

Chapter 2

The Latin American Integration Association

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Abstract This chapter considers the Latin American Association in the context of different backgrounds and main goals within the regional economic integration processes. It also looks at the various types of agreements that are developed within the region and new forms of partnership. The institutions of ALADI are also considered in the context of the legal framework that develops external relations with other institutional partners in Latin America. The chapter considers the role of ALADI in relation to other existing regional and sub-regional agreements, such as the Andean Community, Mercosur and NAFTA, and their relationships as a factor of integration and cooperation.

Keywords LAFTA • Andean Community • MERCOSUR • ALADI • GATT • Economic integration • Open agreements • Partial agreements

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2.1 Introduction

Ever since their independence, Latin American countries have attempted to join together both politically and economically.¹ Moreover, in Bolívar's view, regional unity was a necessity to maintain their newly gained regional independence from Spain. He envisaged the political unity of Latin America as a means to defuse regional conflicts, to establish the predominance of a regional international law, and to reduce the vulnerability of the Latin American countries to the actions of the great powers, especially Great Britain and the United States.² While Latin America's independence changed the region's political structure, it also transformed the economic landscape. The region's mercantile economies began modernization by instituting reforms that would allow them to compete in the industrialized world and would facilitate trade liberalization and regional integration. At the onset of the Great Depression, however, their export-reliant economies began to sink into recession as foreign demand decreased. Only government protection and foreign assistance prevented a complete collapse of the economy. The need to protect and shield industries in order to create a viable economy was addressed in the years following World War II by convincing leaders to adopt import substitution policies on both a national and, subsequently, regional basis.³ Some authors believed that 'Latin America's economic difficulties stemmed from [*inter alia*] [...] lack of capital, excessive concentration of power in the hands of the wealthy, an inefficient system of land tenure and inadequate domestic markets'.⁴

Most Latin American countries implemented far-reaching structural reforms in the 1980s, based on the triad of free markets, free trade and privatization. In short, the inward-looking import substitution industrialization approach to development was replaced by an outward-looking strategy, as Latin America decided to become part of the global economy. This economic reform programme was initially stimulated and promoted by the International Monetary Fund and the World Bank. Indeed, it was reasonable to reach a new trade policy, i.e. a new import substitution model which involves replacing imported goods with domestic goods. This keeps money within a nation's or trade region's borders, preventing foreign producers from profiting at the expense of the domestic industry. Import substitution necessarily involves raising tariffs on imports to protect nascent, national industries, which, in theory, will give national industries an advantage in supplying the country with goods previously imported from abroad. Nevertheless, one of the problems of implementing this import substitution policy was that the Latin American national markets did not have enough demand to support these newly

¹Baquero-Herrera 2005, pp. 156–158.

²Mace 1988, p. 405.

³ECOSOC, Economic Commission for Latin America, UN Doc E/CN.12/89 (14 May 1950) *Desarrollo de la América Latina y sus Principales Problemas*, describing plans for establishing viable economies in Latin America.

⁴Radway 1981, p. 7 discussing development of Latin America's infrastructure.

‘substituted’ industries. Given the policy objective, regional integration was to cover the limitations of the import substitution model through the creation of a regional market. The approach was to eliminate internal barriers to trade and to maintain or increase high levels of external protection and expand industrial planning at the regional level. The explicit goal was to divert third-party imports to intra-regional production and export. The sustainability of the initiatives depended on successfully opening national markets to intra-regional trade.

Successful integration, however, will only be accomplished with a significant change to the *status quo* that takes into consideration problems encountered in the past in order to change the political will of the Latin American states, including such issues as national, regional and international economic reform.

Conceptually, there are two different channels on which trade and economic integration among countries can occur. We call these two mechanisms integration by markets and integration by agreements. Integration by markets focuses on the notion that economies can join together through the use of the marketplace, i.e. allowing the private sector to be the vanguard of trade integration. This can also be described as regional integration via *de facto* agreements. In contrast, integration by agreements focuses on trade integration via the use of formal or *de jure* trade treaties. This channel of integration emphasizes the primacy of legal instruments to further economic integration among countries. These two instruments of integration are closely related and indeed are ultimately complementary. Integration via markets without formal regional trade agreements can create uncertainty among businesses since the legal foundations are not sufficiently clear and transparent. Integration by agreements can be vacuous if the underlying economic factors are not favourable for integration.

Latin America has primarily used formal regional trade treaties as the main channel of integration in preference to integration via the market. Nevertheless, in recent years, new models have been developing in order to strengthen internal markets because this can give stronger political bargaining power to the outward-looking economic-oriented forces within the country.

In 1960 the Treaty of Montevideo was signed, creating the Latin American Free Trade Association (LAFTA), a free trade area allowed by Article XXIV of the General Agreement on Tariffs and Trade (GATT). The LAFTA represents the first incarnation of regionalized trade in South America. This intergovernmental organization was replaced by the 1980 Montevideo Treaty creating a new association, the Latin American Integration Association (LAIA or ALADI in Spanish). Currently it is made up of 12 states: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. Altogether they represent 20 million square kilometres and more than 500 million people. Today, while referring to the Latin American economies several other regional organizations are also included: the Andean countries (Bolivia, Colombia, Ecuador and Peru),⁵ MERCOSUR (Argentina, Brazil, Paraguay and Uruguay)⁶ and the NAFTA countries (Canada, Mexico and United States).

⁵See Chap. 5 in this book.

⁶See Chap. 6 in this book.

In the international legal order there is no legal provision that prohibits a State from participating in more than one organization. International organizations can be complementary in their objectives and functions. In this context, the significance of ALADI has to be noted in the creation of a 'real political will in trade integrations' that will lead to some of its member states establishing new partnerships to achieve greater integration, but without withdrawing from the ALADI system.

In light of this chapter, we will focus on the study of ALADI. It is important to analyse what ALADI is today, taking into consideration its political and economic background as well as its development from the 1990s until today. To reach these aims it is worthwhile studying its structural organization, working methods and some of the many agreements among the ALADI members. This chapter posits that the integration envisioned by ALADI is difficult because it relies on existing institutions, but without altering the pre-existing legal structure of trade relationships. It concludes that regionalism is only beneficial to Latin America if an organization is given the necessary legal power to implement economic integration.

2.2 Economic, Political and Institutional Background of ALADI

Since the General Agreement on Tariffs and Trade, (GATT 1947) has been ratified, there have existed a set of international trade obligations and rules applicable to contracting members states aimed at the reduction of tariffs and other trade barriers. One of the most important ideas underpinning the GATT (and today World Trade Organization) framework is the idea that bilateral and trade agreements can lead to the ultimate facilitation of international trade. This idea, included in the GATT in 1947, was that the GATT provision itself should not prevent, as between the territories of the contracting parties, the formation of a custom union or a free-trade area or the adoption of an interim agreement necessary for the formation of custom unions or free trade areas.⁷ Thus the international trading regime that was created in the 1940s specifically promotes regional trade agreements. As expected, such regional trade agreements developed all over the world and particularly in the Western Hemisphere.

After World War II, the Latin American economies have significantly increased. Their raw materials (such as meat, sugar, cocoa) were in high demand in European markets. This European economic need moved Argentina, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay to sign the first integration treaty (1960 Montevideo Treaty). This Latin America Free Trade Association (LAFTA) agreement aimed at greater economic integration through expansion of their national markets

⁷General Agreement on Tariffs and Trade 1947, 55 UNTS 194, Article XXIV with some specific limitations.

and of their reciprocal trade. A few years later, Colombia, Ecuador, Bolivia and Venezuela joined the Montevideo Treaty. The treaty's stated goal was to gradually eliminate trade restrictions on imports from member states and to guarantee a free trade area among its member states. The 1960 Montevideo Treaty created, as a preliminary step for future trade integration, a free trade area formed by reciprocal multilateral agreements whereby two or more countries agree to limit or to eliminate all import tariff and duties between them. With such agreements the signatory states attempt to establish an economic grouping of states similar to a customs union as a previous commitment for the future common market.

This free trade area should be fully operational for 12 years (that is, until 31 December 1972). This deadline was postponed until 31 December 1980, because during that period the signatory states had been unable to identify the national goods that should have been included in the free trade area. Thus, the 1969 Protocol of Caracas modified that deadline until 31 December 1980, considering that 20 years was reasonable to reach those goals. Evidently, it was planned to carry out the integration process gradually through a list system which would reduce taxes and tariffs on certain goods progressively.

Discontented with the slow pace of liberalization, five members of the group (Bolivia, Chile, Colombia, Ecuador and Peru) established the more ambitious Andean Pact in the late 1960s.⁸ Indeed, the Andean Group split from LAFTA. In 1969 they decided to form their own sub-regional common market in reaction to their frustration with that association. They opted for a sub-regional common market for their manufactured goods wherein sub-regional industries could grow in strength as they took advantage of more economies of scale but were still protected from the industries of the first-generation developed countries. At that time, the Andean Community benefited from the mistakes made by LAFTA, which attributed to its early success.⁹

From the Economic Commission for Latin America's point of view and for many observers, both outside and inside the region, LAFTA was intended and believed to be a 'magic elixir' that would reform the economic structure and improve general welfare throughout the region. Unfortunately, LAFTA never got off the ground. Moreover, early results suggested that the pieces of the 'trade-pie' were not cut equally.¹⁰ Indeed, countries with 'larger national markets and more diversified industries were reaping most of the benefits [of LAFTA]'.¹¹ Instead of trade increasing the well-being of all, LAFTA improved conditions for a few, while others—such as Chile, Colombia and Peru—began running trade deficits.¹² LAFTA was producing on a regional scale the dominance-dependency relationship

⁸Venezuela joined this Group in 1973 and Chile withdrew in 1976.

⁹Middlebrook 1978, p. 64.

¹⁰Mace 1988, p. 412 where he states that the integration process is not creating equal benefits for member countries and attributes the initial failure of regional agreements to 'local factors'.

¹¹Mace 1988, p. 412.

¹²Porrata-Doria et al. 2005, pp. 7–12, noting that Chile, Colombia and Peru began trade deficit within first 3 years of LAFTA.

characteristic of North–South relations in general which many developing countries criticized with increasing vehemence. The most frustrated countries were those mid-way up the developmental chain because they had intended LAFTA to stimulate their economies and industrial growth.¹³ Thus, in 1969 Chile, Colombia, Ecuador, Peru and Venezuela decided to form their own sub-regional common market in reaction to their frustrations with LAFTA.

Briefly explained, LAFTA had trouble accomplishing its goals because members insisted on negotiating concessions on a product-by-product basis. Moreover, LAFTA's failure to stimulate growth resulted mainly from two factors: first, LAFTA's structure was built on governing trade among its member countries rather than on creating trade opportunities for all members. Second, LAFTA agreed to agree on lowering trade barriers in the future; it was therefore merely a framework for agreeing to tariff reductions at a later date. Then, at the time of its signing no trade was liberalized. It was hoped that, through bilateral negotiations countries with widely divergent interests could find mutual benefit through concessions that fitted in with each country's priorities. Moreover, the tight schedule of the tariff negotiations meant that if one round failed subsequent rounds necessarily would fail as well. But these limitations did not mean the economies of the LAFTA nations did not prosper and grow; rather, the causes of this prosperity were primarily extra-regional in nature and not a result of regional integration efforts. Moreover, some authors see other deficiencies as well. Professor Porrata-Doria lists four causes of LAFTA's failure: (1) a lack of understanding of the purposes for entering into LAFTA; (2) the lack of regional trade on which LAFTA could act to facilitate free-trade; (3) an unworkable framework; and (4) a lack of an institution capable of building consensus between the members.¹⁴

2.3 The Main Goal of ALADI: A Common Market for the Region

LAFTA eventually ended in failure, and in 1980 was replaced by the Latin American Integration Association (ALADI). The new Montevideo Treaty was signed at the same time by all LAFTA member states. Considering the reasons for the failure of LAFTA, ALADI replaced it with a different, more streamlined structure and more realistic objectives and mechanisms and indeed, intended to put some of LAFTA's inherent problems right. Both organizations, LAFTA and ALADI, have a very similar legal nature. Both Montevideo treaties are regional multilateral treaties under international law, open to the admission of any Latin American state. Both Montevideo Treaties aim for trade integration, although

¹³Bennet 2008, p. 108.

¹⁴Porrata-Doria et al. 2005, pp. 13–14.

through different mechanisms. Such different mechanisms are essential to understand the differences between LAFTA and ALADI and why ALADI supposedly works successfully.

Unlike LAFTA, the 1980 Montevideo Treaty establishes a long-term and gradually common market with no strict deadlines. Compared to a single free trade area, ALADI is more of *an association* among countries. Article 1 clearly states that the contracting parties intend to continue the integration process and to promote economic and social development, as a harmonious and balanced development of the region. According to Article 2, ALADI aims to develop the following basic functions: promotion and regulation of reciprocal trade, economic complementation and development of acts of economic cooperation that will contribute to expanding markets. To achieve its final objective, countries shall take into account the following specific purposes: (a) pluralism, sustained by the will of the member countries for integration over the diversity in political and economic which may exist in the region; (b) convergence, which requires progressive multilateralization with partial agreements through regular negotiations among member countries for the establishment of the Latin American common market; (c) flexibility to allow for the conclusion of partial scope agreements and to set standards consistent with progressive future integration. Moreover, differential treatment has to be established for each case. This differential treatment is applicable in both the regional scope mechanisms and in the partial scope agreements. Such differential treatments will be applied in a more favourable manner to less-developed countries. Therefore, the ALADI actions will be open to various forms of agreement between member countries, compatible with the objectives and functions of the integration process, using all possible instruments for the activation and expansion of regional markets.

2.3.1 *Specific Objective and Mechanism*

The transformation of LAFTA into ALADI gave new impetus to the process of economic integration in Latin America. The new institution adopted a 'flexible' approach to integration, relying mainly on sector-based bilateral or plurilateral negotiation.

ALADI promotes the creation of trade preferences in the region by (1) creating regional tariff preferences, whereby ALADI members grant each other tariff preference on a reciprocal basis; (2) allowing regional scope agreements; and (3) allowing partial scope agreements amongst member countries. Thus, the 1980 Montevideo Treaty is a framework treaty that creates a new legal agenda which could be developed progressively among its member states. It conceived the integration process as being mainly a series of bilateral treaties within a flexible framework of multilateral tariff preferences. Indeed, this promotion of trade agreements works on two levels: (1) an internal level, i.e. among the ALADI member states with two different scopes (regional and partial) and (2) an external level, between ALADI members and third-party Latin American states or associations.

2.3.1.1 Preferential Agreements with Regional Scope

Let us consider the some conceptual elements involved in trade policy. All countries make use of trade barriers or other forms of protection. A preferential trade agreement established between a subset of countries implies preferential tariff reduction between the parties. A free trade area is a complex entity from the conceptual point of view. On the one hand, the lowering of trade barriers generates greater efficiency and social welfare. But on the other hand, it causes distortions by discriminating between goods from different countries. In short, a free trade area is discriminatory, because it involves tariff preferences for member countries; but it also involves a movement towards free trade between its members.¹⁵

As a specific mechanism to promote trade integration in the ALADI region, Article 2 of the 1980 Montevideo Treaty foresees reciprocal trade among the ALADI members and the development of economic cooperation activities to assist the expansion of markets. Internal exchange of goods is promoted by establishing a system of regional preferences. To achieve this goal the ALADI Treaty promotes an area of trade preference made by a regional tariff preference and allows furthermore regional scope agreements with the participation of all ALADI members and includes schemes that grant non-reciprocal tariff preference to ALADI's 'less-developed countries' (Bolivia, Ecuador and Paraguay), as well as other complementary agreements, within the principles and objectives of the ALADI, to implement the first ones (Article 5 and Resolution 5 of the Council of Ministers).

The legal basis for these regional agreements are Articles 4, 6, 18, 33(f) and 35(a) of the 1980 Montevideo Treaty, as well as Resolution 1 of the Conference on Evaluation and Convergence. Within these kinds of regional agreements, we can find, for instance, trade and agricultural agreements (Articles 15–17), tourism promotion (Articles 8 and 12), cooperation in science and technology and environmental preservation agreements. This open legal framework of the ALADI Treaty has very important consequences: it allows the conclusion of reciprocal trade finance agreements, facilitates the regional movement of capital within the area for the establishment, for instance, of joint ventures, as well as regional agreements to ensure energy supply.

Since the launch of ALADI, members have signed a range of agreements on regional preferences on all types of goods, from agriculture, industrial products, chemicals, beverages (alcoholic and non alcoholic), hides and skins to automobiles and textiles. In each regional agreement each of the preferences that apply to each product is negotiated. States are free to grant other members of ALADI different tariffs, with the exception of the treatment of less developed countries. Consequently, not all States will benefit from the same tariff.

However, the network of regional trade agreements adopted under the framework of ALADI would undermine its effectiveness if its member states do not simultaneously provide a system to ensure their reciprocal credit transactions. Consequently,

¹⁵Meller 2009, p. 91.

in August 1982, the representatives of the Central Banks of Argentina, Bolivia, Brazil, Colombia, Chile Dominican Republic, Ecuador Mexico, Paraguay and Uruguay signed the Association of Latin American Integration, Reciprocal Payments and Credits Agreement. This multilateral treaty governs the flow of funds between the Latin American countries by replacing the international mechanisms that have traditionally been used. Most Latin American central banks now require that, apart from certain specific exceptions, all payments to be made or to be received from signatory countries be channelled through this new mechanism. In a time of economic recession throughout the continent, the provisions of the ALADI Treaty on transactions has demonstrated that trade flow increases by reducing the need for scarce, hard-currency U.S. dollars. Additionally, by reducing the cross-border risk typically faced by banks operating in Latin America and by guaranteeing the convertibility of required local currency payments, the ALADI Treaty encourages an increase in the amount of local bank credit available. This, in turn, should help to stimulate economic recovery in Latin America.¹⁶

2.3.1.2 Partial Scope Agreements

The ALADI Treaty establishes other specific mechanisms to promote trade preference in the region. It allows partial scope agreements which do not require the participation of all ALADI members, but only with the condition of being open to future, full participation of all its members (Article 6). These partial scope agreements will be held in the framework of the objectives and provisions of the ALADI Treaty, and may relate to matters and depend on the instruments provided for partial agreements set forth in Article 8. Moreover, these partial agreements may be commercial, economic complementation, agriculture, trade promotion or take other forms according to the objectives of the association. Despite this wide range of possible agreements, Article 9 regulates their limitations in detail: they must be open for accession, after negotiation, to the other member countries, and must contain clauses promoting convergence so that their benefits reach all members. They may contain clauses promoting convergence with other Latin American countries, in accordance with the mechanisms established in this Treaty. They must also contain differential treatment according to three categories of countries recognized by the Treaty, whose application forms were determined in each agreement and negotiation procedures for periodic review at the request of any member who is aggrieved. At the same time, partial agreements may contain a deduction for the same type of products or subheadings, but based on a percentage discount on the charges applied to imports originating from countries not participating in ALADI. In addition, partial agreements must have a minimum 1-year period of validity. Finally, such agreements may contain, among others, specific rules on origin, safeguard clauses, non-tariff restrictions, withdrawal of concessions, renegotiation of concessions, reporting, coordination and harmonization of policies.

¹⁶Davison 1985, p. 1308.

Trade agreements with regional scope are intended exclusively to promote trade among ALADI member countries and they are subject to specific rules established for the purpose. Furthermore, Article 11 promotes agricultural agreements among member states in order to be more competitive in the world markets. Such agricultural agreements may have regional scope, but also partial. ALADI changed the goals for integration by recognizing that less developed countries need economic support from more developed countries, and changed the mode of integration by calling for a process of sub-regional integration consistent with the differential treatment of less-developed economies.

Pursuant to Article 13, agreements to promote trade shall refer to non-tariff matters and tend to promote intra-regional trade flows. Particularly, among the actions for the less-developed countries ALADI provides trade-tariff preferences and partial agreements with those and other countries. To ensure the effectiveness of such agreements, member countries will execute negotiated rules concerning preservation of preferences, the elimination of non-tariff barriers and the application of safeguard clauses in justified cases. Over the years, numerous agreements under the ALADI framework have incorporated various safeguard clauses, under which it is possible to recognize a variety of procedures and grounds that can be invoked. But these ALADI safeguard clauses also differ from the scope and other characteristics of the safeguards for trade policy instruments, as the World Trade Organisation (WTO), in each case, adjusted the interest it considered necessary to preserve in each beneficiary country. Today, according to participants of the various agreements, systems coexist with the following guarantees: (1) Regional Safeguard System ALADI Resolution 70 adopted by the Committee of Representatives, (2) the regime of safeguards contained in Chapter IX of the Cartagena Agreement, which applies only among the member countries of the Andean Community, and (3) specific schemes adopted in a number of bilateral agreements, which depend (to a greater or lesser degree) on the normative models of Resolution 70 and Safeguard Agreement of the WTO, whose most important aspects are very similar. Moreover, by express provision of the respective agreements, any safeguard measure shall apply as between states parties to the MERCOSUR Agreement—ACE No. 18, or between Paraguay and Peru No. 20 (Partial Agreement of Renegotiation). Nor will special safeguards apply, after reaching full liberalization of trade, as established in the free trade agreements ACE No. 31 (Bolivia-Mexico), No. 35 (MERCOSUR-Chile), No. 36 (MERCOSUR-Bolivia) and No. 41 (Chile-Mexico). Furthermore, safeguards can be implemented only with the consent of the other party.

According to Resolution 16(III) of the Council of Ministers, the Committee of Representatives approved a Resolution concerning the specific regional safeguard regime, on April 1987.¹⁷ Under this Resolution—and unlike the WTO safeguard system—the Regional Safeguard Regime of ALADI, the Andean Community regime and in some bilateral agreements, only two safeguards can be invoked: a clause of ‘serious damage’ due to imbalance in the balance of payments or to face

¹⁷ALADI/CR/Resolution 70, 27 April 1987.

the serious economic crisis, whose origins are influenced by external factors beyond trade in the products affected. One of the most important issues is that member countries do not apply safeguard clauses to imports originating in the territory of the less-developed countries to correct imbalances in its overall balance of payments. In general terms, safeguards are to be applied for 1 year, except under approved exceptional circumstances.

Taking into account all these considerations, it is worthwhile briefly examining at least few examples of trade agreements under these ALADI provisions. In 1991, under the framework of ALADI, Protocol No. 3 on Mining Integration and Complementation was incorporated into Economic Complementation Agreement No. 16. This Protocol procured the exchange of scientific and technical information between both Argentina and Chile to enable the development of joint projects for the exploration and exploitation of the mineral resources existing along the borders of both countries, in a strip approximately 40 km wide on both sides of the frontier between the respective countries where, historically, legal impediments grounded in security reasons prevented the nationals of Argentina or Chile from the acquisition of property rights. Moreover, both countries agreed to encourage the creation of joint ventures among natural and legal persons of both countries, as well as the participation of foreign investors. (ACE No. 16, Protocol No. 3, Article 3.) The incorporation of an instrument, Protocol No. 3, in 1991, fully demonstrates the cultural and social development of both societies as they began to move towards integration.¹⁸ Not long afterwards, in June 1995, also under the framework of ALADI, an agreement was reached on the need to sign specific protocols for the development of mining projects located throughout the Andean frontier regions of both territories (Argentina and Chile). These Protocols, although ruled by the internal legislation of each State, included provisions dealing with frontier, customs, environmental and other facilities authorizing the competent public bodies of both countries to coordinate actions oriented towards facilitating the performance of mining projects. In 1997, the ACE 16 Additional Protocol XIX ('El Pachón') and the ACE 16 Additional Protocol XX ('Pascua-Lama') were signed, and in March 1998 Additional Protocols XXII and XXIII provided the legal framework for the facilities established for these projects. On the basis of these protocols the Mining Integration and Complementation Treaty between the Republic of Argentina and the Republic of Chile was signed on 29 December 1997, as a stronger cooperation treaty within the ALADI system.

2.3.2 The ALADI Development and Its New Partnerships

2.3.2.1 The New Partial Agreements

Beginning the 1990s, however, the agreements concluded under the 'flexible' approach lost some of their significance when ALADI members entered into more

¹⁸Bauni 2004, p. 67.

comprehensive and far-reaching agreements. As countries in Latin American began embracing broad trade liberalization schemes in the later 1980s and early 1990s, both regional tariff preferences and regional scope agreements, as well as 'selective' partial scope agreements (those negotiated on product-by-product basis or those that cover all products but do not eliminate barriers to trade completely) lost some of their significance. Indeed, with the heightened space of trade liberalization in the hemisphere, these agreements gave way to 'new generation' partial scope agreements, which provide for automatic preferential programmes for the elimination of tariff and non-tariff barriers to trade in all goods, with some exceptions. A large majority of the 26 'selective' partial-scope agreements and all of the new generation partial-scope agreements are registered with ALADI as economic complementary agreements or ACEs (for the Spanish acronym). Most of the exceptions specified in partial scope agreements concluded under the ALADI framework tend to be shared exceptions, that is, they appear in more than one agreement. The majority of these affect the automotive sector, oil and oil-based products, agricultural products, plastic, textiles, clothing and footwear.¹⁹

In this context, it is important to point out the provision of Article 44 of the Montevideo Treaty. It requires that ALADI members extend any benefit granted to a third State to all members of the Association. In this context, the ALADI Council of Ministers approved the Implementation Protocol of Article 44 of the Treaty in June 1994 according to the Resolution 192 of the Committee of Representatives, and Resolution 43 of the Council of Ministers. Notwithstanding, the Implementation Protocol allows members that have granted preferences to third countries the right not to have to apply the most favoured nation clause embodied in Article 44, provided negotiations are launched to compensate ALADI members. Taking into consideration this Protocol and its implementation, Mexico ratified the Protocol and invoked it in September 1994 in the context of its membership in NAFTA.

The introspective attitude that characterized most of the countries in Latin America in the years preceding and immediately following the creation of ALADI has long faded away. As they turned their backs on the economic theories of the 1970s and early 1980s, which called for the creation of partial trade liberalization agreements among a handful of counties in the hemisphere, ALADI members increasingly sought to engage partners outside the group's boundaries.

This more engaging strategy of ALADI vis-à-vis third countries, as we will see, has led to changes in the group's membership. On 26 August 1999, Cuba became the twelfth member of ALADI. At the time of its entry Cuba had already signed agreements with nine of the eleven ALADI members under the framework of Article 25 of the Montevideo Treaty. Of these agreements, those signed with Bolivia, Colombia, Ecuador and Peru were negotiated in parallel to the Uruguay Round and included provision on service, intellectual property and technical barriers to trade. ALADI members are in the process of updating previous agreements

¹⁹Steinfatt 2001, p. 120.

with Cuba or, in the case of Chile, which had no pre-existing agreements with the Caribbean island, negotiating new arrangements to take into account Cuban membership in the regional organization.

2.3.2.2 New External Relations and Open Agreements

External trade relations in the American region encouraged the proliferation of bilateral or trilateral regional initiatives. The free trade areas established in practice are generally between countries that already have significant and long-standing trading relations. Geography and proximity are important features that have been taken into account, so trade creation ought to dominate trade diversion effects.

The ALADI Treaty, as a framework treaty, creates a legal agreement which could be developed progressively among its member states. Specifically, Article 24 of the ALADI Treaty promotes a multilateral association system with other Latin American trade organizations. Article 25 of the 1980 Montevideo Treaty also foresees the formation of agreements with third parties.

All these circumstances made for a surprising proliferation of bilateral free trade agreements and 'new generation' regional agreements in Latin America generally, and in the Western Hemisphere, specifically during the 1990s. No less than 26 free trade agreements were signed between 1990 and 1994 under the ALADI framework. Of course, trade with close neighbours is relatively easy. There are many advantages to geographic proximity. First, transport and communication costs are relatively lower. Second, there tends to be greater affinity between the personal characteristics of trading partners; there is greater mutual understanding, so it is easier to do business, i.e. transaction costs are lower. Latin American has the great advantage of a common language, but there is still much to do to reduce internal connection costs between countries in terms of better infrastructures (roads, etc.), and harmonization of trade practices. The various trade agreements under the ALADI system are generally established between countries that already have significant and long-standing trade relations. The option of joining a free trade area should be weighed against the decision to stay outside one. In fact, new agreements are being forged between ALADI members and non-ALADI members. The 1990s witnessed the creation of major sub-regional preferential trading areas, such as CARICOM,²⁰ NAFTA, MERCOSUR and the Group of the Three (Colombia, Mexico and Venezuela). Moreover, a pioneering bilateral trade agreement between Chile and Mexico went into force in January 1992. The agreement, officially called the Economic Complementation Agreements (ECAs), basically cover trade of goods although they give the possibilities of future negotiation of other areas. One year before the Mexico–Chile ECA was ratified, the Argentina–Chile ECA came into force, called ECA 16 of ALADI. These two ECAs as well as many other trade agreements in Latin American were negotiated in the framework of ALADI.

²⁰See Chap. 8 in this book.

Let us now look briefly at two empirical consequences of the large numbers of trade arrangements that have been established under the ALADI framework:

- A. The Agreement on Trade, Economic and Technical Cooperation between the Caribbean Community and the Common Market (CARICOM) and the Government of the Republic of Venezuela, proposed by the Venezuelan President was signed in October 1992 and came into force on 1 January 1993. Almost 2 years later, CARICOM countries and dependent territories signed a similar agreement with Colombia, which became effective on 1 January 1995. Both agreements were concluded under the provision of non-reciprocal partial-scope agreements of the ALADI system, of which Colombia and Venezuela are also members. Consequently, the two preferential schemes are open to accession by other members of the association.
- B. Unlike the Andean Group, the Common Market of the South (MERCOSUR) came into being in 1991 as a partial-scope agreement under the framework of ALADI. Argentina and Brazil decided to move towards a mutual integration process by means of a series of sectoral protocols, subsequent to the Declaration of Buenos Aires, signed in 1986, and the Agreement on Argentine-Brazilian Integration. The original goal of MERCOSUR was the creation of a common market between Argentina and Brazil. The broad, general guidelines for the establishment of MERCOSUR were included in the ALADI Economic Complementation Accord No. 14 (ACE No. 14), signed on December 1990. Paraguay and Uruguay's fears that they would be excluded from a common market between two of the largest trading partners caused both countries to ask to be included in the MERCOSUR process. The end-result of this request was the Treaty of Asunción, signed by Argentina, Brazil, Paraguay and Uruguay on March 1991. The Treaty of Asunción was later incorporated into the ALADI framework as ACE No. 18 on November 1991, following the Treaty's almost unanimous ratification in the legislatures of all four signatory States. Many have pointed out that the only reason why the Asunción Treaty was incorporated into the ALADI framework in the first place was to avoid the reporting requirements of Article 24 of the GATT,²¹ and that all MERCOSUR countries are members of the GATT.²² In fact, MERCOSUR reinforced rather than creating new trade relations.²²

Despite its superiority and the fact that the current MERCOSUR integration project is proceeding pursuant to the multilateral Treaty, it is important to emphasize that the Treaty of Asunción does not supersede ACE No 14. Under Article 8 of the Asunción Treaty the signatory states specifically preserve their obligations under any provision of the ALADI agreement. In the Asunción Treaty there are several provisions that corroborate a very close connection between ALADI and MERCOSUR. Pursuant to Article 1 of the Asunción Treaty, the signatory states propose to allow the free movement of goods, service, and factors of production

²¹O'Keefe 1994, p. 445.

²²Porrata-Doria 2005, pp. 44–45.

(capital and workers) between them by the end of a transition period on 31 December 1994. Such a goal will be accomplished, *inter alia*, through the complete elimination of tariff and non-tariff barriers.

In addition the member states propose to have a common external tariff in place in a specific datum. The Common External Tariff (CET) has been in force since 1995. Then, the free movement of goods, with some exceptions to be discontinued by the years 2001 and 2006, has already been accomplished. Article 15 of the Asunción Treaty sets up an administrative secretariat in Montevideo to coordinate meetings, issue press releases and handle public relations. In this regard, it should be pointed out that, by falling within the ALADI framework, the MERCOSUR process has at its disposal the ALADI administrative and bureaucratic organs, which are also headquartered in Uruguay capital. To date, the MERCOSUR countries have preferred to use their own institutional framework. The one major exception to this avoidance of ALADI institutions is the utilization of the ALADI central clearing-house mechanism. Using this mechanism private sector transactions are channelled through the main clearing agent, Peru's Central Reserve Bank in Lima, and dollar payments are only required to cancel balances remaining at the end of every 4-month period. Daily gaps between credit and debit are financed by bilateral credit lines, also settled at the end of every 4 months. All members of ALADI plus the Dominican Republic participate in this clearing-house mechanism.

2.4 Institutional Structure and Technical Control Power

Logically, the institutional structure that is decided for integration will depend on the objectives, instruments and mechanisms for seeking such an association. At the institutional level, ALADI, unlike LAFTA, has a solid institutional system of an intergovernmental nature. Articles 28 and 29 of the ALADI treaty identify three governing bodies: the Council of Foreign Affairs Ministers, the Conference on Evaluation and Convergence and the Committee of Representatives. The three bodies are intergovernmental. This means that their representatives must always act in accordance with the instructions received.

According to Articles 30–32 and 43 of the ALADI treaty, the Council is ALADI's highest authority, responsible for providing political guidance on the process of integration among the association. Council members are the Ministers of Foreign Affairs of the member states. The Conference on Evaluation and Convergence, made up of plenipotentiaries, examines the functioning of the integration process and seeks to foster convergence between existing agreements (Articles 33 and 34). This Conference on Evaluation and Convergence is quite important because of the principles of the Association as mentioned above, according to Article 3.b) of the ALADI treaty. Thus its main goal is to 'promote actions of broader scope regarding economic integration'. This is an institutional innovation compared to the previous system. By contrast, the Council of Ministers and the Committee of Representatives do not present any innovation.

The Committee of Representatives is a permanent political body and negotiating forum responsible for analysing and agreeing on the initiatives necessary to achieve the objectives sponsored by the ALADI treaty (Articles 35–37). Its resolutions must be adopted by a two-third majority, with each member casting one vote. Although this voting system is quite classic and habitual in many other international organizations, it has important exceptions. A two-thirds majority is needed, but with no negatives votes for the following issues: amendments or additions to the Treaty, establishment and deepening of the regional tariff, the multilateralization, i.e. the conversion of partial trade agreements into general ones; the admissibility of new countries, for the development of the Treaty, together with the adoption of the necessary corrective actions as a result of the periodical evaluation of the integration process.

According to Articles 35(o) and 38(g) of the ALADI treaty, the Committee of Representatives may establish subsidiary organs and working groups, when and if the Secretariat suggests it. Subsidiary organs may be consultative, for advice and technical support (Article 42). Under this provision many auxiliary bodies have been created, for example, the Council on Financial and Economic Affairs,²³ a Budget Committee,²⁴ a Transport Council for Trade Facilitation,²⁵ etc. The working groups will consist of members of the Permanent Representatives accredited to the Association, and will be open to participation by all member countries. Each working group will prepare a final report to complete their tasks, which should contain a summary of the work and the conclusions and recommendations adopted. Moreover, working groups may make periodic reports of their activities with specific recommendations.²⁶

ALADI also has a Secretariat, based in Montevideo, which is designed to support negotiations between the ALADI members. This technical organ has important new roles: it can make proposals to the other organs of the association and may represent the association before international economic institutions in order to discuss matters of common interest. To strengthen the integration process, the ALADI agreement empowers the Secretariat with two essential competences: (1) to regularly assess the integration process and monitor the ongoing activities of the association and (2) on its own initiative or at the request of the Committee, it can analyse the compliance of the commitments assumed. Moreover, the Secretariat

²³ALADI/CR/Resolution 6, Creación del Consejo para Asuntos Financieros y Monetarios y de la Comisión Asesora para Asuntos Financieros y Monetarios, 17 September 1981; ALADI/CR/Resolution 20, Modificación del Artículo Cuarto de la Resolución 6 del Comité de Representantes, 11 August 1982.

²⁴ALADI/CR/Resolution 41, 12 April 1984; ALADI/CR/Agreement 42, 27 March 1985; ALADI/CR/Agreement 203, 10 December 1996.

²⁵ALADI/CR/Resolution 57, Creación de un Consejo de Transporte para la Facilitación del Comercio y funcionamiento en los países miembros de organismos nacionales sobre las mismas materias, 27 August 1986.

²⁶ALADI/CR/Resolution 262, Reglamento para la creación y funcionamiento de los Grupos de Trabajo del Comité de Representantes, 26 June 2001, dealing with internal regulations.

can evaluate the national regulations that directly or indirectly violate the ALADI arrangements and resolutions. All these technical control powers of the Secretariat may help the Committee of Representatives to achieve its functions, i.e. to propose solutions when contracting parties claim the violation of any Treaty provision or Resolution. At the same time, these technical control powers of the Secretariat may help the Conference on Evaluation and Convergence to do its work and, at least, may help the Council of Ministers to decide on the merits falls the contacting parties claim the breach of treaty. Of course the Secretariat is not a judicial body, but is an alternative dispute resolution 'technical' mechanism and gives an authoritative interpretation of the commitments established under the ALADI framework.

2.5 Final Remarks

As we have seen, there are different approaches to integration in the Americas. LAFTA with ALADI, the Andean Community and MERCOSUR have historical roots, share geographical similarities, economic complexity and difficulties and yet are almost indistinguishable. Since the 1960s, Latin America has mainly used trade agreements as the primary channel for integration. Regional trade agreements can help with this projected economic integration, but only marginally. If the main objective is regional trade integration, then the proper sequencing of the various forms of integration is first to develop integration via the markets before engaging in more formal agreements.

Before making a general balance of the not so far-reaching goals and results obtained under the ALADI system, we ought to bear in mind what trade integration really means. True economic and trade integration requires the political will of the countries concerned to negotiate under the international principle of good faith, according to the Vienna Convention of the Law of Treaties. But trade negotiations are concerned with harmonizing policies and institutions in order to eliminate other elements that cause market segmentation. It is now recognized that trade integration involves far more than trade in goods and services. Trade integration means adopting common rules of conduct among countries, together with certain agreements on policies.

Under this perspective, it is easier to understand that common rules of conduct and agreements on policies are quite difficult within the ALADI framework, that not all the twelve member states of ALADI have the political will to change their national trade relationship, nor the internal existing legal structures to assume legal obligations against their economic interests. Nevertheless, the implementation of a real common market is easier in smaller groups of states, such as the Andean Community and the MERCOSUR, as they are made up of countries with more similar economic and trade policy circumstances.

In 1980, it was problematic to reach such political agreements or some legal obligations to ensure the achievement of a common market gradually. The lack of

a sense of community among ALADI at that time and the strong desires to enforce trade regulations blur the objectives of the ALADI integration. That is why a distinguished author rather uncharitably refers in 1991 to ALADI as a 'quasi caricature' of LAFTA since it has no goals or fixed periods, but is rather mostly symbolic.²⁷ Of course this author could not have been taking into consideration that, thanks to the ALADI, other integration associations (Andean Community and MERCOSUR) could go further in order to achieve a real, but smaller common market. As already mentioned above, from the early 1980s until the 1990s there has been huge regional and partial-scope agreement development. Consequently, the 1990s could well be called the 'free trade area decade' in Latin America.²⁸

The goals of MERCOSUR are much more ambitious than the ALADI ones. MERCOSUR member states try to achieve what the ALADI cannot dream of. In this sense, MERCOSUR has achieved the objectives initially proposed more quickly than the larger association ALADI. Moreover, the coordination of an external common trade policy has become a reality ranking both the multilateral system of the WTO and the regional initiative, ALADI in this case. Consequently, as mentioned above, the ALADI treaty aims at trade integration via agreements, which is why the Montevideo Treaty is seen as a kind of 'umbrella', which facilitates the negotiation and realization of a regional tariff preference, regional trade arrangements and partial-scope agreements. Besides, as we have already seen, the ALADI treaty encourages States to establish other integration associations and partnerships between these associations. This 'association of associations' could be significant, since from a strict international law trade perspective, it makes little sense to engage in regional negotiations on matters such as agriculture, investments, intellectual property and dispute resolution, when the WTO sponsors global negotiations on those same items within the multilateral system in the twenty-first century.

Trade integration in Latin America was slower than suspected, although Latin America has comparative advantages in natural resources. In general terms, 17.2 % of Latin American exports were intra-regional in 1995. Ten years later, in 2005, 34.3 % of the Andean²⁹ exports of manufactured goods were inter-regional too. And 20.2 % of the MERCOSUR exports of goods were shipped to other MERCOSUR members. As for parts and components, the share of ALADI intra-regional exports of components and parts amounted to 14.00 % in 2005.

But if we take a closer look under the ALADI umbrella, and analyse only the Andean Community and MERCOSUR countries, the results are different: 39.5 % of Andean exports of parts and components were shipped to other Andean countries in 2005 and 22.6 % for MERCOSUR. Both the Andean Community and MERCOSUR showed great economic success in their early stages. This success can be attributed to the fact that its member countries have economies that work

²⁷Chaparro 1989, p. 60.

²⁸Meller 2009, p. 91.

²⁹Bolivia, Colombia, Ecuador, Perú and Venezuela.

well together.³⁰ This ‘inevitable marriage’, combined with the support of businesses and the elite within the region, provided the fuel that drove the relatively rapid creation of a common market within MERCOSUR.

In short, however, if we compare these facts, it can easily be seen that the Latin American economies are less integrated among themselves than East Asian or European economies.³¹

Within the bilateral import and export relation among the ALADI members, the General Secretary is optimistic in its reports for March 2011. Indeed, for instance, Argentina expanded its foreign trade considerably: 32.2 % of its exporters were acquired by Brazil.³² In contrast, the intra-regional exports of Uruguay contracted slightly (−3.3 %). But it should be noted that in 2010 most of these exports were soyabeans, whose final destination was world trade, to, in particular, Russia (48.4 %), Switzerland (26.5 %) and Turkey (18.19 %). The main destinations of Uruguay exports in June 2011 were Brazil (17.7 %), the Free Zone of Nueva Palmira (14.9 %) and Argentina (7.4 %). At the same time, exports of beef from Uruguay increased by 9.1 %: Russian acquired 28.4 %, Israel 12.9 % and Venezuela 7.2 %.³³ Brazil’s foreign trade also grew considerably in 2010: exports increased by 30.6 % and imports by 25.3 %. The expansion of exports was widespread, especially to the European Union (31.2 %), China (48.1 %) and ALADI (28 %).³⁴

For these reasons and also because there is some strong resistance to losing state sovereignty, through complete trade liberalization, one can comfortably predict the failure of the Free Trade Area of the Americas. Conversely, we have to recognize the consolidation of MERCOSUR. We must say that MERCOSUR is much more than a regional trade pact, as its scope is distinctly wider, both economically, through the creation of a common market, and politically. To reaffirm this essential point, we only have to corroborate that the MERCOSUR initiative is protected in the constitution of the member states.

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³⁰Porrata-Doria 2005, pp. 1–19 stating that MERCOSUR created an imperfect common market in 10 years, and recognizing that while this progress is impressive, there are still tensions and reductions in barriers to be addressed.

³¹Aminian 2009, p. 119.

³²ALADI/SEC/di 2406.3, 5 May 2011.

³³ALADI/SEC/di 2406, 26 April 2011.

³⁴ALADI/SEC/di 2406.1, 28 April 2011.

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