

# University of Miami Inter-American Law Review

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Volume 3  
Number 2 *Lawyer of the Americas*, Volume 3  
Number 2 (June 1971)

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Article 8

6-1-1971

## Latin American Economic Integration

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### Recommended Citation

F. V. Garcia Amador, *Latin American Economic Integration*, 3 U. Miami Inter-Am. L. Rev. 334 (1971)  
Available at: <https://repository.law.miami.edu/umialr/vol3/iss2/8>

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## LATIN AMERICAN ECONOMIC INTEGRATION

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### LATIN AMERICAN FREE TRADE ASSOCIATION (LAFTA)

As related in a previous issue, the Montevideo Treaty was modified by the Caracas Protocol, signed on December 12, 1969, which extended to 1980 the period for full operation of the Free Trade Zone. Together with this modification and several others, a "Plan of Action for LAFTA 1970-1980", based on the Protocol, was also agreed upon at Caracas. All delegations attending the X Annual Conference in that city unanimously agreed "to give full implementation to the commitments of the Montevideo Treaty" and "to accelerate the ratification of the Caracas Protocol and other protocols and agreements so as to improve LAFTA's institutional instruments." The Protocol would enter into effect, it was agreed, upon ratification by all parties.

However, at the time of this writing, April 1971, only four countries — Argentina, Bolivia, Brazil and Paraguay — have ratified the Protocol; the seven other members of LAFTA — Colombia, Chile, Ecuador, Mexico, Peru, Uruguay and Venezuela — have not done so. This fact creates an anomalous situation in LAFTA from the practical and the legal points of view.

On the practical side, the implementation of the 1970-1980 Plan is in jeopardy due to the uncertainty of its legal basis. And from the juridical point of view — no less practical, however — an example can illustrate the anomaly.

Article 5 of the Montevideo Treaty provides that "with a view to the preparation of the national schedules . . . each contracting Party shall annually grant to the other contracting Parties reductions in duties and charges equivalent to not less than eight (8) per cent of the weighted average applicable to third countries . . ." but the Protocol establishes that since the tenth session the 8 per cent will be replaced by the figure

of 2.9 until 1974. Which of the criteria should now be applied, the original 8% or the 2.9% agreed upon?

A formalistic answer might suggest that since the Protocol requires the ratification of all the Parties in the Montevideo Treaty in order to be effective, the Treaty should be applied and therefore the 8% of Article 5 also. But formalism has never been the best instrument of juridical analysis of the relationship between states, and much less is it vis-à-vis the problems of economic integration between nations. The same practical considerations that have led the Montevideo Treaty countries to modification of the basic instrument of their process of integration will undoubtedly prevail in the solution of this aspect of the application of the Treaty.

Meanwhile, on the positive side, the meetings scheduled under the framework of the Montevideo Treaty for 1971 indicate that, although the optimistic outlook reflected in the Declaration of the Presidents of America in Punta del Este in 1967, and especially the idea of having a Common Market by 1985, have not passed the test of the hard realities of the Latin American countries, both with respect to their internal problems and their foreign trade problems, the idea of integration has not reached a dead end. On the contrary, the institutional and economic formulas of integration that in the end will fulfill the aims and expectations of the Latin American countries in this increasingly interdependent world are still being sought.

More than twenty sectorial meetings are scheduled for the rest of the year 1971. These meetings are important inasmuch as they provide a forum for the progressive integration of the existent economic activities without which the aims of the governments would lack the basis for further advances in the intergovernmental level. This logic dictates that these advances must come slowly. And even temporary setbacks seem to be a specific characteristic of any process of integration, as the history of such processes proves.

The Permanent Executive Committee has been meeting regularly and has approved several resolutions related to the progress toward integration.

## THE CARTAGENA AGREEMENT

The entry into force of the Andean Investment Code adopted unanimously by the countries within the Cartagena Agreement in December 1970, is still pending. Transitory provision "A" of the 55-article Code establishes that this instrument will enter into effect when all the member countries have deposited in the *Junta* Secretariat the instruments through

which they make it effective in their respective territories in accordance with Article 27, second paragraph, of the Cartagena Agreement. And, Article 27 provides that the member countries shall adopt all the necessary measures to put the Code into effect within the period of six months.

Meanwhile, the Code has been the subject of opinions and controversies among bankers, businessmen, politicians in the Andean countries and in those capital-exporting countries that have or might have investors willing to venture under the Cartagena Agreement framework. No doubt exists about the sovereign right of these countries to lay the ground rules for foreign investors and determine the juridical norms under which they must operate. What is questioned is the criteria adopted by the Code as a means of attracting capital and technology.

On the investor's side, great concern has been expressed about the so-called "fade-out theory", under which foreigners would be obliged to sell the majority interest in their investments within 15 or 20 years.

It is evident that the Code aims at enabling the Cartagena Agreement countries to control their socioeconomic development by way of a common approach to foreign investment, avoiding ruinous competition among themselves in attracting outside capital and technology. And, at the same time, this aim has to be put into a juridical form in the context of the growing nationalism of the masses of the area. Both elements combined could introduce an element of rigidity in the delicate issue of attracting technology and investments and controlling their process of development.

Perhaps the key in this issue lies in how the Code will be implemented and administered once it is adopted within the terms of Article 27 of the Cartagena Agreement. And perhaps the legal profession can contribute to the economic aims by providing broad formulas for negotiation of the much-needed changes in the socioeconomic situation of the developing countries of the Andean Group.

## CENTRAL AMERICAN COMMON MARKET

Almost two years have passed since armed conflict opened between El Salvador and Honduras in July 1969, and resumption of the Central American Common Market must await a solution to the political problems posed by the situation existing between these two countries. As agreed by the five foreign ministers of the Central American countries, the Market would be restructured under a new juridical and economic basis. New developments within the inter-American system inspire hope that it will be

possible in 1971 to obtain a restoration of normal relations between both countries.

On the occasion of the meeting of the ministers of foreign affairs of the Western Hemisphere in conjunction with the First Regular Session of the General Assembly of the Organization of American States at San José, Costa Rica, on April 23 El Salvador and Honduras signed a formal and solemn declaration committing themselves to seek a solution to their problems, including those specifically related to the Common Market, through the bilateral talks, which are held regularly in that city under the chairmanship of José A. Mora, former Secretary General of the OAS and present Minister of Foreign Affairs of Uruguay, acting as moderator.

In the meantime, the General Secretariat of the Central American Common Market has been at work on the decisions that the Managua Treaty countries must face in the near future concerning the problems involved in their common development.