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F. V. Garcia Amador
University of Miami School of Law

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LATIN AMERICAN ECONOMIC INTEGRATION

F. V. GARCIA-AMADOR
*Director, Department of Legal Affairs
Organization of American States*

LATIN AMERICAN FREE TRADE ASSOCIATION (LAFTA)

On December 10, 1971 the XI Annual Conference of the Contracting Parties of the Montevideo Treaty completed its deliberations. Although some progress was apparent as regards certain issues which have concerned the various organs of the Association for some time, the observers were in general agreement that LAFTA has lost some of its dynamism.

Among the positive aspects of the Conference, the following are worthy of mention: On the important problem of drafting an instrument on the rules of origin (*reglas de origen*) — the task of a special advisory committee — the Conference was informed of the present status of the work and agreed that a final draft should be completed not later than by the end of the first half of 1973. Meanwhile, the effectiveness of the current provisional regulations was extended to December 31, 1972, to be further extended an additional year should the advisory committee be unable to complete its work at the specified time.

As for free trade mechanisms, the Conference instructed the Standing Executive Committee to draft a resolution establishing a program for eliminating non-tariff barriers applicable to the products on national lists. In this connection, the Committee is to convoke a meeting of the group of governmental experts before July 15, 1972.

Besides considering other pending problems by Resolution 295(XI), the Conference approved the Standing Executive Committee's work program for 1972, which, aside from the regular tasks of the Committee, includes specific matters relating to the Plan of Action and other subjects. The program was divided into five parts:

- a. Free movement of merchandise and coordination in matters of trade policy;

- b. industrial problems;
- c. agricultural problems;
- d. economic problems;
- e. others.

“Others” include the study of the juridical and institutional aspects of LAFTA and the relationship of that organization to the institutions of the Cartagena Agreement and the Central American Common Market.

THE CARTAGENA AGREEMENT

A more dynamic situation prevails with respect to the Cartagena Agreement. In the first place, Venezuela has accepted the invitation extended by the Committee, through Decision 42, to enter into negotiations towards joining the Andean Group, and to that effect conversations were initiated in February.

Moreover, the Committee has been active on the legal instrumentation dealing with the objectives of the Agreement, issuing important supplementary decisions and linking them to previous decisions, either expressly or implicitly. The Agreement and supplementary decisions comprise the present *corpus juris* of the integration of the countries of the Andean Group and their importance should not be overlooked. If the aim of the process is to achieve the well-integrated development of certain national economies, then the criteria for the legal interpretation of the instruments of integration cannot be limited to the repetition of traditional criteria; the law must necessarily be transformed. However, this would become a major obstacle to that very development, and would be equivalent to denying the possibility of a major peaceful transformation, something which Latin America needs in order to achieve the aspirations of its peoples. Sound juridical thinking in conformance with the needs of development and integration is the surest road to achieve the goals set forth by the participating countries.

During its Sixth Special Meeting, the Committee issued two important legal instruments: the Uniform Policy of Multinational Enterprises and Regulations for Treatment of Subregional Capital (Decision 46), and the Directives for Achieving Uniformity in Legislation on Industrial Development (Decision 49). Brief comments on both are given below.

The Standard Code on Multinational Enterprises and Regulations on the Treatment Applicable to Subregional Capital, divided into nine chap-

ters, contains 62 articles and some transitory provisions. Although this is not the proper place for a complete analysis of the Code, it should be noted that it develops Articles 28, 38 and 86 of the Cartagena Agreement and Article 30 and transitory provision I of Decision 24 of the Common Code for Treatment of Foreign Capital, Trademarks, Patents, Licenses and Royalties. It is a complex instrument which could present some problems when applied at the national level.

Enterprises should be constituted in the form of corporations (*societades anónimas*) and the words "multinational enterprise" should be added to their trade or firm names. The principles that will govern multinational enterprises are:

- a. Bylaws (which should be adapted to the provisions of the Standard Code);
- b. the Standard Code, as regards all matters not set forth in the bylaws;
- c. the legislation of the country in which the enterprise has its main domicile as regards matters pertaining to domicile and administration not regulated by the above instruments;
- d. in all other cases, the legislation of the country in which legal status is established or of the country where the legal acts of the enterprises are to become effective in accordance with the applicable practices of private international law (Articles 18, 24, and 25 of the Policy).

The Code specifies the requirements of a multinational enterprise, some of which are: the corporate objective must be of interest to the sub-region and must adapt itself to the practices and conditions established in regional programs of industrial development; the corporate objective must relate either to projects of infrastructure, rationalization of the production of existing industries, or to joint agricultural development programs.

Article 10 stipulates that the participation of foreign investors may not exceed 40% of the capital of the enterprise. However, it is up to the government in whose territory the enterprise is established to determine the ratio of foreign capital in accordance with the maximum limit specified.

The majority position represented by the capital of national and subregional investors should be reflected in the technical, administrative, financial and commercial direction of the enterprise.

The second legal instrument, Directives for Achieving Uniformity in Legislation on Industrial Development, consists of six chapters divided into 41 articles. The directives distinguish between the conditions existing in Colombia, Chile and Peru, the more developed countries of the subgroup, and those existing in Bolivia and Ecuador, the less developed nations. The instrument provides for tariff, fiscal exchange, monetary and financial policies. In addition, it regulates matters pertaining to the development of exports and contains a chapter on joint action for industrial development and another on industrial technology and development.

These instruments, together with the Common Code on the Treatment of Foreign Investments aim at regulating essential aspects of integrated development and, therefore, presuppose their primacy over the internal law of the States in cases of conflict between regional instruments and national laws. However, if put to the test, this primacy must be recognized by national judges. In this connection, the juridical approach to problems must be adapted to the needs of the development process.

One of the practices of the Andean Group has already been put to the test with negative results. The Code on the Treatment of Foreign Capital has been declared unconstitutional by the Supreme Court of Colombia by reason of having been implemented solely by decree of the Executive Power. That is, the Court felt that in order for the Code to have the validity of an internal law, the national Congress would have to give it that validity through the appropriate legislation.

It is not intended to analyze here the decision of the Colombian court. The court's reasoning is correct according to the traditional Latin American interpretation of the Constitution in the matter of the relationship between international law and internal law. The main point is to realize whether, in view of the urgency of the situation, the traditional criteria are the most adequate to face the problems of integrated development.

So far it has not been possible to implement the Common Code since in its transitory article the Code stipulates that it shall become effective in *all* the States only when *all* governments have deposited the instrument that will enforce it in their respective territories. Thus, a certain legal interpretation has become an insurmountable obstacle.

CENTRAL AMERICAN COMMON MARKET

The seventh and eighth meetings of the Committee to Normalize the Central American Common Market were held January 6-7 and February 8-9 respectively. All the Central American countries, with the exception

of Honduras, are represented in the Committee. The work of the Committee represents a partial solution to the present disorganization of the Common Market, now almost three-years-old.

Nevertheless, due mainly to the work of the General Secretariat of the Treaty for Central American Economic Integration (SIECA), the four participating countries continue to seek a common approach to the problems of the Market. The following objectives were agreed upon at the eighth meeting:

- a. Formulation of a new Central American customs import tariff, considered an instrument of development, especially as regards manufactured products. The Committee set up standards to accomplish this objective;
- b. a recommendation to the governments to adopt uniform customs legislation and to create mechanisms that will insure uniform interpretation and application;
- c. adoption of some instrument that will take the most flexible approach to the application of the Central American Import Tariff.

The Secretariat presented pertinent technical documents. The function of SIECA becomes essential in this impasse in the process of Central American integration since it combines the human and technical elements capable of guiding the governments towards various possible solutions. Yet it is the governments which, in the final analysis, must make the decisions that will lift the Common Market from its present stagnation.

Also at the eighth meeting, the delegation of Guatemala reported that a proposed Agreement of the Central American Community, prepared by its government, had already been distributed to the Ministries of Foreign Affairs and to the Ministries of Economy of the other countries for study.

CARIBBEAN INTEGRATION

In the interest of informing the regional public about developments in the regional movement during 1971, the Secretary General of the Commonwealth Caribbean Regional Secretariat has submitted the following report.

Economic Integration

Accession of Belize

In May 1971, Belize (or British Honduras) the 7,000 square mile - 120,000 populated British self-governing territory on the Central American

mainland, became the twelfth member of the Caribbean Free Trade Association.

Approval of CARIFTA by GATT

Towards the end of the year the Contracting Parties of the General Agreement on Tariffs and Trade adopted a Special Working Party Report which endorsed the CARIFTA Agreement as a free trade area within the meaning of the General Agreement. In other words, the GATT has approved of CARIFTA.

Adoption of the Brussels Definition of Value and the Brussels Tariff Nomenclature

The stage has been set for the adoption throughout the Region of a new customs valuation system based on a uniform text incorporating the Brussels Definition of Value.

The stage was also set for the adoption of a new system of tariff classification known as the Brussels Tariff Nomenclature.

Marks of Origin and Labelling of Food and Drugs

The CARIFTA Council of Ministers has also taken important decisions regarding marks of origin and the labelling of food and drugs with a view to preventing unfair trade practices and to ensure consumer protection.

Agriculture

In the field of agriculture, the CARIFTA Council has taken a number of decisions to improve the effectiveness of the Agricultural Marketing Protocol, among them being a decision to offer greater price and market guarantee incentives to stimulate regional agricultural production.

Decisions were also taken to improve regional marketing of agricultural products by reviewing the existing CARIFTA grading system, by publishing a monthly marketing newsletter, and by increasing the effectiveness of regional Marketing Boards.

Meetings on Animal and Plant Quarantine and toxic chemicals were also held and Member Territories are moving towards the adoption of uniform legislation and procedures over a wide area in these fields.

During 1971 all twelve CARIFTA Member Countries became signatories to a new Oils and Fats Protocol which will shortly be incorporated

into the CARIFTA Agreement. An important aspect of the new Agreement is the greater scope it offers to the exporting LDC's to increase their exports of raw oil as against copra. A study requested by the CARIFTA Council of Ministers will soon be undertaken by the Secretariat to determine the prospects of offering guaranteed markets to the LDC's for refined oil.

The convening of the first meeting of regional Government officials to discuss the possibilities for regional agricultural rationalisation marked a significant step forward in regional agricultural development. This meeting, held in April, agreed to take a number of steps with a view to charting the course of regional agricultural development.

Later in the year a special short term study was undertaken jointly by a FAO expert and an economist of the Regional Secretariat on some of the problems experienced in the operation of the Agricultural Marketing Protocol and the impediments to agricultural trade and development in the Region with special emphasis on the less developed countries. Several recommendations made in that study, which placed a high priority on improving agricultural organization and production in the LDC's, are being implemented.

One such recommendation has led, after discussions with the University of the West Indies and Member Governments, to a formal request being forwarded to the UNDP for assistance to improve the agricultural extension services for the LDC's.

Finally, by the end of the year, the long-awaited United Nations Multi-disciplinary Team was getting into the field. When fully constituted it will include experts in several areas of agricultural and agro-industrial development. The Team is expected to examine and develop programmes which would further strengthen individual national economies of the less developed countries through a regionally integrated agricultural development programme.

Harmonization of Fiscal Incentives to Industry

Much work of a technical nature has been carried out during the year on the scheme for the harmonization of incentives to industry. In an effort to speed up consideration of the final problems, two seminars involving Government Officials were held late in the year and it is now hoped that final decisions will soon be taken by the CARIFTA Council of Ministers.

Common External Tariff

In January, 1971 a detailed report on the establishment of a common external tariff was completed by a special team of regional experts working along with economists and customs experts of the CARIFTA Secretariat and regional Governments. The report is undergoing intensive study by officials of national Governments and a number of recommendations have already been made at a meeting of intergovernmental officials held last October, to deal with these problems with a view to ascertaining areas of difficulty for individual Territories.

Location of Industry

The question of industrial location is central to the question of the equitable distribution of benefits in a free trade area. After several regional meetings on the subject, a framework for policy is gradually emerging, the Council of Ministers having accepted certain recommendations put forward by a meeting of officials on industrial location held in July, 1971.

But the major thrust in this direction has been the work of the Caribbean Development Bank which is in the process of investigating the industrial prospects of the relatively less developed countries of CARIFTA.

Relations with the EEC

As Britain moved closer to the EEC, there was growing concern over the future position of the Region's exports to the U. K. market, mainly sugar, bananas and citrus.

Insofar as sugar is concerned, the United Kingdom and the EEC have given certain assurances concerning the safeguarding of the interests of CARIFTA exporters after 1974, when the present Commonwealth Sugar Agreement comes to an end. Also during 1971, the EEC re-opened the Declaration of Intent with respect to the four independent Commonwealth Caribbean Countries thereby leaving the door open to CARIFTA countries — which have already decided to seek association with the EEC as a group — to work out the final form of association they will wish to pursue with the expanded EEC.

Consultation on Monetary Matters

Consequent on the uncertainties created in world trade and monetary transactions by the adoption in August of certain policies by the United States, the Commonwealth Caribbean Regional Secretariat participated in

a series of consultations among Commonwealth Caribbean countries and monetary authorities designed to safeguard their interests. It is relevant to recall that Article 24 of the CARIFTA Agreement calls on Member Territories to hold consultations on financial and economic policies to ensure the smooth operation of the Agreement.

The consequent world currency realignment and the devaluation of the Guyana dollar has now raised issues which are to be discussed by Member Countries early in 1972.

Caribbean Development Bank

The Caribbean Development Bank was very active in 1971. Numerous loans were made to the LDC's for agricultural credit, agricultural development, hotel development, small industry development and some infrastructural development.

The Bank decided:

- To allocate over the immediate future all its soft loans to the LDC's;
- to adopt in its lending the following order of priority:
 - (a) the development of agriculture
 - (b) industry, and
 - (c) tourism

Other Measures to help the LDC's

At its Ninth Meeting, Council adopted a number of additional measures (over and above those already mentioned) for giving special concessions to the LDC's. In the case of nearly all these measures, action will have to be carried out by the more developed countries over a period of time.

Functional Cooperation

The year also saw significant developments in the Region in the field of functional cooperation.

Caribbean Examinations Council

After many years of effort in the region to establish a Caribbean Examinations Council, agreement was finally reached in the Montserrat Accord in November, 1971. The Draft Agreement embodying this Ac-

cord has been circulated for final acceptance and ratification by participating Governments and is scheduled to enter into operation by 30th April, 1972.

Council of Legal Education

In the field of Legal Education, agreement was reached to establish a Council of Legal Education with Headquarters in Barbados, to provide professional training for law students. Two training centers will be operated — one in Jamaica and the other in Trinidad and Tobago. The Agreement establishing this Council has already been signed and is in force, and the arrangements for the establishment of the two training centers are in progress.

Co-operation in Health

The Third Caribbean Health Ministers' Conference was held in Bermuda in February, 1971. Arising from this Conference regional cooperation in certain aspects of Health Administration has been established. These include —

- (a) Post Graduate Medical Education;
- (b) education in Health Professions other than medicine and nursing;
- (c) the setting up of specialized regional laboratories for the quality control of drugs; and
- (d) the training of staff on the maintenance of specialized hospital equipment and other aspects of hospital maintenance.

With the assistance of funds provided by PAHO (Pan American Health Organization) a Health Section was created in the Regional Secretariat to coordinate and organize regional activities in the field of Health.

Shipping

In addition to servicing meetings of the Regional Shipping Council, the Secretariat has been involved in studies to improve and rationalize the West Indies Shipping Service and has also prepared a draft agreement for the continued operation of the Service.

Commonwealth Caribbean Technical Assistance

The Agreement establishing a Commonwealth Caribbean Technical Assistance Programme was signed and entered into force during the year.

Requests for technical assistance under this programme have already been received by the Secretariat from participating Governments.

Political Integration

In July, 1971, six Heads of Government of Commonwealth Caribbean countries subscribed to the Declaration of Grenada which set out a procedure for discussing and working towards some form of political unity among the countries of the Region. The Grenada Declaration was intended to be in aid of, and not in derogation from, the movement towards economic integration now under way in the Region.

Secretariat's Publicity and Publications

By far the most effective publicity effort so far undertaken by the 3-year-old Caribbean Free Trade Association was the Third Anniversary Mission mounted by the Commonwealth Caribbean Regional Secretariat. The Mission mandated by Council, visited the Member Territories of the Association and held discussions with Government officials, private organizations, trade unions, youth groups, schools and the public at large.

In addition, the Secretariat has addressed numerous groups and organizations throughout the Region on various aspects of regional co-operation and development.

During the year, the Secretariat issued three publications:

- (a) *CARIFTA and the New Caribbean*
- (b) *A Guide for Use of Exporters and Importers*
- (c) *The Brussels Tariff Nomenclature*

The first of these outlines the background and objectives of the Free Trade Agreement, explains the Agreement itself, and gives a brief description of other aspects of regional cooperation. The other two publications are in the nature of handbooks for the guidance of importers and exporters in the context of the CARIFTA Agreement. Copies of the publications are available from Member Governments and the Regional Secretariat.