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PREFERENTIAL TREATMENT IN TRADE: IS THERE ANY ROOM LEFT IN THE AMERICAS?

Fernando Masi

Seven years after the conclusion of the Uruguay Round of the General Agreement on Tariffs and Trade, the developing countries find the agreement's results disappointing. Inroads in market access for their products have barely been attained. Since asymmetries in the Uruguay Round were only recognized for the least developed countries, preferential trade treatment has been maintained at a minimum level for the rest of the developing world. Will negotiations within the Free Trade Area of the Americas (FTAA) follow the Uruguay Round's path? Will countries and subregions within the Western Hemisphere be treated as equals in the FTAA — regardless of their sizes, economic capacities, and trade competitiveness? How will costs and benefits be distributed among the developed and the developing countries of the Americas?

Leveling the playing field of hemispheric trade through mechanisms of preferential treatment should not obstruct the formation of the FTAA. Instead, agreement on acceptable measures would help developing countries to avoid great losses and to become much more competitive.

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The Dante B. Fascell North-South Center
UNIVERSITY OF MIAMI
1500 Monza Avenue, Coral Gables,
Florida 33146-3027

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ABSTRACT

Developing countries lost their special status in international trade after the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) was concluded in 1994. Preferential treatment had been established to reduce asymmetries and to allow developing countries an increasing participation in international trade. At the Uruguay Round,[1] preferential treatment was retained only to help the least developed countries for a designated period of time. Also, in order to have greater access to markets in the developed world, developing countries accepted the inclusion of nontrade-related issues in multilateral agreements. In the American continent, new integration and free trade areas — such as the Southern Common Market (Mercado Común del Sur — MERCOSUR) and the North American Free Trade Agreement (NAFTA) — followed the new World Trade Organization's (WTO) provisions on preferential treatment. At the same time, old, and in some cases, reactivated integration projects — such as the Andean Community (Comunidad Andina — ANC); the Central American Common Market — (CACM); and the Caribbean Community and Common Market — (CARICOM) — maintained nonreciprocity for less developed countries. However, the Uruguay Round was disappointing for developing countries, and new demands to revise or enlarge the scope of preferential treatment have been posed before a new trade round within the WTO. In the Americas, preferential treatment proposals put forward during negotiations toward a hemispheric free trade area, the Free Trade Area of the Americas (FTAA), have met strong opposition by developed countries. This paper recommends a search for a new alternative for preferential treatment without obstructing the building of an FTAA.

Introduction

This paper evaluates the costs and benefits of changes brought by the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) on special and differential treatment (S&D); shows how these changes affected the new regional integration processes in the American continent; and examines whether this issue is still a priority of developing countries' agendas. Large concessions offered by developing countries in exchange for access to markets automatically led to "trade graduation." Thus, S&D has lost its former significance among developing countries. Moreover, nonreciprocal treatment was retained for least developed countries, which do not even enjoy this type of treatment under the so-called "new trade-related issues" of services, investment, and intellectual property rights.

The first part of this paper examines the nature of S&D before the Uruguay Round and the pros and cons of this treatment for developing countries. The second and third parts explain the

Fernando Masi is a Fulbright Scholar of The Dante B. Fascell North-South Center, a Senior Researcher at the Centro de Análisis y Difusión de Economía Paraguaya (CADEP) and at the Red de Investigaciones Económicas del Mercosur (RED MERCOSUR). He is an Assistant Professor at the School of Economics of the Catholic University (Asunción), and he has worked for the World Bank and for the United Nations Development Programme (UNDP).

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Uruguay Round's main results and changes brought about in S&D and the decreasing significance of this issue within new integration agreements in the Western Hemisphere. The fourth part deals with special treatment measures and how these measures have been negotiated so far in working groups within the proposed Free Trade Area of the Americas (FTAA). The paper concludes with a final assessment of losses and gains of developing countries after the Uruguay Round, proposing alternatives of negotiating S&D in the Americas.

The Making of Special and Differential Treatment

Several arguments in favor of a differential trade treatment for developing countries have been made ever since the foundation of GATT. The first argument points to the fact that elements for a proper functioning of markets are missing in developing countries. A second argument underlines the absence of equal terms of trade between developed and developing countries and hence to the lack of capacity of developing countries to influence world trade. In turn, this argument is also linked to a third, regarding protectionist measures established by developed countries in terms of agriculture and textile products from developing countries. The fourth argument is somewhat related to the first one, in the sense that wide differences in levels of development preclude developing countries from following the rules of the game in world trade as set up by developed countries.

In 1979, The Tokyo Round (TR) codified these arguments under a special provision and translated them into a particular status: special and differential treatment, abbreviated as S&D. Under this provision, called the "Enabling Clause,"[2] developing countries had the right to trade restraints to promote industrialization, the right of preferential access to markets, and the right to nonreciprocity. The two most important features of this Enabling Clause were the following: First, "least developed countries" was a category regarded as separate from more advanced developing countries; hence, more favorable treatment was established for countries in the least developed category. Second, the TR permanently extended developing countries' rights to various General System of Preferences (GSP) provisions established in 1971 that had originally been intended to apply for only 10 years. Moreover, developed countries were permitted to set their own rules of eligibility for GSP treatment (Oyejide 1998, 20).

Several objections to the establishment of S&D preferences have been raised, especially regarding the costs of such concessions for the international trade system and for developing countries them-

DEFINITIONS OF TERMS

Developed countries are the United States, Canada, the countries in the European Union, Japan, and the new industrialized countries of Asia.

Developing countries are all countries that are not classified in the economic literature as industrial or "developed countries."

Least developed countries are included within the generic category of "developing countries," but they are those very poor countries with a per capita income of US$1,000 or less.

In this paper, the above terms are used in reference to the Uruguay Round of GATT and the World Trade Organization. The term "developing countries" is also used when comparisons are made within the Western Hemisphere between the United States and Canada (developed countries) and the Latin American and Caribbean countries (developing countries).

When comparisons are made among and between countries within the Latin American and Caribbean region, three other terms are also used:

More developed countries **(MDCs)** are those with a higher GDP per capita and a higher trade share than other developing countries.

Less developed countries **(LDCs)** are those with a lower GDP per capita and a lower trade share than "more developed countries."

Small and relatively lesser developed economies **(SRLDEs)** is a new designation that varies according to levels of per capita income. (See the OAS Trade Unit's website for detailed information: <http://www.sice.oas.org/tunit/studies/secon/index.asp>.)

selves. One of these objections concerns the damage done to the principles of reciprocity and multilateralism. According to this argument, preferential trade concessions offered to developing countries have permitted the build-up of different schemes of trade protection other than tariffs in developed countries without breaking the GATT rules (Wolf 1985). A similar argument shows that the trade system reached a zero sum game when developing countries abused the use of import quotas and other types of restrictions, confronting the use and abuse of nontariff barriers (NTBs) by developed countries (Low 1990).

The benefits of S&D cannot be ignored, however. Protection of infant industries in developing countries not only has contributed to growth, but has also provided those countries access to markets. Conversely, balance of payments restrictions contributed somewhat to macroeconomic stability, a necessary condition for sustainable economic growth. Although this positive effect was concentrated in a few developing countries, especially those already enjoying dynamic growth, preferential treatment had an important microeconomic impact on developing countries.

The existence of asymmetries in trade relations was accepted as a fact by all integration experiences in Latin America and the Caribbean (LAC) in the 1960s and 1970s. For instance, the Latin American Free Trade Association (LAFTA), which included all countries in South America plus Mexico, recognized three levels of development among countries associated with this initiative. For each one of these levels, a different trade treatment was granted, and preferences were provided to those countries classified as "less developed." Most of these preferences remained when LAFTA became the Latin American Integration Association (LAIA) in 1980. Other integration processes — the Andean Pact, the Central American Common Market (CACM), and the Caribbean Free Trade Association-Caribbean Community and Common Market (CARIFTA-CARICOM) — followed the same path of LAFTA-LAIA in treating asymmetries, adding some other preferential treatment provisions for less developed countries in terms of building infrastructure, fostering industrialization, and channeling investment flows.[3] However, preferential treatment in the region was not respected by members of LAFTA and LAIA, and it was barely implemented by the other trade agreements. This situation was due, first, to the import substitution policies of the more developed countries in the region and, second, to the weakness of the integration process itself, which did not go beyond the stage of a preferential tariff and never became a free trade zone.[4] As integration experiences in Latin America in the 1960s and 1970s did not flourish, special and differential treatment also did not succeed.

Enter the Uruguay Round: New Rules

The debt crisis of the 1980s for developing countries put an end to the excesses of the import-substitution model. Structural adjustment programs led to unilateral trade liberalization. At the same time and in order to gain competitiveness, a new generation of regional agreements was born. In fact, regional integration agreements have multiplied during the 1980s and 1990s among developing countries, but these agreements have a different orientation from the integration experiments of past decades. Recent regional integration has been viewed not as a means of protectionism or trade deviation, but as a means of enhancing trade creation and lessening high protection. This new experience has been called "open regionalism," one of the strongest responses from developing countries to the failures of multilateral agreements within GATT.

In LAC countries, open regionalism also meant that S&D was no longer needed or at least was not an important issue to negotiate in new regional agreements originated in the 1990s. This was the case for MERCOSUR and NAFTA. But it was not the case for the Andean Pact and the CACM (both of which were revitalized in the 1990s) and for the CARICOM integration processes, all of which included historical and new S&D provisions.

Besides trade reorientations — not limited to LAC — and the inauguration of open regionalism, another factor contributed to dilute S&D in the Uruguay Round. Developing countries focused their demands on market access. One of the main arguments posed by developing countries for phasing out the tariff and NTBs of developed countries was their own policy of unilateral trade liberalization. Before the Uruguay Round, the core of S&D treatment, as it was known until that time, became threadbare (Glover and Tussie 1993, 229-230).

Main Results of the Uruguay Round

In order to understand the Uruguay Round's impact on developing countries, S&D measures should be classified in two categories: actions taken by developed countries to permit greater market access and exceptions to rules for developing and least developed countries. The impact of the Uruguay Round on developing countries in trade-related agreements and norms, such as the General Agreement on Trade in Services (GATS), the Trade-Related Investment Measures (TRIMs), and Trade-Related Aspects of Intellectual Property Rights (TRIPs), will also be assessed.

In terms of market access, developing countries benefited from the lowering of tariff barriers on products traditionally exported by them and by the lifting of all voluntary export restraints (other than textiles and clothing) to be completed by the year 2000. The Uruguay Round made a commitment to end the Multifiber Agreement (MFA) and bilateral export restraints and to restore normal GATT rules by 2005. The use of safeguards for textile products, however, will not be in place when least developed countries export a volume of textiles or clothing that accounts for only a small percentage of the total purchase of this type of product by the importing countries.

Trade liberalization in agriculture as a result of the Uruguay Round follows at a slower pace, even though negotiations for further liberalization were started in 2000. Agreements made at the Uruguay Round stated that subsidies were to be cut at a faster pace in developed countries than in developing countries. Exemptions on cutting subsidies were maintained for least developed countries. In addition, most import restrictions were converted into tariffs, with the exception of measures taken due to reasons related to balance of payments problems.[5] Special safeguards provisions and countervailing duties are restricted to some sensitive products that vary from country to country.

After the Uruguay agreement, S&D in the case of agriculture applies, first, to time exceptions for developing countries, which are given a 10-year period to reduce domestic support subsidies (investment and import subsidies) and export subsidies. Developed countries were given six years for this reduction. Second, certain types of investment subsidies to agriculture adopted by developing countries were exempted from this reduction.[6] Third, domestic support subsidies to developing countries that do not exceed 10 percent of the total value of production were also excluded from reduction commitments (*deminimis* clause). No reduction commitments are applied to least developed countries. In the case of possible negative effects of agriculture liberalization on least developed and net food-importing countries, the Uruguay Round established certain measures to assure an appropriate level of food aid commitments toward those countries, so that more concessionary terms could be provided for importing basic foodstuff by these countries. Special programs were also devised for technical and financial assistance to improve agriculture productivity, and S&D applies for any agreement relating to agricultural export credit for developing countries.

Exceptions to the rules agreed upon at the Uruguay Round apply to the following topics: sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), antidumping, subsidies and countervailing measures, and safeguards and balance of payments restrictions. Under the SPS, S&D is applied only in terms of the longer time limit allowed to impose these measures, in order to take into account the developing countries' financial and trade needs for exports. Technical assistance is recommended for these countries to help them comply with SPS levels in export markets. Time-limit exceptions and technical assistance to developing and least developed countries are also included in the S&D treatment for the rules on TBTs.[7]

The Uruguay Round included few S&D provisions in the area of antidumping measures; thus, it made little impact in this respect. Developing countries were given the chance to negotiate with developed countries before they apply any measure that could affect their most vital interests to resolve those potential problems in advance.

Subsidies at the Uruguay Round were classified in accordance to countervailing actions that may take place if those subsidies are applied. Subsidies permitted will be those directed at research and development (R&D) and regional development as well as subsidies translated into expenditures to implement new environmental laws, also known as nonactionable subsidies. Export subsidies and subsidies that favor domestic over import inputs are not permitted; such actionable subsidies are subject to countervailing duties. A third category of subsidies may be subject to countervailing actions, depending on the injuries caused to countries. The Uruguay Round, however, granted developing countries the exemption in

the case of serious injuries resulting from the use of actionable subsidies.

According to the Uruguay Round, developing countries have a maximum of eight years to phase out all export subsidies, while countries with a per capita income of less than US$1,000 can maintain all export subsidies. Further, the maximum eight-year time limit provided to a developing country to comply with the new rules on subsidies does not hold when the developing country obtains export competitiveness in a shorter period of time. Countervailing duties to developing and least developed countries will not be applied by developed countries when the developed country's export subsidies do not affect a considerable percentage of imports from the developing countries (*deminimis* clause).[8]

In terms of safeguards, the Uruguay Round retained certain exemptions; some selected ones are kept but only for a limited period of time. For example, S&D provides exemptions on the use of safeguards but only in cases of a very low participation (less than 3 percent) in the total number of products imported by developed countries that may use this type of measure. Also, according to the Round, developing countries that exert safeguards measures could extend the time of application of this provision up to two years beyond the maximum period provided at the Round.

The use of import quantitative restrictions by developing countries as part of S&D also has been limited by the Uruguay Round. For example, developing countries can still claim balance of payments problems to impose those restrictions but only in critical cases and without discrimination among products.

So far, the developing countries' surrendering of nonreciprocal S&D at the Uruguay Round has not brought them significant entrance into the markets of developed countries. In the case of trade liberalization in agriculture, clear gains for developing countries are difficult to observe. Agricultural commodities are still the most sensitive area for developing countries in world trade. Thus, if no clear progress is made on market access in this area in the near future, developing countries probably will end up in a more adverse situation than in the pre-Uruguay Round period.

Nonreciprocal S&D provisions were only maintained for least developed countries through the *deminimis* clause, and these provisions were concentrated in safeguards exemptions (textiles) and in export and domestic subsidies (agriculture). Paradoxically, developed countries benefited more than developing countries from the process of phasing out subsidies. The only types of subsidies permitted now are for those areas directed at R&D and environmental protection, both areas in which only developed countries can afford to make significant investments. Moreover, an excessive use of antidumping measures has translated this tool into a new trade barrier, primarily hurting least developed and developing countries.

Developing Countries and the "New Issues" in the Uruguay Round

Apart from surrendering nonreciprocal S&D in exchange for apparent market access, developing countries had to make other concessions so that new trade-related issues could be included in the WTO agenda. Liberalization of services and investment has been a part of the "new issues" included within the Uruguay Round. At the same time, developed countries have strongly pressed for the inclusion of non-liberalization issues in the trade agenda, such as intellectual property rights, labor, and environment. S&D treatment is practically negligible within these new multilateral agreements at the WTO. The question of whether S&D is present in the agreements concerning services and investment is still irrelevant — for services, because it is a simple legal framework for starting negotiations to liberalize, and for investment, because developing countries have unilaterally started to lift restrictions on foreign investment. Nevertheless, an agreement on liberalization of services based on positive lists rather than negative stipulations is more beneficial to developing countries.

One of the major concessions made by developing countries within the "new issues" is related to the protection of TRIPs.[9] The costs for reaching international standards within TRIPS, as well as enforcing new domestic laws, would be higher for developing countries. At the same time, a partial or inadequate enforcement or control of TRIPs in developing countries (the likelihood of this outcome is high) could lead to trade sanctions and halting investments by developed countries. Moreover, TRIPs might become the platform for the constitution of monopolies, especially in the pharmaceutical industry, with adverse consequences for developing countries. Even though S&D provisions are granted to developing and

least developed countries within TRIPS, again, they are only granted in terms of providing a transitional period of time and technical cooperation to help these countries comply with enforcement of rules.[10]

Environmental and labor issues were not part of the Uruguay Round. However, two main reasons have been set forth by developed countries for the creation of multilateral arrangements on these issues. First, a significant reduction of trade barriers in the world has resulted in rising costs in environmental and labor standards for developed countries in comparison with developing countries. Second, over the last several years, according to developed countries, trade and financial liberalization have encouraged a significant flow of foreign direct investment (FDI) from developed countries to developing countries, where environmental and labor regulations are more relaxed. So far, WTO policy on these matters has been either to encourage the use of means other than trade sanctions to protect the environment or to enforce labor standards in developing countries. Moreover, developing countries have firmly opposed the inclusion of these new issues within the multilateral trade agreements based on arguments of a new type of protectionism.

In addition, a "new issue" introduced into the discussions at the WTO after the Uruguay Round has been competition policy. A multilateral agreement on competition policy at the WTO would be beneficial to developing countries, especially by providing them market access to developed countries. Such a treaty would also be beneficial for controlling and regulating mergers and acquisitions by FDI in the developing world and for eventually replacing antidumping measures. However, different stages of market development among countries could slow the process of harmonizing national competition policies.

In Search of More S&D

New proposals for widening the scope of preferential treatment to developing and least developed countries have been presented in order to reduce cost-benefit imbalances derived from the Uruguay Round. These proposals were formulated before and after the Seattle Conference (November 1999).

In terms of agriculture, developing countries and least developed countries have requested the elimination of export subsidies by developed countries and the use of special safeguards provisions by developing and least developed countries on a permanent basis as a part of S&D. Also, developing and least developed countries have asked for the formation of a Development Box to protect and foster the domestic food production capacity in developing and least developed countries and to allow a 20-percent increase of the *deminimis* domestic support subsidies for developing countries (UNCTAD 2000, 5-6).

A new proposal for handling SPS and TBT measures for developing and least developed countries acknowledges the existence of different levels of development and calls for the formulation of "international standards" based on specific conditions prevailing in developing countries. At the same time, the new proposal urges developed countries to offer longer time frames to developing and least developed countries so that they can adapt more easily to SPS and TBT measures (UNCTAD 2000, 7-8).

In terms of antidumping, the major S&D proposals submitted to the WTO ask for a revision of criteria for initiating an investigation of "dumped" imports as well as for an increase in the existing 2-percent *deminimis* dumping margin on export prices "...below which no antidumping duty can be imposed for developing countries" (UNCTAD 2000, 4, 18). Developing countries reason that antidumping should not be imposed on goods that represent such small percentages of export prices.

By the end of 1999, developing countries had also requested that the WTO increase the *deminimis* level of export subsidies not subject to countervailing duties and that developing countries be allowed the use of competitive export financing instead of conditions offered by credit agencies in developed countries (UNCTAD 2000, 10-11).[11] In terms of safeguards, the proposal presented by developing countries for the next negotiation round is to increase the minimum exemption rate of 3 percent to 7 percent of the total products imported by developed countries on the use of this trade mechanism (UNCTAD 2000, 10-11).

As for trade in services, new proposals on preferential treatment for developing countries attempt to prevent adverse impacts when further liberalization takes place in this area. The new proposals ask 1) that more flexibility be given to developing countries as the process of liberalizing services proceeds, 2) that future GATS always be

based on the positive list approach, and 3) that negotiating credits be granted to developing countries when they undertake autonomous liberalization in services. In relation to the post-Uruguay Round agreement reached on liberalizing telecommunication services, a proposal of preferential treatment calls for creating emergency safeguards mechanisms (ESMs) in favor of developing countries within GATS (UNCTAD 2000, 14-15).

In the area of TRIPs, several proposals have been placed on the negotiating table for the inclusion of new S&D provisions. First of all, a proposal was presented to extend the transition period for developing countries. Second, another request called for increasing the scope of TRIPs to include indigenous knowledge and farmers' rights, as well making TRIPs compatible with the Convention of Bio-Diversity. Third, a new proposal asked for transfer of technology to developing countries to be made on "*fair and mutually advantageous terms*" (UNCTAD 2000, 16-17).

S&D and Regional Integration in the Americas after the Uruguay Round

As a result of the Uruguay Round, preferential treatment has diminished and has been confined almost exclusively to least developed countries. The idea that developing countries had to adjust their trade policies to the new rules inaugurated by the Round has been present in the treaties that gave birth to new regional integration initiatives in the hemisphere. Thus, S&D treatment does not seem to be part of the core trade agreements in NAFTA and MERCOSUR, and the concept of "smaller economies" at the FTAA does not appear to represent different treatment as in the pre-Uruguay Round period. However, old regional experiences like CACM, ANC, and CARICOM still seem to preserve nonreciprocal trade treatment, even including nontrade means to treat less developed economies.

Since its creation in 1994, NAFTA's aim has been to become a completely free trade zone by the year 2010. For example, a tariff reduction timetable was set, so that most of the products will have zero tariffs within a term of 10 years. However, a 15-year term was agreed upon for the complete liberalization of tariffs in the case of certain more sensitive products. In terms of trade concessions, moreover, Mexico had to lower its tariffs five times more than the United States, simply because the Mexican economy was more protected than the U.S. economy before the NAFTA agreement was signed (ECLAC 1997, 5).[12]

Trade liberalization in agriculture since the Uruguay Round follows a slower pace than other products. This is because Mexico, the United States, and Canada have claimed a prolonged timetable for sensitive products (10 to 15 years). For example, no export or production subsidies for Mexican agriculture were permitted after the Uruguay Round. To compensate Mexico for this loss, it was also determined that no SPS rules would be applied to Mexican agricultural products entering Canada and the United States (ECLAC 1997, 6).

Under NAFTA, Mexican textiles and clothing exports to the United States are free of tariffs, quotas, and safeguards measures if the final product contains some manufactured inputs made in the United States. In the case of U.S. textile exports to Mexico, 20 percent of these products were immediately freed from tariffs, while it was agreed that the remaining 80 percent would be phased out by the year 2000. Also, Mexican quotas were eliminated, although safeguards measures may be applied in special cases (ECLAC 1997, 30-31). Antidumping and countervailing duties, extensively used by the United States before and after the Uruguay Round, remained untouched by NAFTA and may only be lifted if the cases are brought to a dispute-settlement system established by NAFTA (ECLAC 1997, 8).[13] As part of NAFTA, moreover, Mexico agreed to be treated as a developed, not a developing, country; therefore, it was not provided S&D status. Nevertheless, the benefits reaped by Mexico under NAFTA have substantially helped it overcome this limitation. For instance, Mexican exports to the United States have increased from US$80 billion to US$250 billion since 1994, while FDI to Mexico has grown by US$9.4 billion per year, in comparison with US$4.5 billion per year from 1991 to 1993 (Schott 1997, 8, 10, 14; *Gazeta Mercantil Latinoamericana 2000*) (See Table 1).

MERCOSUR

In the case of the smaller economies in MERCOSUR, there also seems to be absence of S&D treatment. The Treaty of Asunción (1991) aimed for the formation of a common market to "accelerate economic development with social justice" for the countries in the region; the Treaty also called for the construction of the common market to be

based on the principles of "gradualism, flexibility, and equilibrium." However, no special treatment was established for less developed countries in the region except for certain concessions in terms of a tariffs timetable, which is the same as requesting more time for smaller economies to adjust to the new rules.[14]

A free trade zone was completed by the end of 1994 with a list of products temporarily exempted from zero tariff (5 percent of the total) for each country.[15] At the same time, when a common external tariff (CET) was set up for 85 percent of the tariff universe, a so-called "imperfect" customs union was created in 1995, and all export restrictions and import quotas were lifted.[16] Following Decision 10/94 by its Council, MERCOSUR incorporated the Uruguay Round/WTO rules that prohibited all export subsidies. In terms of export incentives, the countries of MERCOSUR agreed not to use them, with the exceptions of limited use of financial incentives, reimbursement of indirect taxes, and special customs regimes (IDB-INTAL 1997, 25).[17]

Safeguards were permitted within MERCOSUR until 1995, and a system to establish safeguards, antidumping duties, and countervailing measures for third countries (that is, countries outside the MERCOSUR area) is not in place yet. Antidumping duties are still used by MERCOSUR countries for trade within the region and with third parties. NTBs of all sorts are numerous within MERCOSUR, and new import restrictions from trade partners in the region were put in place from 1995 onward. So far, only a few NTBs have been lifted.

From 1991 to 1998, trade within MERCOSUR increased five times, although investments from trade partners in the region has grown at a slower pace. FDI from third parties has risen noticeably since the launching of the regional integration process, especially in Brazil.[18] Within MERCOSUR, trade flows ran mainly between Argentina and Brazil. Paraguay and Uruguay have been traditionally dependent on trade from the major economies of MERCOSUR. However, Uruguay benefited more from the regional opening than Paraguay. Given its less competitive agriculture and industrial sectors and the fact that Paraguay has basically built its comparative advantages as a trade intermediary in the region (importing at lower prices from the rest of the world and re-exporting to Argentina and Brazil), the Paraguayan government has repeatedly required from its partners in MERCOSUR trade concessions as well as compensation funds similar to those of the European Union (EU). Consequently, it is Paraguay rather than Uruguay that has pressed for establishing mechanisms of S&D treatment for smaller economies in MERCOSUR (See Table 1).

CACM and CAM

S&D, in fact, has not disappeared from the agendas of other integration processes in the hemisphere. For instance, the Protocols of Tegucigalpa (1991) and Guatemala (1993), which reactivated the project of a CACM, include concepts of gradualism, harmonic regional development, equity, reciprocity, and S&D for less developed countries in the region (ALADI-SELA 1997b, 1-2). Following macroeconomic criteria, the region is divided into two groups of countries: more developed countries (MDCs) — Costa Rica, Guatemala, and El Salvador — and less developed countries (LDCs) — Honduras and Nicaragua. In the case of Honduras, S&D treatment means giving this country a preferential fiscal incentive for industries, while preferential treatment to Nicaragua includes trade concessions, special financial funds, and preferential incentives for investment (1997b, 3-5).

Despite efforts to reintroduce a CET within the CACM in the 1990s, disagreements on the pace of tariff convergence among countries delayed a full implementation of the CET until 2005; at the same time, major products were excluded from intra-regional free trade (mainly agricultural). Also, there has been no major progress in establishing common rules on safeguards, antidumping, and countervailing duties in the CACM (Robert 1997, 64-65). Exports from the CACM substantially increased over the second half of the 1990s, but intra-regional exports were less dynamic than exports to third countries during the same period of time.[19]

In the 1990s, the Andean Pact was reactivated within the Andean Community (ANC), starting with the legal establishment of a free trade zone and a customs union for member countries. A body of regulations on subsidies, incentives, antidumping, countervailing duties, and safeguards was also established through several decisions of the ANC General Secretariat, starting in 1991 (Tórtora 2000, 23-25). However, the ANC is now called an "imperfect customs union" because Peru does not participate in it and because increasing CET exemptions have been granted to Bolivia and

Table 1. S&D Treatment in Latin America and the Caribbean

	LAFTA-LAIA	MERCOSUR	ANC	CACM	CARICOM
Tariffs	Nonreciprocal and diverse degrees of preferential treatment granted according to categories of countries.	A longer period of time provided to Paraguay and Uruguay for tariff reductions and for goods exempted from tariff reductions.	Nonreciprocal trade preferences granted for goods from Bolivia and Ecuador. A longer timetable provided to Ecuador and Bolivia for tariff liberalization.	Temporary protection tariffs granted to selected goods imported by Nicaragua from CACM, and from the extra-zone.	LDCs granted temporary duties on goods imported from the CARICOM when loss of fiscal revenues is projected.
	Compensation mechanisms granted to landlocked countries (Paraguay and Bolivia).	A longer period of time provided to Paraguay and Uruguay to converge to a CET (increase) for capital goods.	A longer timetable, exceptions, and different tariff rates approved for Bolivia and Ecuador in terms of CET.	Higher common external tariff rates provided for Nicaragua and Honduras.	CET on selected goods to be temporarily lifted to foster industries in LDCs.
Nontariff Barriers (NTBs)	Preferential treatment given to LDCs in lifting trade restrictions.		Transitory annual quotas for imported goods granted to Ecuador and Bolivia.		Quotas on imported goods by LDCs from CARICOM set to favor industrialization.
Safeguards			Imports from Bolivia and Ecuador to be subject to safeguard measures by other member countries only in exceptional cases.		No safeguards permitted to products of LDCs that comply with rules of origin, unless they have more than 20 percent of the market share of the importing country. Safeguards to be imposed for three years on goods imported by LDCs.
Rules of Origin	LDCs granted a 60-40 percent ratio of extra- and intra-zone imported components for exporting products in the region, instead of the regular 50-50 percent.	Paraguay granted preferential treatment with a 60-40 percent ratio of extra- and intra-zone imported components for exporting products in the region, instead of the regular 50-50 percent.	Bolivia and Ecuador granted a 60-40 percent ratio of extra- and intra-zone imported components for exporting products in the region, instead of the regular 50-50 percent.		Temporary suspension of rules of origin for LDCs to favor industrialization. Suspension of CARICOM provisions on the so-called "sensitive industries."
Others					A Special Regime applied to highly indebted poor countries.

Sources: Treaty of Montevideo, Treaty of Asunción, Treaty of Cartagena, Protocols of Tegucigalpa, and Treaty of Chaguaramas.

Ecuador as LDCs. Before the 1990s, nonreciprocal trade preferences were granted to Ecuador and Bolivia in terms of intra-trade tariff liberalization. The same countries can still impose quotas on imported goods from other member countries of the ANC, and safeguards on their exported products could only be exceptionally applied by Colombia, Peru, and Venezuela. Moreover, preferential treatment for Ecuador and Bolivia are also present in the ANC rules of origin, in its industrial integration projects, and in the area of financial and technical assistance.[20]

Exports from Andean countries increased moderately during the 1990s, but intra-regional exports experienced a significant growth over the last decade. However, the Andean countries' ranking as markets of destination within the total exports of the ANC is still low in comparison with the participation of the United States and the European Union as markets of destination (See Table 1).[21]

CARICOM

CARICOM was established in 1973 with only four countries of the English-speaking Caribbean nations. Today, CARICOM includes 13 English-speaking countries plus Suriname and Haiti. In order to hasten the pace for a common market objective, which stagnated during the 1980s, several institutional reforms were adopted in recent years, adding new protocols on liberalization of services; industrial, agricultural, and trade policies; treatment for "disadvantaged countries and regions"; transportation policy; competition policy; and dispute settlement. However, intra-regional trade only equals 14 percent of total CARICOM exports, and one country (Trinidad and Tobago) accounts for almost 70 percent of total intra-regional exports (Bryan and Bryan 1999, 6). Moreover, the distinction between MDCs and LDCs[22] within the region, has created a high number of exceptions and preferential arrangements that have not allowed for the proper functioning of a free trade area nor the conclusion of negotiations for a common external tariff.

LDCs in CARICOM have been given the rights of temporary duties on imports in the case of loss in fiscal revenues as well as import quotas that could favor industrialization of these countries. Industrialization is also fostered in LDCs, with temporary lifting of CETs on a number of goods, temporary suspension of rules of origin, and special industrial programs. Moreover, LDCs could impose safeguards on imported goods for a maximum of three years and be exempted from safeguards on their exports if they do not exceed 20 percent of the market share of the importing country. A number of special provisions are also included to grant technical and financial assistance as well as investment incentives to "disadvantaged countries" (See Table 1).[23]

"New Issues" and Regional Integration in the Hemisphere

There has been a disparity within the hemisphere in regard to progress in harmonizing policies related to the new issues in the trade agenda. At one extreme, the most significant efforts to agree on common rules on these issues have been made by the NAFTA countries with some degree of success. In contrast, discussions on trade-related issues have not even started within the CACM. In South America, certain progress has been attained mostly in terms of legislation and norms. In other words, NAFTA has shown faster movement than other integration processes in the hemisphere, both in terms of elaborating common rules as well as enforcing them. Agreements on liberalization of services both in NAFTA and in MERCOSUR do not include S&D provisions for small economies or LDCs as defined by GATS. The main difference in the services liberalization agreements signed by countries in NAFTA and in MERCOSUR is that NAFTA members adopted a different system than those of MERCOSUR, permitting a faster liberalization process (Abugattas 1998, 23-27). A "positive list approach" adopted by MERCOSUR — although not a strict S&D provision — allows small economies to have more space in negotiating a sort of temporary protection for non-competitive sectors. A positive list approach has also been adopted by the ANC. However, preferential treatment is included in the ANC, providing more flexibility to LDCs in the liberalization schedule. The same treatment is adopted within CARICOM to remove restrictions on services in LDCs (See Table 2).

In terms of TRIMs, NAFTA does not provide space for S&D either. No investment agreement has been signed within MERCOSUR except for two protocols to promote and protect investment flows from MERCOSUR countries and from third countries.[24] Instead of restricting FDI, MERCOSUR countries have been busy adopting all types of incentives to attract and promote FDI.

Nevertheless, the lack of harmonization of investment policies within MERCOSUR could lead to asymmetries that would not be beneficial to small economies in the region. A similar stance toward FDI has been adopted by the Andean Community.[25] However, CARICOM offers preferential treatment to LDCs, providing them flexibility in meeting investment obligations established in the Protocol of Services and Capital.[26]

The NAFTA agreement on intellectual property rights had a great impact on the final version of the TRIPs agreement.[27] In opposition to TRIPs, NAFTA permits a coverage of national treatment of all intellectual property rights and stricter protection for patents. S&D treatment as established by TRIPs is not present in NAFTA.[28] No regional agreement on intellectual property rights has been negotiated at MERCOSUR. National patent laws tend to differ in each country, in terms of complying with WTO regulations or going beyond them.[29] In the case of ANC, countries have reached a regional TRIPs agreement but without including any specific S&D.[30] CARICOM has established community rules on protection of intellectual rights within the Protocol of Industrial Policy but without any specific provisions for LDCs.[31]

New trade-related issues not included in the Uruguay Round became the target of harmonization in NAFTA. The North American Agreement on Labor Cooperation (NAALC) has aimed to commit members of NAFTA (especially Mexico) to enforce labor laws or else face trade sanctions. Given the difficulties and complexities involved in harmonizing wage differentials among countries, the NAALC regards unfair trade advantage or "labor dumping" only in terms of the lack of enforcement of technical labor standards that affect companies producing goods and services traded within the region (Canela-Cacho 1997, 527-538). In contrast, harmonization agreements on environment in NAFTA have taken two directions: market access (protection through TBTs and SPS) and competitiveness (keeping high standards of environmental protection) (Esty and Geradin 1997, 568-572).

A de facto preferential treatment in the context of NAFTA's agreements on labor and environment has consisted of providing technical cooperation to Mexico. However, no special timetable was provided to Mexico in terms of compliance with labor and environmental standards, and, so far, no arbitration panel to study violations of these standards (that may eventually lead to trade sanctions) has been set up.

Within MERCOSUR, agreements to harmonize labor and environmental standards have not been reached yet. An Environmental Protocol for MERCOSUR was finished but has not been enacted. The purpose of this protocol is to harmonize environmental standards, so as to eliminate NTBs to trade that could emerge because of different legislation. As in the case of NAFTA, it does not seem that S&D for smaller economies will be included in the harmonization of labor and environment standards within MERCOSUR, except for technical cooperation. Common rules for labor and environment are yet to mature in the ANC and in CARICOM.

In terms of competition policy, legal harmonization has shown more progress in regional integration processes such as ANC and MERCOSUR than in NAFTA. Common rules to prevent distortions of competition among countries were agreed upon in the ANC in 1991. A Protocol of Competition enacted by MERCOSUR in December 1996 has been officially in operation since mid-2000 because of its ratification by Paraguay and Brazil. Apart from becoming an antitrust instrument, this protocol deals with the practice of predatory prices and with public policies of member countries that distort competition in production and export activities (IDB-INTAL 2000, 70). An agreement was reached by MERCOSUR countries to include the treatment of antidumping duties in this protocol by mid-2001 (IDB-INTAL 2000, 70). Likewise, CARICOM has recently established a Protocol on Competition Policy, Consumer Protection, Dumping, and Subsidies.[32] At NAFTA, harmonization on competition policy cannot be decided upon until the Mexican competition policy agency reaches enforcement capabilities.[33]

As in the case of the WTO, S&D in regional agreements on services, investment, and intellectual property is absent or negligible. However, the real problem in complying with new trade-related common rules is the lack of capacity for enforcement in LAC countries. Similar to the Uruguay Round, the real interest in the implementation of regional agreements for these new issues has come more from the developed countries, the United States and Canada, than from developing countries in the region.

Table 2. S&D Treatment in Latin America and the Caribbean

	LAFTA-LAIA	MERCOSUR	ANC	CACM	CARICOM
Industrial Programs			Assistance given to Bolivia and Ecuador as part of its "industrial integration projects."		Special regimes provided to foster industrialization in disadvantaged regions and countries.
Financial Assistance			Resources from the Andean Development Corporation (ADC) allocated in larger shares to Bolivia and Ecuador.	External debt alleviated, and special development funds allocated to Nicaragua.	Different types of financial assistance provided to LDCs.
Technical Assistance	Technical cooperation offered to the relatively less developed countries to help them build up their capacities in different areas of the tariff liberalization program.		Preferential treatment given to Bolivia and Ecuador.		Different types of technical assistance provided to LDCs.
Investment and Fiscal Incentives				Preferential fiscal incentives provided to promote industrialization in Honduras.	MDCs helping to channel significant flows of investment toward LDCs.
Services		Positive list to benefit LDCs.	Flexibility granted in the liberalization schedule, and exceptions granted to Bolivia and Ecuador.		Flexibility and longer timetables granted to remove restrictions on services in LDCs.
Investment					Flexibility in complying with investment rules granted to LDCs.

Sources: Treaty of Montevideo, Treaty of Asunción, Treaty of Cartagena, Protocols of Tegucigalpa, and Treaty of Chaguaramas.

GSP: the Survivor

Apart from *deminimis* clauses set for least developed countries, nonreciprocal treatment has been confined to the GSP. Rather than diminishing, GSP schemes have been extended to more countries and more products since 1994. However, given the proliferation of regional trade agreements between developed and developing countries, the GSP is quickly becoming the last vestige of nonreciprocal trade relations, but perhaps not for much longer.

The modalities of GSP preferences (products and countries) are exclusively determined by developed countries or preference-providing countries. The system mainly consists of nonreciprocal schemes in which preferential market access is granted to selected developing countries through zero tariff or substantially lower tariffs than the ones established by the preference-providing countries to imports from the rest of the world. Within the Americas, the countries that have benefited the most from this type of nonreciprocal trade are concentrated in the Caribbean Basin and in the Andean region. Additionally, as a result of the Lomé Convention and the Cotonou Agreement, African, South Pacific, and Caribbean countries have largely received a different preferential arrangement. The United States, Canada, the EU, Australia, and New Zealand have been the major providing countries in this type of arrangement.

The GSP has been beneficial to developing countries in terms of market access to some extent. Only small percentages of imports of preference-providing countries are affected by this system, meaning that trade advantages have yet to be fully exploited by receiving countries. Even though GSP and other sorts of preferential arrangements have promoted export growth and diversification of exports in receiving countries,[34] this type of benefit has been extended only to a few developing countries, as stated earlier. Reasons for the limited impact of GSP schemes can be found both in providing and receiving countries. In the case of providing countries, they have included import quotas under the GSP and the exclusion of sensitive products from the GSP (especially those where developing countries have important comparative advantages). They have also added certain noneconomic conditionalities and clauses related to labor and environment requirements. In the case of developing countries, problems have been concentrated mainly in their scarce export supply capacities as well as economic instability, lack of competitiveness, and low productivity (Onguglo 1999, 119).

The advent of a very fast trade liberalization process during the 1990s, together with reciprocity, has been eroding GSP schemes. Although the GSP was retained within the WTO after the close of the Uruguay Round, several north-south free trade agreements are phasing out nonreciprocal treatment and preferences. This is the case for NAFTA with Mexico, and it will be the case under the FTAA with the current users of GSP schemes in the hemisphere. The EU has several free trade agreements with Central and Eastern European countries, and it is negotiating similar agreements with countries in the Middle East and North Africa. Likewise, the Lomé-Cotonou system of preferences provided by the Europeans for least developed countries in Africa, the Caribbean, and the South Pacific has been temporarily extended until 2008.

In sum, GSP schemes are increasingly concentrated in benefiting least developed countries, while middle- and high-income developing countries are accepting more reciprocal treatment under the WTO or several new free trade agreements (north-south and south-south). Consequently, the GSP (as nonreciprocal treatment) could endure during the entire time it takes least developed countries to "graduate" to higher economic levels and as long as preferential exports from these countries continue to affect developed countries' imports only marginally.

S&D and the Free Trade Area of the Americas

S&D is being claimed as a provision by Latin American and Caribbean countries in the negotiations that are expected to confirm the FTAA by the year 2005. The demand for S&D is coming from CARICOM, Central America, and the ANC. At the same time, MERCOSUR, led by Brazil, has pressed for gradualism and equilibrium in tariff and nontariff negotiations in the FTAA. Brazil claims that, given a process of its own unilateral trade liberalization followed by regional liberalization (MERCOSUR), a rapid pace of hemispheric trade liberalization (especially between the United States and Brazil) will affect important and sensitive sectors of the Brazilian economy – without appealing to S&D. In other words, Brazil does not accept a symmetrical tariff reduction with the United States, recognizing macroeconomic imbal-

ances, restrictions in microeconomic policies, and risks of severe retorting measures by third countries who may see themselves as discriminated against by the FTAA (Da Motta 1997, 14). In a hemispheric trade agreement, Canada and the United States are the only developed countries, together representing 80 percent of the continental gross domestic product (GDP). The rest of the countries represent different levels of development, creating different degrees of asymmetries among themselves and between them and Canada and the United States.

Discussions on special and differential treatment within an FTAA have taken different paths ever since the first Summit of the Americas (1994). S&D was first established along the lines of the NAFTA and MERCOSUR treaties, rather than those of ANC, CACM, and CARICOM. In other words, asymmetrical levels of development have been admitted as such, but without including the old GATT principle of nonreciprocity in favor of developing and least developed countries. However, CARICOM and CACM countries have pressed for the inclusion of the principle of preferential treatment for smaller economies, meaning waivers of reciprocity requirements for free trade and longer transition periods for lifting trade or trade-related restrictions. As a result, a Consultative Group on Smaller Economies was established in 1998, as a mandate of the San José Ministerial Meeting. At the same time, an Advisory Group of the Organization of American States (OAS) was created to study the special needs of the so-called Small and Relatively Lesser Developed Economies (SRLDEs) in the hemisphere.[35]

Classification of SRLDEs has not been an easy task. Different criteria and indicators have been considered to select a group of countries that would need special assistance for hemispheric integration. A preliminary conceptualization of SRLDEs by an Advisory Group of the OAS has shown that preferential treatment would be concentrated in the Central American countries, the Caribbean, and one or two countries in South America, depending on per capita income levels. If a per capita income level of less than US$1,200 (slightly higher than the Uruguay Round $1,000 level) is used, then the following countries in the Western Hemisphere qualify as SRLDEs: Bolivia, Dominican Republic, Ecuador, Guatemala, Guyana, Haiti, Honduras, Nicaragua, and Suriname.[36]

Because of the staunch opposition of the United States and Canada to S&D, the Consultative Group on Smaller Economies has been set up as a separate body from the FTAA's Trade Negotiating Committee (TNC), and the Consultative Group has been granted the right only to submit recommendations to the TNC. CARICOM chaired this Consultative Group in 1999, providing specific recommendations to the TNC. However, as no genuine attempt was being made in the TNC to operationalize the principles agreed upon in the San José Ministerial Meeting's Declaration, CARICOM countries insisted that the next Ministerial Declaration in Toronto (which was held in November 1999) include specific language on the issue of S&D treatment. They also requested that S&D be included in the discussions of each negotiating group within the TNC. This last request was backed by the Andean countries at the Toronto meeting.

S&D was officially introduced in the Toronto Ministerial Declaration as recognition of differences in the levels of development and size of the economies of the hemisphere. In the same Declaration, the TNC was instructed to examine how these differences could be taken into account in the FTAA negotiation process as they are in other integration processes in the Americas. The CARICOM-ANC proposal for including S&D in the TNC provoked a heated debate within the FTAA, but it was finally accepted. At the subsequent Trade Vice-Ministerial Meeting (April 2000), it was decided that S&D should be part of discussions held in the TNC of the FTAA as well as in each one of the negotiating groups and ad hoc working groups (IDB-INTAL 2000, 78-79). During the last Trade Vice-Ministerial Meeting (January 2001), Andean and Caribbean countries opposed a U.S. proposal to advance a time frame in several areas as long as differential treatment was not included in the negotiations.

Additionally, at the Ministerial Meeting in Toronto in November 1999, a series of recommendations for preferential treatment were made to each one of the negotiating groups by representatives of the business groups in the Americas Business Forum (ABF). In terms of market access, an asymmetrical tariff and NTBs elimination schedule was required for small and developing countries. At the same time, it was decided that smaller economies should benefit from earlier tariff reduction for exports and from non-applicability of certain NTBs. Moreover, it was agreed that the GSP

should be maintained and enlarged and duty-free access should be granted to all imports from the most vulnerable economies.[37]

The "new issues" are also part of negotiations within the FTAA. With the exception of labor and environment, nine negotiations groups have been established within the FTAA to discuss these new areas, and five of them relate to the new trade agenda: government procurement, intellectual property, investment, services, and competition policies.[38]

At the Toronto Ministerial Meeting, S&D provisions within the process of liberalizing services and investments were practically absent from the proposals presented to the TNC by business groups. In the case of services, only one proposal was made to provide a longer timetable for developing countries to adjust to new regulations that would emerge from the liberalization of financial services. Even though no specific S&D proposal emerged from the discussions on the establishment of an Intellectual Property (IP) Rights agreement within the FTAA, several areas of divergence remained after the discussions. The main area of disagreement is regarding the significant gap in the technological and productive capabilities of countries in the region to enforce an agreement on IP rights.[39]

S&D was properly included in the proposals for reaching an agreement on competition policies within the FTAA. These proposals called for longer timetables for smaller economies to implement competition policies and for technical cooperation to facilitate and promote competition policies within smaller economies.[40] Canada and the United States have repeatedly asserted their intention to introduce issues related to labor and environmental standards within the trade agenda of the TNC and its working groups. However, as in the beginning of the FTAA negotiations, Latin American governments and business groups reject these proposals, although discussions on labor and environmental issues may continue to appear in the agenda, pressed by developed countries in the hemisphere.[41]

After the Toronto meeting, a number of proposals for preferential treatment were officially introduced by developing countries in the negotiating groups. In terms of market access to developing and small economies, preferential treatment was proposed as part of safeguards measures and rules of origin, and the establishment of different time frames for tariff reductions was also recommended. Developing countries have requested a longer time for applying safeguards than those prescribed by the WTO, and they have requested the use of tools different from tariffs as safeguards measures. In relation to rules of origin, developing countries also have asked for preferential treatment, so as to set up different percentages of local and imported contents of goods exported by developing countries (ALADI 2001, 34-35) (See Table 3).

In terms of market access to developed countries, S&D was requested for different types of nontariff barriers (interpreted as such by developing countries) and for agricultural trade. Developing countries agree that different standard levels of SPS and TBTs should be recognized within the FTAA and that different technical capacities for implementing SPS and TBTs should be recognized for the various Latin American and Caribbean countries. Conversely, some countries have proposed that the FTAA agreement should include special rules for smaller economies in assessing dumping practices and any negative impacts caused by those economies on those of the more developed countries. In order to reduce the negative impact of countervailing duties on developing economies, Chile has proposed to replace antidumping rules with a hemispheric competition policy system. As for agricultural goods exported to developed countries, developing countries aim for keeping domestic subsidies to investment and to small rural producers (ALADI 2001, 37).

With regard to the "new issues," developing countries have opposed a comprehensive agreement on services covering all sectors and suppliers — the so-called "negative list" — putting forward, instead, a consideration for flexibility and preferences. They have also requested adopting some trade restrictions when balance of payments problems arise and have asked for special safeguards and the inclusion of subsidies. At the same time, they have claimed exceptions for different sectors in a hemispheric investment agreement, and they have demanded preferential treatment in the case of government procurement because of most governments' lack of capacity to implement such a comprehensive system.[42]

Preferential treatment is now under discussion in all of the FTAA trade negotiating committees. Proposals have been made on different issues of negotiations, but these discussions still remain in an embryonic stage. Nevertheless, the Declaration of the Buenos Aires Ministerial Meeting (April

Table 3. Preferential T reatment: Most Relevant New Demands from Developing Countries

	WTO	FTAA
Tariffs		Different time frames for tariff reductions for developing countries.
Subsidies	Elimination of agricultural export subsidies in developed countries. An increase of 20 percent of the *deminimis* domestic subsidies for agriculture in developing countries. Increase of the *deminimis* level of export subsidies in developing countries. Developing countries permitted to use competitive export financing.	More subsidies for developing countries (beyond the limit set by the WTO), especially for investment and small rural producers.
Safeguards and Rules of Origin	Increase the minimum of 3 percent to 7 percent of the total goods imported by developed countries for exemption of safeguards. Special safeguards in importing agricultural goods by developing countries.	Developing countries permitted to use other tools apart from tariffs as safeguards. Use of safeguards by developing countries anytime, not only during FTAA transition period. Preferential treatment in rules of origin (percentages of local and imported content of export products).
TBTs / SPS	Formulation of international standards based on specific conditions of developing countries. Longer time frames to developing countries to adapt to SPS and TBTs.	Admitting different standards levels in developing countries, according to their capacities to develop and implement them.
Antidumping	Revision of criteria for initiating an investigation of "dumped" imports. Increasing *deminimis* of 2 percent of export prices below which no antidumping is imposed for developing countries.	Revision of criteria to impose antidumping measures on small economies. Replacement on antidumping by antitrust measures.
Services	Flexibility for developing countries. Negotiations based on positive lists. Emergency safeguards mechanisms for developing countries.	Flexibility for developing countries in negotiating services liberalization. Opposition to negative lists by developing countries. Trade restrictions, special safeguards, and subsidies.
Investment		A hemispheric agreement on investment to include exceptions for certain economic sectors.
Intellectual Property	Extending the period of transition in applying TRIPS for developing countries. Technological transfer to developing countries on "fair and mutually advantageous terms."	
Government Procurement		Support to developing countries for implementing a hemispheric system.

Sources : UNCTAD, USTR, and ALADI (LAIA).

2001) repeatedly mentioned the need to take into account the different levels of development and sizes of the economies in the hemisphere. The declaration also emphasized the importance of making those economies competitive, requesting the establishment of necessary provisions for specific technical assistance. The trade ministers, in the same declaration, instructed the different negotiating committees to study all specific proposals submitted by countries and group of countries on preferential treatment and to work jointly with the Consultative Group on Smaller Economies to produce guidelines on preferential treatment no later than November 1, 2001.[43]

Conclusions and Recommendations

Developing countries surrendered nonreciprocal treatment in the Uruguay Round in exchange for greater access to developed countries' markets. Clear gains for developing countries are observed in the dismantling of the MFA and greater tariff cuts conceded by developed countries in manufactured products. Phasing out the MFA toward a complete liberalization of the textiles and clothing sector by 2005 would largely benefit medium- and high-income developing countries that have sufficient export capacity. The maintenance of the GSP after the Uruguay Round has been largely favorable to least developed countries. These countries are also benefiting from the *deminimis* clause that permits them to continue with export subsidies, while it prevents developed countries from adopting safeguards and countervailing duties to goods from least developed countries.

However, longer timetables to adjust to new trade requirements and technical assistance did not become real gains for developing countries in the Uruguay Round. In fact, no exemption other than time was provided by these new requirements, which resulted in new costs for developing countries as they adjusted to the new rules. But more important, the agreements on SPS and TBTs and the agreement to make more room for antidumping actually benefited developed countries, providing them with new NTB mechanisms to restrict imports of goods from developing countries. Antidumping has even been adopted by more advanced developing countries to reciprocate restrictive trade practices of developed countries as well as to create more barriers to trade among developing countries.

Furthermore, agreements on textiles and agriculture did not automatically end higher tariffs imposed by developed countries. These tariffs are primarily related to agriculture. But the timetable to reduce them as well as other restrictions (such as subsidies and import quotas) within the agriculture agreement have not been well established; these items require further negotiations in a new round. Thus, concessions made by developed countries in agriculture at the Uruguay Round have barely translated into more market access for developing countries.

Apart from maintaining the GSP and creating the *deminimis* clause (mostly favorable to least developed countries), no other net gains were achieved by developing countries in the Uruguay Round for trading off S&D — as defined in the Tokyo Round — for more market access. In order to reach a compromise regarding major liberalization in agriculture and textiles with developed countries, developing countries had to make other concessions. The new trade-related issues were included as part of new multilateral agreements in the Uruguay Round. However, apart from TRIPs, agreements on these issues have not translated into new higher costs for developing countries so far.

Developing countries obtained only a few small benefits from the Uruguay Round in exchange for substantial concessions in terms of S&D. After the Round, the developing world was divided into two sectors: those countries that had "graduated" and would not need nonreciprocal S&D anymore, and those very poor countries that could still benefit from certain (not all) nonreciprocal trade provisions. John Whalley has defined the new nature of S&D after the Uruguay Round as a result of a change in focus from a system of "preferential access and special rights to protect" to a system providing developing countries with certain preferences for adjustment to the new WTO decisions (Whalley 1999, 1073). In other words, the Uruguay Round drastically reduced the scope of S&D, setting up a platform for its eventual disappearance within the WTO.

It is not surprising, then, that discussions among developing countries on how to negotiate the next round barely include the topic of S&D. High- and medium-income developing countries have been more focused upon what position to adopt in defining the agenda for the next trade round: the built-in agenda (agricultural and services) vs. inclusion of the new themes (labor,

environment, investment, and competition policy). Thus, it appears that in any *single undertaking* agreement, as in the Uruguay Round, mutual concessions from developed and developing countries would have to be negotiated in this context. This hypothesis was reinforced after the Seattle Ministerial Meeting (1999), where developed countries indirectly used labor and environment "pressures" to widen the agenda of negotiations.

Narrowing down the Millennium Round agenda to the built-in agenda set up in 1995 also has been suggested to developing countries as a first line of defense against the pressures from developed countries. If this first line of defense cannot be sustained, then a suggested second line should consist of conducting negotiations not under the strategy of a single undertaking, but in *two separate tracks:* 1) trade liberalization and the built-in agenda and 2) all other issues. This strategy is supposed to provide more bargaining power to developing countries because they do not have to make concessions on some other issues to achieve an agreement on further trade liberalization, especially in agriculture (Panagariya 1999).

Several questions arise at this point. Are developed countries going to accept negotiations in two separate tracks? If developed countries indeed accept this strategy, in which track will S&D fit? Will there be any bargaining room for developing countries to renegotiate or enlarge S&D under a different scope from that of the Uruguay Round?

The debate on the convenience of keeping S&D in the next agenda has to take into consideration the widening gap between developed and developing countries in recent decades. Despite a significant increase in trade flows, especially in capital mobility, the average per capita income of the richest countries is about 50 times greater than that of the poorest countries (UNCTAD 1997, 69). At the same time, this gap has also been enlarged among developing countries. From 1960 to 1990, the ratio of maximum to minimum per capita income among developing countries rose from 20 to 1 to 37 to 1 (UNCTAD 1997, 85). Income-increasing inequalities have led to persistent inequalities in international trade participation. However, replacing S&D with more trade liberalization would not necessarily permit major gains for all developing countries. Thus, S&D should still be part of the trade agenda.

A decision to revise or enlarge the Uruguay Round version of S&D is a necessary step toward a more balanced distribution of costs and benefits for developed and developing countries. Recent proposals presented by developing countries before and after the Seattle meeting call for extending S&D provisions in time and in kind. They also request that nonreciprocal S&D be expanded beyond the *deminimis* clause and that international trade standards take into account the specific conditions prevailing in developing countries. What these countries are definitively asking for is to widen the scope of S&D (See Table 3).

The option of widening S&D should be considered seriously by the different integration projects in the Americas, especially by the FTAA. Demands for differential treatment within negotiating groups of the FTAA range from nonreciprocal treatment for smaller economies to a commercial policy of "gradualism" in the case of large developing countries in their attempt to protect sensitive economic sectors. Large asymmetries in the Americas still call for leveling the field of trade through S&D mechanisms and allowing countries of different sizes to prevent major macro and microeconomic imbalances in the process of building the FTAA.

A recent study (ALADI 2001) on the potential impact of a hemispheric free trade area for South America shows that different levels of development, competitiveness, and capacity to enforce new trade norms between these countries and the United States and Canada are essential for understanding how unequally the benefits of the free trade initiative could be distributed in the hemisphere. The study also demonstrates that South American countries have been able to diversify exports and increase manufacturing and nontraditional exports within the region, helped by the existing subregional and bilateral trade preference schemes. This regional comparative advantage, the same study argues, could become diluted in the FTAA process once the United States and Canada participate in the regional market — rapidly displacing South American countries' comparative advantages as major exporters of both agricultural and manufacturing (intermediate and capital goods) products. Moreover, the FTAA will not encourage manufacturing and nontraditional exports from South American countries to North America. The study also demonstrates that the United States and Canada have a large competitive edge over South American countries in trade in services as well as implementation of new trade norms such as TRIPs, TRIMs, and government procurement, among others. The analysis con-

cludes that South American countries should maintain and widen their subregional preference schemes instead of participating in a hemispheric free trade area.

The existence of larger asymmetries between the more developed countries in the hemisphere and many countries in CARICOM could also result in very high costs for these CARICOM countries in a hemispheric free trade area. According to a recent analysis of CARICOM countries participating in the FTAA process (A.P. González 2001), the abrupt elimination of nonreciprocal preferences — enjoyed by Caribbean countries over the last 25 years — would mean severe economic and social disruptions for most CARICOM members. In terms of trade direction, the Western Hemisphere has been growing more rapidly than other areas as a market destination for Caribbean exports. However, so far, trade growth in the Americas has taken place only in one or two CARICOM countries. At the same time, according to this analysis, CARICOM has no experience in seven out of nine negotiating areas of the FTAA — all of these areas having been included in the new trade-related issues and the new trade norms, due to the rudimentary stages of arrangements on these issues within CARICOM itself. Thus, an FTAA that is only concentrated in lowering trade barriers and harmonizing trade regulations would result in no benefit to most Caribbean countries, as "CARICOM's own integration experience is one that embraces sharing, cooperation, and solidarity among essentially small Caribbean states, to ensure economic and political security," not only economic gains (A.P. González 2001, 2).

Furthermore, the FTAA could mean "playing trade" on a very uneven field, not only for South American and Caribbean countries but also for other developing countries in Central America. Economic structural disparities among different countries in the hemisphere affect trade performances; the solution for that problem is not found solely through trade policies, nor by tolerating a few temporary exceptions. Preferential treatment is just one mechanism, among many others, that countries have to take into account in establishing more or less equal conditions for participating in and benefiting from a hemispheric free trade area.

The following three alternatives should be considered for dealing with preferential treatment in the Americas:

1. Establish S&D through the waiver system used by preferential zones such as Lomé and others set up by the EU for smaller and least developed economies (nonreciprocal treatment).
2. Strictly follow the WTO provisions of preferential treatment, agreed upon at the Uruguay Round, for developing countries (reciprocity) and least developed countries (nonreciprocity) in order to permit them more time and flexibility for adjusting to new trade commitments.
3. Expand the criteria used by the OAS Advisory Group to classify Small and Relatively Lesser Developed Countries to include all developing countries in the hemisphere, so that a scale of nonreciprocal to more reciprocal trade terms can be established within a specific time frame.

The first of the above recommendations could extend preferential treatment to developing countries for an unlimited time, obstructing the formation of a free trade area. The second alternative leaves S&D on the verge of immediate disappearance from trade negotiations. However, the third alternative offers the possibility of applying various degrees of S&D, depending on the needs of different groups of developing countries within a specific period of time. The criteria and indicators to be elaborated for a new categorization of developing countries in the hemisphere — different from the conventional division between "graduated and least developed countries" — would allow negotiating groups to establish layers of preferential treatment more accurately, when needed, and as the conditionalities of graduation. For this purpose, other criteria should be added to the categories related to size, population, income, product, and trade indicators. For instance, certain indicators should measure the degree of competitiveness of products and how sensitive they are to trade liberalization; they could also measure the costs, time, and capabilities of countries for structuring and enforcing the new trade norms. The criteria and indicators selected should be flexible enough to establish a system of preferences that could range from nonreciprocity to nonpreference for different countries and various goods and services.

In addition, this third alternative should revise the WTO provisions on subsidies, incentives, and safeguards, so that developing countries could benefit from an enlarged preferential treatment on the use of these tools, especially needed in agricultural production and exports. At the same time,

the application of S&D in differing degrees would introduce flexibility in the implementation of new regulations for market access, avoiding new trade barriers for developing countries. This flexibility has to be extended within the agreements for the implementation of the new trade-related issues in the hemisphere. Moreover, it is highly recommended that a system for enforcing competition within the hemisphere be established to prevent monopolies and other predatory practices that are not compatible with a free trade area and are especially harmful to developing countries.

Asymmetrical development is not a new phenomenon in the Americas. Yet, this very important subject should not be marginalized in trade negotiations. The region's goal should be to structure a system of preferential treatment that adapts to the different needs of the various countries of the Western Hemisphere. As an FTAA is created, a more balanced participation of all economies should be encouraged, thus permitting costs and benefits to be more or less equally distributed among countries.

NOTES

1. The Uruguay Round of GATT was held between 1986 and 1994 and concluded with the Act of Marrakesh, which gave birth to the World Trade Organization (WTO) as a replacement for GATT.

2. In 1964, the "non-reciprocity clause" was incorporated into GATT under Article XXXVI of Part IV. The GSP provisions for developing countries began to be implemented after the United Nations Conference on Trade and Development (UNCTAD) met in New Delhi in 1968. See Gibbs 1998.

3. Three mechanisms were set up by the Andean Pact to promote industrialization in less developed countries: sectoral programs, trade preferential access, and concessional loans from the Andean Development Corporation. See ALADI-SELA 1997a, 12-13. Industrial and fiscal policies, as well as financial assistance to less developed countries, were also part of the integration initiative in Central America. See Eduardo Lizano 1982, 37-38.

4. Other noneconomic factors also explain this failure, namely, the existence and permanence of authoritarian regimes in the hemisphere and the East-West confrontation that led the United States to view integration processes in the region as not functional to its foreign policy and security interests.

5. The use of this mechanism, however, especially by developing countries, is permitted only after a close examination of other multilateral organizations such as the International Monetary Fund (IMF) and the World Bank (WB).

6. Exclusion of these types of subsidies from reduction commitments is guaranteed by Article 6.2 of the Uruguay Round agreement. See WTO (1998).

7. This last provision plus the exception of a limit for the application of technical standards should be requested by developing countries and negotiated accordingly.

8. Specifically, countervailing duties to developing and least developed countries are not applicable when the subsidy of the product does not exceed 2 percent of its value or does not account for more than 4 percent of the total volume of the imports of the product if the share of all developing countries is not more than 9 percent of the total imports of the product by a developed country.

9. For a complete explanation of the structure of TRIPs, see Carlos Prima Braga 1995, 345-356.

10. In terms of applying patent rights, developing countries are given an additional period of five years to delay protection to those products that were without it at the time of the TRIPs agreement. Least developed countries are given a 10-year delay in applying this protection, a period that could be extended if the TRIPs Council regards it as necessary. See WTO, "Implementation of WTO provisions in favour of developing country members" (Geneva 1998), 40-41.

11. A very thoughtful analysis of the impact of S&D on subsidies and countervailing duties is provided by Manuela Tórtora 2000, 27-28.

12. Mexico's average tariff on U.S. products before NAFTA was 10 percent, while the average U.S. tariff on Mexican products was 2.1 percent, and half of U.S. imports from Mexico were under a GSP treatment.

13. Two types of safeguards measures are permitted in NAFTA: temporary and global. Temporary measures are only applied during the period of a tariff reduction timetable and for controversies resulting from its application, and they may be solved by the dispute-settlement mechanism. Global measures are applied to imports from the rest of the world, and they are solved through the GATT/WTO rules.

14. The Treaty of Asunción. See <www.mercosur.org.uy/p(gina_nueva_6.htm>.

15. This exemption runs until the year 2000 for Brazil and Argentina, and until 2001 for Paraguay and Uruguay.

16. Sensitive products (for the major economies) like electronics, telecommunications, and other capital goods were exempted from the CET until 2006; and another list of exceptions of 300 products was added to Argentina, Brazil, and Uruguay, plus 399 to Paraguay. The list will expire in 2001 for Argentina and Brazil and in 2006 for the smaller economies. Special regimes for the automotive industry and sugar production were to be negotiated and set in motion by 2000. An agreement on the automotive special regime was reached in June 2001. No agreement on the sugar sector has been attained as of this writing.

17. The limited use of export incentives has been applied differently in MERCOSUR countries, and it has created controversies, especially between Argentina and Brazil.

18. FDI flows toward MERCOSUR were around US$5 billion in 1991, reaching more than US$50 billion by the end of 1999. See ECLAC (1997, 2000), *La inversión extranjera en América Latina y el Caribe*.

19. See "Estadísticas del Comercio Exterior" at Secretaría de Integración Económica de Centroamérica (SIECA). Official Website: <http://www.sieca.org.gt/público/CA_en_cifras/serie30/comercio_exterior.htm>. Select "Cuadro CEOI: Centroamérica: Balanza de Comercio total en miles de $CA, 1986-1999."

20. See the ANC official website, and select Normativa Andina at <http://www.comunidad-andina.org/andina.asp>.

21. Intra-zone (intra-regional) exports increased by 86 percent between 1993 and 1998, while exports to the United States increased by 21 percent and to the EU by 29 percent. By 1998, 16 percent of all ANC exports remained in the region, while 55 percent of exports were directed to the United States and 18 percent to the EU. See the table published by the Comunidad Andina's Sistema Integrado de Comercio Exterior at the official website: <http://www.comunidadandina.org/estadistica/comp9099/rubro11.htm>.

22. The distinction between MDCs and LDCs in the Caribbean region could also be applied to countries in other integration projects in Latin America, but in this study I have only made the distinction among developed, developing, and least developed countries when discussing the multilateral trade system (WTO).

23. See Protocol 7 of the Chaguaramas Treaty in the official website of CARICOM: <http://www.caricom.org/expframes2.htm>.

24. The Protocol of Colonia (1994) provides the most favored nation (MFN) treatment to investors in the integration zone, while another protocol for third countries in 1996 set a common legal framework for the treatment of investment coming from the extra-zone. See IDB-INTAL 1997, 41.

25. See the ANC official website and select Normativa Andina at <http://www.comunidadandina.org/andina.asp>.

26. See Protocol 7 of the Chaguaramas Treaty in the official website of CARICOM: <http://www.caricom.org/expframes2.htm>.

27. Since 1984, the United States has unilaterally started to link trade agreements (including GSP) with different countries to enforcement of intellectual property rights, an example that was followed by the European Community. See Govaere 1997, 469.

28. A reciprocity clause was introduced in the agreement as an exemption to the NAFTA principle of national treatment because Mexico was not willing to extend protection to U.S. nationals unconditionally. At the same time, Canada asked for restrictions in market access and national treatment for the audiovisual sector. See Govaere 1997, 485.

29. While in Brazil the law on patent rights permits provisions beyond the TRIPs and more in accordance with NAFTA regulations, Argentina has decided to use the timetable provided by TRIPs to protect national industries (such as the chemical and pharmaceutical industries) temporarily.

30. However, in terms of patent rights, protection is excluded in the case of those pharmaceutical and medical products regarded as essential for human life by the World Health Organization (WHO), as well as those products that are harmful to the environment. See the ANC official website, and select Normativa Andina at <http://www.comunidadandina.org/andina.asp>.

31. See Protocol 7 of the Chaguaramas Treaty in the official website of CARICOM: <http://www.caricom.org/expframes2.htm>.

32. See Protocol 7 of the Chaguaramas Treaty in the official website of CARICOM: <http://www.caricom.org/expframes2.htm>.

33. Negotiations for harmonization of competition policies in NAFTA have emphasized mechanisms to protect public interest and to regulate monopolies and state enterprises. Mechanisms to enforce trade-related competition issues (cross-border anti-competitive activities) are also considered in these negotiations. See Tavares de Araujo and Tineo 1999, 4-7.

34. Apart from more developed countries, export diversification has benefited some small countries in Africa, the South Pacific, and the Caribbean. See Onguglo 1999, 117.

35. See the OAS-SICE Trade Unit's official website, and go to the section on Small and Relatively Lesser Developed Economies: <http://www.sice.oas.org/tunit/studies/secon/index.asp>.

36. See the OAS-SICE Trade Unit's official website, and go to the section on Small and Relatively Lesser Developed Economies: <http://www.sice.oas.org/tunit/studies/secon/index.asp>.

37. See the Recommendations from Workshops at the official SICE-OAS website for the Toronto Trade Ministerial Meeting and Americas Business Forum, November 1999: <http://www.sice.oas.org/FTAA/torontobfe.asap>.

38. The other four negotiating groups are agriculture, market access, subsidies, and dispute settlement. Despite the fact that trade-related environmental and labor issues are not part of the FTAA negotiations, a civil society committee has been established to study and discuss these and other issues.

39. See the Recommendations from Workshops at

the SICE-OAS official website for the Toronto Trade Ministerial Meeting and Americas Business Forum, November 1999: <http://www.sice.oas.org/FTAA/torontobfe.asap>.

40. See the OAS-SICE Trade Unit's official website, and go to the section on Small and Relatively Lesser Developed Economies: <http://www.sice.oas.org/tunit/studies/secon/index.asp>.

41. IDB-INTAL, 2000, 79.

42. IDB-INTAL, 2000, 45-60. See also the Public Summary of the U.S. Position on Negotiating Groups of the FTAA at the official website of the United States Trade Representative (USTR): <http://www.ustr.gov/regions/whemisphere/ftaa.shtml>.

43. See the FTAA's official website, section on the Sixth Meeting of Trade of the Hemisphere. Ministerial Declaration. Buenos Aires, April 7, 2001: <http://www.sice.oas.org/ftaa_e.asp#buenosaires>.

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