

Regional Economic Integration

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During 1996 regional economic integration expanded geographically and intensified substantively. The European Union remains the paradigm, even as it faces internal doubts and difficult negotiations regarding its institutional structure and its plans to proceed to economic and monetary union. Meanwhile the expansion and intensification of regionalism continued worldwide, in Africa,¹ Asia, Europe,² the Middle East,³ North America, the Pacific, and South America. With each year it becomes more important for attorneys to consider the laws of regional economic groups—free trade areas, customs unions, and common markets—when analyzing the laws affecting an international transaction.

I. Introduction

Regional economic integration is rapidly expanding beyond tariff and nontariff agreements concerning trade in goods. Services, intellectual property, investment, and competition are now within the purview of several accords, at least on paper. Social (labor) issues have been discussed by participants in some regional agreements. Regional dispute settlement procedures might be available for government to government and private sector disputes. These developments involve not only

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1. Among the newer agreements in Africa are the Common Market for Eastern and Southern Africa (COMESA), which links 17 countries (but does not include South Africa) in a pact whose scope covers economic and social matters.

2. The Member States of the European Union are not the only European nations that expanded their regional cooperation in 1996. For example in 1996 the Czech Republic and the Slovak Republic each notified the WTO of their separate trade agreements with Romania. Also in 1996 the EFTA countries (Iceland, Liechtenstein, Norway, and Switzerland) notified separate free trade agreements with Estonia, Latvia, and Lithuania.

3. Israel and Palestine (including the West Bank and Gaza) are linked in a customs union. That customs union is linked to Canada through the Canada-Israel free trade agreement, which took effect on July 1, 1996. The Canada-Israel agreement provides for eventual duty-free treatment of all industrial products and a limited liberalization agreement covering certain agricultural and fisheries products. In contrast the U.S.-Israel Free Trade Agreement was not extended to the West Bank and Gaza Strip, which instead became eligible to receive duty-free treatment for their exports under 1996 legislation. Exports from industrial zones established on the borders of Israel and Jordan and Israel and Egypt were included. In turn the Palestinian Authority will provide duty-free access for products of U.S. origin and national treatment for those products within that region.

the World Trade Organization (WTO) but also the World Bank, the Organization for Economic Cooperation and Development, and regional institutions such as the InterAmerican Development Bank (IADB) and the Organization of American States (OAS). The involvement of the private sector in monitoring and participating in regionalization continued in APEC and in the cross-Atlantic discussions called the TransAtlantic Business Dialogue or TABD. In sum, counsel to clients involved in international transactions should not overlook these new regional laws and plans.

The multitude of 1996 developments makes it impossible to discuss every regional arrangement and event.⁴ The Asia Pacific Economic Cooperation (APEC),⁵ the European Union, the North American Free Trade Area (NAFTA), and the Southern Cone Common Market (MERCOSUR)⁶ were especially active. The perception of the seriousness of both APEC (which includes the United States) and MERCOSUR (which does not) increased during the year, while work on a planned ministerial to discuss a Free Trade Area of the Americas (FTAA) continued at a desultory pace.

This article will present a picture of the expanding geographical and substantive coverage of free trade areas, customs unions, and common markets. It also will describe the expanding web of overlapping regions. These developments can be characterized in terms of four trends: enlargement and overlapping regions, accelerated tariff reductions and progress on technical issues, expanded scope, and a strengthened WTO role.

II. Enlargement, the Hub and Spoke Phenomenon, and Overlapping Regions

Regional groups were contemplated,⁷ were created,⁸ were enlarged,⁹ and shared members in "hub and spoke" phenomena.¹⁰ They discussed cross-regional free trade areas¹¹ and considered

4. See the reports of the various other foreign law committees for details regarding developments within each region.

5. APEC members are Australia, Brunei, Canada, Chile, Hong Kong, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, People's Republic of China, the Philippines, Singapore, South Korea, Taiwan, Thailand, and the United States. Russia and India have applied for membership.

6. Argentina-Brazil-Paraguay-Uruguay Treaty Establishing a Common Market, 30 I.L.M. 1041 (1991). The common market is to encompass free movement of goods, services, and factors of production through the elimination of customs duties and nontariff barriers.

7. The June 1996 Arab Summit requested the Economic and Social Council of the League of Arab States to "take the necessary steps for a speedy establishment of the Greater Arab Free Trade Area in accordance with a programme of action and a timetable to be agreed upon." Final Communiqué of the Cairo Summit Conference on Mideast Peace and Decisions on New Institutions, 35 I.L.M. 1280, 1290 (1996).

8. Treaty on the Formation of the Community of Belarus and Russia [Russian Federation], done at Moscow, April 2, 1996, 35 I.L.M. 1190 (1996). The treaty addresses economic ("the unification of monetary, credit and budgetary systems"), social ("equal rights of the Parties' citizens to receive an education, find work, receive pay or be granted other social guarantees"), and institutional (a Supreme Council to act by consensus, a Parliamentary Assembly to adopt model acts by qualified majority, and an Executive Committee) regional cooperation. The Supreme Council and Executive Committee "are entitled within their competence to make decisions to be directly implemented, without detriment to the Parties constitutions, or decisions to be transformed into national legislation." *Id.*

9. Several types of enlargement or expansions in membership occurred. Chile, the European Union Mexico, and the United States epitomize the hub and spoke phenomenon. The EU did not enlarge its 15 nation membership in 1996, but it did continue its web of arrangements. The European Union expanded its web of interlocking and autonomous arrangements, which includes customs unions, free trade areas (including the Europe Agreements, designed to establish a series of free trade areas over 10 years), and preferential trading arrangements.

10. Mexico reached out from the North American Free Trade Agreement to negotiate a free trade agreement with the Central American countries of El Salvador, Guatemala, and Honduras. *Mexico-Centam Talks*, Int'l Trade Rep. (BNA) (Nov. 13, 1996).

11. The EU and MERCOSUR crossed geographically and substantively by signing a free trade agreement, which is to go into effect in the year 2005. MERCOSUR and the Andean Pact discussed closer ties.

subregional arrangements.¹² An informal transatlantic group addressed narrow issues of limited technical accords, such as mutual recognition agreements and an agreement on information technologies.

Not all was positive. The failure of the Clinton administration to obtain fast-track negotiating authority prevented the accession of Chile to NAFTA and removed the momentum from plans for an FTAA. Consequently Chile, which was considered a likely fourth member of the NAFTA until negotiations with the Clinton administration ended, became a fulcrum for several agreements. Chile concluded negotiations for a free trade pact with Canada¹³ and completed a trade liberalization pact with MERCOSUR.¹⁴ The proposed EU–South Africa free trade agreement encountered opposition within Europe by countries concerned about the potential of South Africa's agricultural exports and about the effect of such an FTA on relations with other countries in Africa.¹⁵ In spite of a dispute between Caribbean and Central American countries about banana trade with the EU, these constituencies¹⁶ and the Latin countries continued discussions in the 25-member Association of Caribbean States,¹⁷ which includes Cuba. Caribbean and Central American countries also managed to discuss political integration and common economic and social interests, with the view toward an eventual free trade pact.¹⁸

In a speech to the World Economic Forum at Davos, Switzerland, President Alberto Fujimori of Peru predicted that in the "very near future, Latin America will have one single enormous area as a common market and I think this will be one of the driving forces behind further economic development . . . we should secure policy convergence leading to free trade by 2005."¹⁹ In its 1996 annual report the WTO sounded a different note concerning the proliferation of regional trade arrangements, especially continentwide free trade arrangements, which "may have far reaching implications for the multilateral trading system."²⁰ It noted the two usual concerns: fragmentation of the world trading system and the "shifting of political momentum from multilateralism to regionalism."²¹

12. Reportedly at least some members of the Association of Southeast Asian Nations (ASEAN) are eyeing the Mekong region.

13. NAFTA: Maclaren Says Canada to Negotiate Pact with Chile to Ease NAFTA Accession, Int'l Trade Rep. (BNA) (Jan. 3, 1996). The free trade agreement covers goods, services, investment, and dispute settlement, as well as labor and environmental standards. *Id.* It was concluded in November.

14. International Agreements: Chile's MERCOSUR Membership Takes Effect: Average Customs Duties to Drop to 6.9 Percent, Int'l Trade Rep. (BNA) Oct. 9, 1996.

15. Bilateral Negotiations: Talks on EU–South Africa Pact Put on Hold Pending Study, Int'l Trade Rep. (BNA) (Jan. 31, 1996).

16. CARICOM was established in 1973 by the Treaty of Chaguaramas. The member states of CARICOM are Antigua and Barbuda, Belize, the Bahamas, Barbados, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Lucia, Saint Vincent, Saint Kitts and Nevis, Suriname, and Trinidad and Tobago.

17. The ACS members are 13 CARICOM members, Cuba, the Dominican Republic, Haiti, the nations of Central America, Colombia, Mexico, and Venezuela. There are 12 associate dependent territories and special members (England, France, and the Netherlands).

18. *Central America, Caribbean Ministers Debate Integration*, XINHUA NEWS AGENCY, Nov. 28, 1996 (LEXIS: Cumwvs).

19. International Agreements: Argentina, Peru Presidents to Press for Trade Liberalization, Integration, Int'l Trade Rep. (BNA) Feb. 7, 1996.

20. WTO, Annual Report 1996, Vol. 1 at 141. APEC countered the enlargement trend. At its November summit meeting the participants decided to place a moratorium on new memberships. The next group of members will be announced in 1998 and admitted in 1999.

21. WTO, Annual Report 1996, Vol. 1 at 141.

III. Accelerated Tariff Reductions and Progress on Technical Issues

Regionalized, preferential tariff reductions are a principal aspect of free trade areas and customs unions.²² Some free trade areas have accelerated the pace of their tariff reductions,²³ while others have either limited their product coverage or delayed tariff liberalization.²⁴

As an illustration, the participants in Asia Pacific Economic Cooperation included national tariff reductions in their agreement, as well as national "action plans," and an APEC action plan for achieving trade liberalization.²⁵ In April, at the request of the U.S. Trade Representative, the International Trade Commission held hearings on plans for attaining regional free trade to assist USTR prepare the U.S. action plan. The national action plans, as well as APEC collective action plans, were presented at the November 1996 summit in the Philippines. Indonesia, for example, reduced tariffs on average 60 percent and on a most favored nation basis on certain products, including scientific equipment, pulp and paper products, and automotive parts.

What was considered more significant was the agreement to work within the WTO, where the EU participates, to eliminate most tariffs on information technology by 2000. Other topics covered by the Joint Statement of the Eighth APEC Ministerial Meeting included trade and investment liberalization and facilitation, economic and technical cooperation, industrial science and technology, small and medium enterprises, transportation, telecommunications, tourism, trade and investment data, trade promotion, marine resource conservation, fisheries, agricultural technical cooperation, and sustainable development.

Members of ASEAN²⁶ have established an ASEAN Free Trade Area (ACTA),²⁷ which envisions a reduction in tariffs to zero to five percent on approximately 40,000 products by the year 2000 (2006 for Vietnam and 2010 for sensitive items). As an AFTA member Thailand announced in 1996 a round of tariff reductions on products ranging from machinery, electrical appliances, processed food, and paper/printing materials (normal track goods), to unprocessed agricultural goods, and motorcycles and radios (temporary exclusion list goods).²⁸

The MERCOSUR accord includes one special rule under which Brazil may be given approval by the Commerce Commission to reduce, temporarily, Brazilian external duties on goods that

22. Under Article XXIV:8(b) a free trade area must eliminate duties and other restrictive regulations of commerce on "substantially all the trade between the constituent territories in products originating in such territories." For a customs union, which involves tariff-free internal trade and a common external tariff, Article XXIV(a) requires that members eliminate duties and other restrictive regulations of commerce "with respect to substantially all the trade between constituent territories of the union or at least with respect to all the trade in products originating in such territories." *Id.*

23. This occurred within NAFTA and ASEAN.

24. These developments can be reviewed by the new WTO Committee on Regional Trade Arrangements. *See*, pp. 1054-63, *infra* for a discussion of the role of the Committee.

25. In 1994, at their meeting in Bogor, Indonesia, APEC participants had agreed to reach regional free trade and investment by 2010 for developed economy participants and 2020 for developing economy members.

26. ASEAN was created in 1967 by the ASEAN Bangkok Declaration August 8, 1967, 6 I.L.M. 1233. Its members are Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. In addition to the 1995 preferential trading arrangement, 35 I.L.M. 1092 (1996), ASEAN has extended its scope to include the ASEAN Framework Agreements on Intellectual Property Cooperation and on Services, 35 I.L.M. 1072 (1996). It is exploring ASEAN patents and trademarks and cooperation regarding investment in the region.

27. *See* Protocols Amending the Framework Agreement on Enhancing ASEAN Economic Cooperation, Amending the Common Effective Preferential Tariff and Amending the Agreement on ASEAN Preferential Trading Arrangements, *done* at Bangkok, Dec. 15, 1995, 35 I.L.M. 1081.

28. International Agreements: Thailand Approves More Reductions Under ASEAN Free Trade Agreement, *Int'l Trade Rep.* (BNA) (Jan. 31, 1996).

Brazil requires but that are not available from its MERCOSUR partners. Brazil was given a one-year authorization to reduce tariffs on 63 products, some to two percent and others to four percent.²⁹

IV. Expanded Scope

The expanded scope of regionalism can have positive consequences,³⁰ for example, through mutual recognition agreements; however, the discriminatory nature of regionalism can also have trade distorting consequences.³¹ "The considerable recent expansion in the number, scope and ambition of such initiatives has made it all the more essential to ensure not just that they conform to WTO rules but also that, in a wider sense, they reinforce, rather than detract from, the multilateral system."³²

APEC, the EU, MERCOSUR, and NAFTA illustrated the expanded scope of regional arrangements. While most limit their scope to the traditional trade issues,³³ these agreements may also touch on social issues such as accommodating the travel needs of businesspersons, sector-specific integration, and alternative dispute resolution. APEC is a case in point. At the November 1996 APEC summit, the participants reached agreements on technical issues (mutual recognition of standards and guidelines on telecommunications equipment standards) and customs cooperation (including common forms for manifests and electronic transmission of shipping documents). Moreover, the participants touched on the movement of businesspeople, with Australia, the Philippines, and South Korea creating an APEC business card to ease business travel.

A. SOCIAL ISSUES

Although the APEC Action Agenda is already broad, at their January 1996 meeting in Manila, APEC ministers began to discuss possible additional undertakings regarding human resources, especially vocational education and training. The ministers also called on international and regional organizations to give greater priority to education and skills training. This human resources agenda reached into technology, as the ministers recommended the development of a labor market information framework with national "focal institutions" disseminating labor

29. International Agreements: MERCOSUR Approves Tariff Cuts for Goods Imported by Brazil, Int'l Trade Rep. (BNA) (Feb. 14, 1996).

30. At the December Singapore WTO Ministerial Conference, the participants included a positive statement on regional agreements in their Declaration. "We note that trade relations of WTO Members are being increasingly influenced by regional trade agreements, which have expanded vastly in number, scope and coverage. Such initiatives can promote further liberalization and may assist least-developed, developing and transition economies in integrating into the international trading system. In this context, we note the importance of existing regional arrangements involving developing and least-developed countries. The expansion and extent of regional trade agreements make it important to analyse whether the system of WTO rights and obligations as it relates to regional trade agreements needs to be further clarified."

31. Peter Passell, *Trade Pacts by Regions: Not the Elixir as Advertised*, WALL ST. J., Feb. 4, 1997, at D1.

32. WTO, Annual Report, vol. 1 at 8.

33. For example the APEC Action Agenda encompasses fifteen areas: traditional trade issues (tariffs, nontariff measures, customs procedures, rules of origin, standards and conformance, government procurement, and dispute mediation), the new issues resulting from the WTO (services, investment, intellectual property), an issue identified for possible future multilateral negotiations (competition policy) and a NAFTA issue (mobility of businesspeople), Uruguay Round implementation, and information gathering and analysis. *International Agreements: APEC to Establish Expert Groups for implementing Action Agenda*, Int'l Trade Rep. (BNA) (Jan. 17, 1996). The Action Agenda follows nine principles: comprehensiveness, WTO consistency, comparability, nondiscrimination, transparency, standstill, simultaneous start and continuous process, and differentiated timetables, flexibility, and cooperation. *Id.*

market information. Such a framework will facilitate worker mobility by providing information concerning skills required, wages, and working conditions, through the use of various mediums, including the Internet.

For our neighbors, the members of the Caribbean Community and Common Market (CARICOM), the illegal drug trade presents a human issue recognized at the regional level. At their July summit CARICOM agreed to consolidate into a regional agreement their bilateral agreements concerning drug interdiction efforts.

B. SECTOR SPECIFIC AGREEMENTS

In addition to the developments already discussed there were agreements of a narrower scope. For example, Argentina and Brazil signed an agreement on automobile trade. The agreement establishes the first step toward their goal of a unified binational automobile and automobile parts industry by the year 2000.³⁴ Although not a true regional economic free trade area, this agreement was the end product of a proposal for a transatlantic FTA.³⁵ At its November meeting in Chicago the United States and European Union reached agreement on mutual recognition in . . . sectors: And reached an agreement on information technology.

C. ALTERNATIVE DISPUTE SETTLEMENT

The settlement of public and private disputes is a traditional hallmark of regional arrangements. There are two new developments as well: attention to alternative dispute resolution (ADR) and agreements to create regional courts.³⁶

Both NAFTA and APEC had developments regarding ADR in 1996. Article 2022 of the North American Free Trade Agreement encourages the use of arbitration and other means of alternative dispute resolution when there are international commercial disputes.³⁷ In March the Mediation and Arbitration Rules of the Commercial Arbitration and Mediation Center for the Americas (CAMCA) were agreed upon by the American Arbitration Association, the British Columbia International Commercial Arbitration Centre, the Mexico City National Chamber of Commerce, and the Quebec National and International Commercial Arbitration Centre.³⁸ According to CAMCA, the Rules may be used to regulate the arbitration or mediation of disputes about investment and trade, construction, employment, financial services, franchising, intellectual property, manufacturing, oil and gas, among other possibilities.³⁹ The Rules address

34. Bilateral Negotiations: Argentina, Brazil Sign Four Year Car Trade Pact, *Int'l Trade Rep.* (BNA) (Jan. 24, 1996).

35. The TABD Framework for Action has four goals: promoting peace and stability, democracy and development throughout the world; responding to global challenges; contributing to the expansion of world trade and closer economic relations; and building bridges across the Atlantic. "Without detracting from our cooperation in multilateral fora, we will create a New TransAtlantic Marketplace by progressively reducing or eliminating barriers that hinder the flow of goods, services and capital between us." Strengthened regulatory cooperation, customs cooperation and mutual assistance, a TransAtlantic Information Society, and a joint working group on employment and labor-related issues were included in the original 1995 TABD Agenda.

36. Of course, the Court of Justice of the European Community is far from new, having been created under the 1957 Treaty of Rome. The Court of First Instance and Court of Auditors are of later date. Most other regional economic groups have shied away from the creation of supranational regional courts.

37. 32 I.L.M. 698 (1993).

38. 35 I.L.M. 1541 (1996). "The parties shall be deemed to have made these rules a part of their mediation agreement whenever they have provided for mediation by the Commercial Arbitration and Mediation Center for the Americas . . . under its . . . rules." *Id.* at 1546.

39. CAMCA suggests contractual clauses and language for the submission of controversies to its procedures. 35 I.L.M. 1544.

how to begin the procedure, general conditions for the mediation or arbitration, the mediator or arbitral tribunal, expenses and fees, as well as other topics.

In April the APEC Dispute Mediation Experts Group issued its second report on a Voluntary Consultative Dispute Mediation Service.⁴⁰ The use of mediation, rather than arbitration, had been considered more appropriate in an Asian setting by the Eminent Persons Group, which in 1995 recommended a dispute mediation system.⁴¹ Applying to private, government dispute mediation and the mediation of disputes between private parties, the Experts Group recommended that APEC members accede by 1997 to international dispute settlement agreements. The International Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) are two such agreements. The expert group also noted the importance of transparency, education, and training in the avoidance and settlement of disputes.

MERCOSUR and CARICOM took another approach: regional courts. In June MERCOSUR agreed to establish a court, with supranational authority, to resolve trade disputes.⁴² Subsequently, in November, based on a recommendation of the Attorneys General of the CARICOM countries, CARICOM agreed to establish by October 1997 a Caribbean Supreme Court. As a result the Supreme Court, rather than the Judicial Committee of the British Privy Council, will hear appeals.⁴³

V. Private Sector Involvement

The private sector increased its involvement—formally and informally—in regional developments. Usually this involvement was welcomed, if not encouraged, by the public sector.

APEC formally welcomed the participation of business groups in its discussions. The Eminent Persons Group that published several papers on APEC issues⁴⁴ and its successor, the Pacific Economic Cooperation Council, are examples. Philippine President Fidel Ramos recommended the formal inclusion of a special panel of business leaders in the Manila Action Plan for APEC in 1996.⁴⁵ The summit Leaders' Declaration affirmed the "central role of the business sector in the APEC process" and recognized the APEC Business Advisory Council (ABAC).⁴⁶ Business participants in TABD pushed their agenda in Chicago in November, as they had in Seville in 1995. Alex Trotman, the President and Chief Executive Officer of the Ford Motor Company,

40. 35 I.L.M. 1102 (1996).

41. Achieving the APEC Vision: Free and Open Trade in the Asia Pacific, Second Report of the Eminent Persons Group (1995). At the Bogor Summit APEC decided to study a "voluntary consultative dispute mediation service, to supplement the WTO dispute settlement mechanism." APEC Leaders' Declaration of Common Resolve, done at Bangkok, Dec. 15, 1995, 35 I.L.M. 1063.

42. International Agreements: MERCOSUR Countries to Establish Supranational Bank and Court, Int'l Trade Rep. (BNA) (June 12, 1996). At the same time they agreed to establish a Common Investment and Development Bank to finance infrastructure projects and to improve energy transmission. *Id.*

43. *Caribbean Countries Agree to Set Up Final Appeals Court*, AGENCE FRANCE PRESSE, NOV. 1, 1996; *CARIBBEAN/Supreme Court*, LATIN AM. NEWSLETTERS LTD., NOV. 14, 1996.

44. A series of papers on APEC were published by the Washington, D.C.-based Institute for International Economics. See, e.g., MARCUS NOLAND, IMPLICATIONS OF ASIAN ECONOMIC GROWTH (1994).

45. International Agreements: Philippine President Calls for Private Sector Input in APEC Process, Int'l Trade Rep. (BNA) (Feb. 7, 1996).

46. The APEC Leaders' Declaration: *From Vision to Action* is reprinted in Int'l Trade Rep (BNA) (Nov. 27, 1996). Among the ABAC recommendations were improved movement of businesspeople, enhanced investment flows, strengthened investment protection (transparency), arbitration and enforcement of contracts, support for small and medium-sized enterprises, and the alignment of professional standards. *Id.*

called MERCOSUR an "important and positive development." In fact he urged Mexico's participation and links with other trade blocs. "From a manufacturer's viewpoint, this is all about scale, efficiency and competitiveness."⁴⁷

The FTAA preparations also involve the private sector, a situation endorsed by Ambassador Charlene Barshefsky, who suggested modeling FTAA business participation along the lines of the APEC structure.⁴⁸ There was an Americas Business Forum during the March western hemisphere trade ministers meeting in Cartagena.

VI. WTO Activities

During this year of hectic activity, the World Trade Organization considered that "significant progress" was made in its "consideration of regional trade agreements in relation to the multilateral system." In its 1996 Annual Report the WTO noted a "virtual global consensus on the fundamentals of trade policy" and lauded the role of open trade policies in the "rapid advance of global economic interdependence."⁴⁹

The WTO began to exercise its new authority to review free trade areas and customs unions.⁵⁰ That new authority arises from the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994. The Understanding is one of the documents in Annex 1A to the Agreement Establishing the World Trade Organization and, specifically, is part of the 1994 General Agreement on Tariffs and Trade. The Understanding interprets some of the general language in Article XXIV of the 1947 General Agreement on Tariffs and Trade, and resolves some recurring difficulties. The goal was to partially close the breadth of this exception, narrowing it to most favored nation treatment.

For example, as a result of the Understanding a customs union must submit import statistics for a previous representative period, determined on a tariff line basis and in values and quantities broken down by WTO country of origin. This procedure will allow the WTO to determine whether the formation of the customs union will result in a general incidence of duties and regulations of commerce that is higher or more restrictive than was the general incidence before the customs union.⁵¹ The assessment of the general incidence will be based on the applied duties. Additionally, the Understanding clarifies that central governments will be held responsible for the actions of their sub-central governmental bodies whose measures conflict with the GATT 1994 in any dispute settlement proceeding.

The Understanding provides for the use of Working Parties to review future free trade areas, customs unions, and interim agreements. These Working Parties can also make recommendations to the Council for Trade in Goods. However, in February 1996 the WTO General Council established a Committee on Regional Trade Agreements,⁵² which met for the first time in May 1996.

47. International Agreements: Argentina, Peru Presidents at 207.

48. International Agreements: Process for Business Participation Is Primary Objective of Business Forum, *Int'l Trade Rep. (BNA)* (Feb. 21, 1996).

49. WTO, Annual Report 1996, vol. 1 at 4.

50. Notifications of new agreements and interim arrangements will be examined in light of the GATT 1994 and the requirements of Article XXIV:5-8. Understanding, sec. 7. The WTO review may result in recommendations regarding the proposed time-frame and measures required to complete the formation of the agreement.

51. Article XXIV: See The Uruguay Round Agreements Act, Statement of Administrative Action at 38-39.

52. Canada in 1995 had proposed such a committee.

Under its terms of reference the Committee must examine and report on all bilateral, regional, and plurilateral preferential agreements under procedures established by the Council for Trade in Goods, the Council for Trade in Services, or the Committee on Trade and Development. This work will include examining new agreements and assuming the work of existing working parties. The Committee must make recommendations to improve reporting on the operation of these agreements, especially how to implement the biannual reporting requirement in the Understanding. The Committee will also develop procedures to facilitate and improve the examination process, with the aim of streamlining the process in mind. Another important function of the Committee is to examine and clarify the "systemic implications of such agreements and regional initiatives for the multilateral trading system and the relationship between them." The terms of reference of the Committee allow it to carry out any other functions assigned to it by the General Council.⁵³

At its first meeting the Committee planned to hold another five meetings during 1996 and to examine 23 agreements, including the existing NAFTA,⁵⁴ MERCOSUR⁵⁵ and EU. In July 1996 it actually reviewed the enlargement of the EU to include Austria, Finland, and Sweden as new Member States. The Committee examined 21 of the 32 (then) existing regional trade agreements, became the forum for discussing relevant WTO issues, and created a "Standard Format for Information on Regional Trade Agreements" to be used for Article XXIV notifications.⁵⁶ The Committee also identified relevant issues that are worthy of consideration because of their "importance for its consideration of the systemic implications of regional trade agreements."⁵⁷

VII. FTAA Negotiations

The future negotiators of a planned Free Trade Area of the Americas must decide the scope of such an agreement, the structure for it, and the timing of commitments. At the 1994 Miami Summit of the Americas, the 34 western hemisphere democracies (Cuba did not participate) agreed to reach an FTAA by the year 2005. Seven working groups collected data during 1996 with the goal of being able to recommend possible approaches to the FTAA's treatment of traditional trade issues (*e.g.*, market access, customs procedures and rules of origin, standards and technical barriers to trade, sanitary and phytosanitary measures, subsidies, antidumping and countervailing duties), a new issue (investment), and smaller economies. At the suggestion of the United States, working groups on government procurement, intellectual property, services, and competition policy were added at the Cartagena, Colombia, summit in 1996.

53. WTO, Annual Report, vol. 1 at 142-43.

54. A Working Party had been established in 1995 to examine the NAFTA. Among the questions that had been posed by Members concerned the impact on third countries, national treatment, rules of origin, quantitative restrictions on agricultural trade, technical barriers to trade, trade in services, foreign investment, trade-related intellectual property rights, and the Mexican system of customs valuation. WTO, Annual Report 1996, vol. 1 at 145.

55. A Working Party on MERCOSUR had been established in 1993. At its October 1995 meeting several questions were raised by Members, including questions about planned tariff and nontariff liberalization, the common external tariff, coordination of macro economic policies, national treatment, the relationship between MERCOSUR and the Latin American Integration Association and MERCOSUR's plans for relationship with other arrangements in the hemisphere, dispute resolution, and accession of other Members in the region. WTO, Annual Report, vol. 1 at 145.

56. WTO, Annual Report 1996, vol. 1 at 8.

57. WTO, Annual Report 1996, vol. 1 at 8.

Other regional institutions are involved in FTAA preparations. For example, both the Inter-American Development Bank⁵⁸ and the Organization of American States⁵⁹ are providing research and support for the working group on investment. That working group made a comparative analysis of investment schemes in the region, using the reports of the IADB and OAS. Regarding the modalities of the negotiations, MERCOSUR proposed in November that the process of creating an FTAA involve two stages of business facilitation followed by market access negotiations.

VIII. Conclusion

The nature of 1996 developments regarding regional economic integration is so varied that it is almost impossible to generalize. The increases in these types of arrangements and in the numbers of countries involved, coupled with their expanded substantive scope, are creating new bodies of law and presenting new challenges to the multilateral system. Those laws should not be ignored by attorneys who counsel clients concerning international transactions.

58. The IADB began in 1996 to update its study of investment regimes in the region.

59. The OAS compiled an inventory of regional, bilateral investment treaties.