified therein cannot extend beyond the twelve-year period mentioned previously. Thus, the Association will be faced with a real de facto situation insofar as the regulation of intrazone trade is concerned. Perhaps the LAFTA Conference will take the necessary steps to overcome these obstacles, although this presupposes the exercise of legislative powers which so far the Parties have, in many instances, denied the Association.

Expiration of the Executive Secretary's Term of Office. The Conference held its fifteenth special meeting May 24-30, for the purpose of designating the Executive Secretary of the Association. The only candidate presented — for re-election — was Mr. Gustavo Magariños of Uruguay; the nomination, however, failed to obtain the two-thirds vote necessary to carry. Seven countries voted in the affirmative, three abstained (Argentina, Mexico and Venezuela) and one voted against (Chile). Mr. Pascual Martínez, from Argentina, present Undersecretary, became Executive Secretary ad interim.

Other Activities of the Association. With a view to expediting the coordination, financial and monetary, of the Association's member countries, the fifth meeting of commercial banks of LAFTA countries was held in March, 1973. Among other topics, the following were considered in depth: the Latin American bank acceptances market; system of reciprocal payments and credits of LAFTA; financing of intrazone trade; and relations between the banking institutions of the area. Financial and monetary problems were equally dealt with at the ninth meeting of the Council on Financial and Monetary Policy, at the twelfth meeting of the Advisory Commission on Monetary Matters and at the second meeting of experts in exchange operations.

Other meetings should also be mentioned: the first meeting of experts on international double taxation held in April 1973, which ordered a study of tax resources; methods to avoid double taxation, and income tax legislation; and, the eighth meeting of the Consultative Commission on Entrepreneurial Matters held in May 1973 which made several recommendations on the improvement of the system of institutional participation of the entrepreneurs in the activities of the Association.

At the suggestion of the Argentine delegation, LAFTA has initiated a study of the problems of the cultural integration of Latin America, especially with a view to facilitating the free circulation of patrimonies of cultural value. Finally, it should be pointed out that the sectorial meetings of entrepreneurs have maintained an active pace, and that among the most

important in 1973 were the meetings of the photographic industry, equipment for the oil industry, chemico-pharmaceutical industry, chemical industry and graphic industry.

ANDEAN SUBREGIONAL AGREEMENT

XI Regular Meeting of the Commission. The Commission of the Cartagena Agreement held its eleventh regular session May 29 to June 1, 1973 at Caraballeda, Federal District, Venezuela. One of the important decisions reached at that meeting was to request the *Junta* to present the bases for the Common External Tariff before December 31, 1973, followed by a detailed proposal before June 30, 1975. The Commission must adopt the Common External Tariff before December 31, 1975.

Decision 71 created the Physical Integration Council of the Andean group, to study the Andean system of highways for long distance transportation, on a first priority basis. The possibility of coordinating this program with the River Plate Basin countries was also considered. Decision 72 introduced certain modifications to the Regulations of the Economic and Social Advisory Committee. At the same time, several subjects were turned over to the Committee for study, such as relations with Argentina and Mexico, the status of the Protocol of Caracas, exchange and taxation policy, recommendation for the creation of a court of justice, tourism and others.

Other topics considered were negotiations in GATT, where Andean group countries act jointly, and the position of the Andean group in LAFTA's 1974 negotiations to define a new phase of economic integration.

Activities of the Andean Development Corporation. The VII Meeting of the Executive Board of the Andean Development Corporation held in April 1973, agreed to underwrite an issue of securities in the amount of \$75 million, thus bringing the Corporation's subscribed capital to \$100 million. So far, \$16.5 million have been earmarked for projects, independently of the loans made by AID, the *Banco de Mexico*, and other entities. A \$5 million bond issue was also approved, to be floated with the central banks of the subregion. The Andean Corporation is likewise coordinating its activities with the Central American Common Market and the *Banco de Desarrollo del Caribe*.

Other Meetings. The upsurging rhythm of the activities within the Andean group made necessary numerous specialized meetings during

1973. The following were some of the most important: Meeting of Ministers of Labor (Quito, March-April, 1973), which discussed the harmonization of labor legislation, improvement of professional training procedures, establishment of a subregional system of migration, social participation and other aspects; the meeting of Ministers of Education of the Andrés Bello Cultural Convention (Caracas, April 1973); the meeting of Planning Ministers (Caracas, May 1973); the Tourism Council (Arica, Chile, June 1973) and others.

The twelfth meeting of the Commission was scheduled for December 1973, when the following important topics were to be discussed, among others: regulations on industrial property and the establishment of the Andean Group court of justice, and on which proposals from the *Junta* of the Agreement have already been received. It is to be expected that the creation of the court of justice will be decided during 1974.

CENTRAL AMERICAN COMMON MARKET

Reorganization of the Common Market. Important developments have taken place in the reorganization process of the Central American Common Market, made easier, in great measure, by the gradual normalization of relations between El Salvador and Honduras after their armed conflict which precipitated the crisis of 1969. At a meeting of the Special Commission of the XIII Meeting of Consultation of Ministers of Foreign Relations of the Organization of American States held in Washington, August 20-23, 1973, the Ministers of both countries agreed to take the necessary steps to negotiate, subscribe and present for ratification, in accordance with their respective constitutional processes, a General Treaty based on the resolutions adopted by the Meeting of Consultation October 27, 1969. The negotiations have been carried out in Mexico.

At the same time, various institutional mechanisms aimed at reorganization have been operating satisfactorily. The first of these has been the *Meeting of Ministers of Foreign Relations*, which has brought together all area Ministers on three different occasions since 1969, for the purpose of paving the way for a political settlement of the Common Market and bilateral relations. The second, emanating from the decisions of the Ministers, has been the *Meetings on the Modus Operandi* held by the Ministers of Economy for the reestablishment of the Common Market and the establishment of a procedure for the revision of agreements. Be-

cause of the difficulties which arose within this mechanism, activities were carried out through the *Ad Hoc Commission for the Reorganization of the Central American Institutional System*, which only met once. As a result, and in order to bridge the institutional gap, the Ministers of Economy, save the Minister from Honduras, created the *Commission for the Normalization of the Central American Common Market*, with powers to make decisions. In this respect, the Commission replaced the organisms which were in existence prior to the 1969 crisis. Another important mechanism which intervened in the process was the *Tripartite Meeting*, integrated by the Ministers of Economy and Treasury and by the Central American Monetary Council. Institutional mechanisms and free trade standards accepted by all area countries resulted from this Meeting.

High-Level Committee. As a climax to the reorganization process, the meeting of Ministers of Economy of the five member countries held in June 1973, agreed to the creation of a High-Level Committee, integrated by a representative from each member country, and charged with conducting the necessary studies and presenting definite recommendations on the new Common Market. This organism has been meeting on a regular basis since July 1973, and it is expected that it will be in a position to present its recommendations during the first semester of 1974. At the same time, each country has established a national office of reorganization studies, working in close relation with the respective commissioner. The studies are based on the comprehensive area proposals presented by the Common Market Secretariat (SIECA), during 1972 and 1973.

Symposium on Institutional Aspects. Under the auspices of SIECA, the Central American Institute of Public Administration (ICAP) and the Institute for the Integration of Latin America (INTAL), a Symposium on the Institutional Aspects of the Central American Common Market was held in Antigua, Guatemala, November 19-21, 1973. The purpose of this meeting was to analyze SIECA's institutional proposals which gave rise to an interesting plan based on the creation of a common organism representative of the concerns of the region, of an inter-governmental organism and of a jurisdictional organism for the control of legal matters and various specialized and advisory consultative bodies. Important documentation prepared by ICAP was also presented.

Attendants at the Symposium were all members of the High-Level Committee and their advisors, government officials and representatives

of Central American integration organisms and other regional and international organisms. Discussions were chaired by Dr. Roberto Mayorga-Cortés, Secretary General of SIECA, and Dr. Dante Ramírez, legal advisor of that organization. Among the guests and commentators were the following: Messrs. Mateo Magariños, LAFTA; Salvador Lluch, Board of the Andean Group; Armando Toledano and Vlad Contantinesco, European Communities; and Francisco Orrego-Vicuña, University of Chile and the OAS.

It is hoped that on the basis of this and other preparatory work, all SIECA proposals and the observations of the High-Level Committee, will result in a treaty which will constitute the framework for Central American integration by the middle of 1974.

CARIFTA

A number of important meetings were held under CARIFTA and Caribbean Common Market auspices from August to December 1973. The major meetings are covered below through pertinent press releases.

MEETING OF FINANCE MINISTERS

The Ministers of Finance of the Caribbean Community held their first meeting under the Treaty of Chaguaramas together with Ministers of Finance of CARIFTA Countries at Chaguaramas, Trinidad, on the 28th and 29th August, 1973.

The Meeting was faced with a heavy Agenda in view of the uncertain monetary climate in the world today and the countries commitment under the Caribbean Community Treaty to promote regional monetary and financial cooperation and to coordinate their position in international monetary affairs. Many issues to be discussed at the forthcoming annual meeting of the IMF and World Bank as well as the Meeting of Commonwealth Finance Ministers were considered by the Ministers. The progress of efforts at a Reform of the International Monetary System occupied an important place in the discussions.

At the regional level, the subjects considered included measures for facilitating the use of national currencies by travellers within the region; a review of the efforts over the past year made by regional governments to mobilize more local financial resources for development; the training

of regional personnel in commercial banking; the establishment of an Export Credit Scheme to facilitate the exports of the less developed countries of the region; and finalization of arrangements for the establishment of the Caribbean Investment Corporation.

The imposition of restrictions by the British Government on the remittances of Caribbean migrants to their respective countries also featured in the discussions, as did the development of monetary and financial institutions in the less developed countries as well as the improvement of the level of income tax administration in all the member countries.

As a result of the signing by the Premier of Belize of the Agreement establishing the Caribbean Investment Corporation, the Agreement came into effect, the required number of ten signatories having been achieved.

MEETING OF CARIBBEAN COMMON MARKET COUNCIL OF MINISTERS

The first significant step giving concrete shape to the aims and objectives of the Community Treaty signed at Chaguaramas, Trinidad on 4th July was taken when the Caribbean Common Market Council of Ministers held its first meeting in Kingston, Jamaica on October 12, 1973.

Several important issues relating to regional economic development and to the functioning of the newly established Common Market, including the Common External Tariff, were discussed and decided upon.

Thereafter, the Meeting also considered the implications for the Region of the proposed reductions in the sugar quotas for the West Indies under the various Sugar Agreements, especially the proposal by the U.S. Department of Agriculture that the West Indies sugar quota should be drastically reduced to 23,803 tons for the year 1974. The Council expressed its serious concern in this matter and passed the following resolution:

The First Meeting of the CARICOM Council of Ministers observes with great concern the announcement by the U.S. Department of Agriculture of a drastic reduction in the West Indies sugar quota for 1974, 23,803 tons:

Notes that the reason stated, namely, the inability of the West Indies completely to fulfill the entire 1973 quota allocation, is not consistent with the understood intentions of the U.S. Sugar Act of 1948 as amended;

Stresses the vital importance of the sugar industry to the social and economic survival of the Caribbean Region, being by far the largest source of employment in an area of small developing countries bedeviled by very high unemployment rates;

Recalls that a series of representations have been made to the U.S.A. authorities, explaining the circumstances and committing the West Indies to make every effort to meet future quota allocations—within the context of sugar rehabilitation programmes already underway with international assistance;

Resolves that the CARICOM Council request the U.S. authorities not to implement the announced quota reductions and to withhold final action until talks between the U.S. and Caribbean Governments have been concluded.

MEETING OF CARIFTA COUNCIL OF MINISTERS

The CARIFTA Council of Ministers met in Kingston, Jamaica on the 11th and 12th October, 1973, for their Fifteenth Meeting.

The Council reviewed the position of the CARIFTA Countries on the negotiations with the EEC which were due to commence with a Ministerial Meeting on 17th October in Brussels, Belgium. The Council also discussed economic, cultural and technical cooperation between the Government of Mexico and the Caribbean Community.

The Council also gave consideration to a number of other important regional and extraregional issues. These included the recent Trade Negotiations, the Caribbean Investment Corporation, Canada-West Indies Trade Relations, Double Taxation, and Incentives to Industry, among others.

The Council concluded its deliberations by issuing the following statement on the legal aspects of the steps taken in transforming the Caribbean Free Trade Association into the Caribbean Community and Common Market.

PUBLIC STATEMENT BY THE CARIFTA COUNCIL OF MINISTERS ON THE LEGAL ASPECTS OF THE TRANSITION FROM CARIFTA TO CARICOM

An article appearing recently in newspapers throughout the Region sought to question the legality of the steps taken to create CARICOM and to terminate the CARIFTA Agreement.

The basic contentions were:—

- (a) that the ten signatories to the Georgetown Accord could not agree without the consent of Antigua and Montserrat that CARIFTA shall cease to exist as between the States which have become parties to the Caribbean Community Treaty; and
- (b) that the proper procedure which apparently had not been used by the signatories to the CARICOM Agreement would have been to serve notice of withdrawal from CARIFTA within the terms of Article 33 of that Agreement.

The whole question of the procedure required by international law to provide for the supersession of CARIFTA by CARICOM was extensively discussed in the course of the negotiation and preparation of the CARICOM Agreement and the Georgetown Accord. In order to ensure that established principles of international law were observed very careful language was used in Article 71 of the Common Market Annex to preserve these principles. That Article reads as follows:—

On entry into force of this Annex in accordance with the provisions of Article 24 of the Treaty, the Agreement establishing the Caribbean Free Trade Association done at Dickenson-Bay, Antigua, on the fifteenth day of December 1965, and the Supplementary Agreement, under Article 31(3) of the former Agreement, done at Georgetown, Guyana, on the fifteenth day of March, 1968, and St. John's, Antigua, on the eighteenth day of March, 1968, shall be superseded by the provisions of this Annex as between the Parties to whom the provisions of this Annex apply.

The effect of Article 71 of the Common Market Annex is that "as between the Parties" to the Common Market Annex, i.e. as of today, between Barbados, Guyana, Trinidad and Tobago and Jamaica the provisions of the CARIFTA Agreement are superseded and it is the Common Market Agreement which governs the relationship between these four members of the Common Market inter se. As between the four members of the Common Market, however, and other members of CARIFTA, it is the CARIFTA Agreement which applies, so that as between Jamaica and Antigua the CARIFTA Agreement continues to apply.

The fundamental and essential principles are to be found codified in the Vienna Convention and the Law of Treaties, and is dealt with in

Article 30 of that Convention. In essence, this Article deals with the application of successive treaties relating to the same subject-matter and stipulates that when Parties to a later treaty do not include all the Parties to the earlier one, then as between a State Party to both Treaties and a State Party to only one treaty, the Treaty to which both States are Parties governs their mutual rights and obligations. As between State Parties to both Treaties, however, the earlier treaty can only apply to the extent that its provisions are compatible with those of the later treaty. In the case of the Common Market Treaty it is expressly provided that the provisions of the CARIFTA Agreement shall be superseded as between the Parties to whom the provisions of that Treaty apply.

It is an elementary principle of international law that a Member State may withdraw from an Agreement in accordance with the provisions of that Agreement governing withdrawal. Article 33 of the CARIFTA Agreement sets out the withdrawal provisions thus:

Any Member Territory may withdraw from participation in this Agreement provided that the Government thereof gives twelve months notice in writing to the Government of Antigua which shall notify the other Member Territories.

It is clear, therefore, that a Member Territory of CARIFTA may at any time in its sole judgment invoke Article 33 of that Agreement. But what is more, a Member State so acting would not only be acting in accordance with an express provision of the Agreement but also in accordance with a time-honoured practice in international law which practice has been re-affirmed by the Vienna Convention on the Law of Treaties, Article 54 which provides:

The Termination of a Treaty or *the withdrawal* of a party may take place:

- (a) *in conformity with the provisions of the treaty; or*
- (b) at any time by consent of all the parties after consultation with the other contracting States.

The fact is that, in accordance with Article 33 of the CARIFTA Agreement the four Members of CARICOM served notice of withdrawal of CARIFTA so that on the expiration of such notice CARIFTA shall cease to exist in respect of such States.

In summing up, it should be made clear that what *was never attempted* and indeed it could not have been done without the consent of

all the Members of CARIFTA, was to purport to stipulate in the CARICOM Treaty that upon the coming into force of that Treaty, the CARIFTA Agreement, without more, would automatically be terminated. The CARIFTA Agreement will be terminated only upon the expiration of twelve-month's notice given in accordance with Article 33 of that Agreement in respect of those Member Territories giving such notice. The present Members of the Common Market have already given such notices. Most of the other Member Territories of CARIFTA have either already given, or are in the process of giving, notice of withdrawal from the CARIFTA Agreement in accordance with Article 33 of that Agreement. What the CARICOM Treaty stipulates in full conformity with international law, is that "as between the Parties thereto" the provisions of CARIFTA shall be superseded. CARIFTA however continues in full force and effect between all members including members of CARICOM until the expiration of the notices of withdrawal in accordance with the provisions of Article 33 of the CARIFTA Agreement.

There is no doubt therefore, that the CARICOM Treaty and the steps taken to enable withdrawal from the CARIFTA Agreement are in full conformity with international law and the CARIFTA Agreement itself.

MEETING OF MINISTERS RESPONSIBLE FOR FOREIGN AFFAIRS

The Standing Committee of Ministers Responsible for Foreign Affairs constituted under Article 17 of the Treaty establishing the Caribbean Community and comprising the Ministers responsible for Foreign Affairs in Barbados, Guyana, Jamaica and Trinidad and Tobago held its first meeting at the Community Headquarters, Georgetown, Guyana from November 21-23, 1973.

The Inaugural Meeting was preceded by a Preparatory Meeting of Officials consisting of representatives from the Member States who were charged with the responsibility for elaborating draft rules of procedure for the Standing Committee and formulating a draft Agenda for its deliberations.

The Standing Committee of Ministers is mandated by its terms of reference to make recommendations to Governments represented on the Committee with a view to achieving the fullest possible coordination of the foreign policies of Member States of the Caribbean Community.

The Committee recognized that in the area of foreign policy planning there was already in operation a fair measure of cooperation among Member States but that there nevertheless existed an urgent need to maximize these efforts in the interest of the region as a whole. To this end the Committee agreed to meet twice annually both to formulate a common strategy for forthcoming events on the international calendar and to reassess its machinery for achieving the fullest possible coordination of the foreign policies of Member States as mandated by Article 17 of the Community Treaty.

The Committee recognized that in order to give full expression to this mandate a frank discussion was necessary on all the issues of common interest to the Region and, in this spirit, its deliberations ranged over a wide spectrum. It examined the areas in which traditionally there had been various forms of cooperation and consultation and noted with satisfaction the impact which this common involvement has made at regional and international forums such as the General Assembly of the United Nations, the Non-Aligned Summit and Ministerial Conferences, Hemispheric Meetings and the Commonwealth Prime Ministers' Conference. The Committee saw in this process the basis for even closer cooperation and agreed on specific recommendations for its development.

The Committee also examined the question of joint approaches to international issues and was inspired in this regard by the positive and unified position which the Commonwealth Caribbean Countries have taken in the current negotiations with the European Economic Community. It expressed the view that such a unified approach to common issues reflected deep maturity, self-confidence and mutual respect within the region which augured well for its future development.

Conscious of the need to contain the cost of diplomatic representation as well as of representation at international conferences at reasonable levels, the Committee was of the view that much could be achieved by more effective coordination and cooperation between Member States particularly by reducing areas of duplication in the region's efforts and maximising the representation of the region's interest in a greater number of the world's capitals.

In the process of its review of international issues the Committee examined the region's position regarding the forthcoming Conference on the Law of the Sea and the possible means whereby that position can be assured of impact on the deliberations of the Conference.

It also examined the question of the continuing metropolitan presence in the region as it relates to the interests vital to the Commonwealth Caribbean as a whole and was informed in its deliberations by the Resolution of the Sixth Heads of Government Conference held in Jamaica in 1970 which *inter alia* recognized that the Constitutions of the Associated States permit their people to proceed to independence (as separate States or in association among themselves or in association with other independent States in the Region) and recommended that the General Assembly should support any measures taken by the Associated States in exercise of these options to terminate their relationship with the United Kingdom.

The Committee took note of the Region's efforts in the struggle against racism and apartheid and its continuing commitment to assist the liberation movements.

The Committee also discussed the present crisis in the Middle East and took note of the serious problems it posed for international peace and security. The Ministers recognised that their Meeting coincided with the Sixth Anniversary of Security Council Resolution 242 (1967) on the Middle East and re-affirmed the support of the Governments of the Region for a settlement of the problem on the basis specified in the Resolution. They expressed their support for and their readiness to assist in the continuing role of the United Nations in securing a just and lasting peace in the Middle East.

Mindful of the Meeting of Regional Officials on the Energy situation, the Ministers recognised the urgent need for coordinating approaches of Member States of the Region with a view to ensuring a continuing supply of crude oil to regional refineries and the maintenance of essential petroleum supplies throughout the Area.

Finally, the Committee reached agreement on a number of specific recommendations for consideration and decision by their respective Governments in accordance with Article 17 of the Community Treaty.

ENERGY CRISIS

A Special Meeting of CARIFTA/CARICOM Ministers was held in December, 1973 at the Caribbean Community Secretariat to discuss the Regional Energy Crisis. This Meeting was preceded by a Special Meeting of CARIFTA/CARICOM Officials held on November 19 to discuss the same subject.

The Ministers agreed to adopt the principle that regional requirements of petroleum products should be drawn from the supplies of refineries operating in the Region and noted the steps being taken by the Trinidad and Tobago Government to give effect to this principle in the context of the present energy crisis in the Region. The Meeting viewed this principle as part of a wider philosophy that regional resources and production should, in the first instance, be applied to the satisfaction of regional requirements. Finally, the Ministers recognized the need to continue regional consultations on the situation arising out of the energy crisis.

MONTSERRAT-GEORGETOWN ACCORD

On December 10, 1973, the Government of Montserrat signed the Georgetown Accord, thus taking a concrete step towards membership in the Caribbean Community on May 1, 1974.

Montserrat also acceded to the Agreement establishing the Caribbean Investment Corporation, the Agreement for the Harmonisation of Fiscal Incentives to Industry and the Agreement for the Avoidance of Double Taxation between the More Developed Countries and the Less Developed Countries. These three Agreements contain measures for the creation of greater opportunities for development of the less developed countries of the Community.

Montserrat was one of two countries which did not sign the Georgetown Accord at the Eighth Conference of Heads of Government of Commonwealth Caribbean Countries held in April, 1973. On December 10, however, the Government made it clear that the fact that it had not been among the original signatories did not stem from any decision not to seek membership in the Community but rather from the fact that it needed time to study the implications of the Treaty for the country's future development. The Government pledged that it would play its part in implementing the objectives of the Treaty for the mutual advancement of the Region. Representatives of the other Governments attending the Ministerial Meeting warmly welcomed the signing of the Georgetown Accord by Montserrat.