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Opportunities and Challenges: The Caribbean Involvement in Free Trade Area of the Americas

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OPPORTUNITIES AND CHALLENGES: THE CARIBBEAN INVOLVEMENT IN THE FREE TRADE AREA OF THE AMERICAS

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INTRODUCTION

The Caribbean¹ is currently involved in three principal areas of international trade negotiations. These are the World Trade Organization (“WTO”); the Free Trade Area of the Americas (“FTAA”), and the Negotiations between the Group of African, Caribbean and Pacific (“ACP”) States; and the European Union (“EU”), for the establishment of economic partnership agreements (“EPAs”), under the Cotonou Agreement.² This scope of involvement in multilateral trade negotiations by the Caribbean presents the region with some serious challenges and places both its human and financial resources under great strain. Despite these challenges, however, the region’s involvement is necessary in view of the need for the Caribbean to effectively participate in the multilateral trade system and successfully integrate into the new world economy. There are, therefore, both opportunities and challenges in this process.

This Article will examine the region’s participation in the process leading to the establishment of the FTAA, and the benefits and challenges associated with its involvement in this hemispheric undertaking.

Part One of the Article sets out the rationale for the estab-

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1. The Caribbean is here defined to mean the fifteen Member States of the Caribbean Community: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. See CARICOM, *CARICOM Members & Associate Members*, available at <http://www.caricom.org/members.htm> (last visited Mar. 21, 2004).

2. See, e.g., Press Release, CARICOM, Communiqué Issued at the Conclusion of the Twenty-Fourth Meeting of the Conference of the Heads of Government of the Caribbean Community (July 23, 2003) (discussing progress of the negotiations); Press Release, CARICOM, Communiqué Issued at the Conclusion of the Sixth Meeting of the Council for Foreign and Community Relations (May 10, 2003).

lishment of the FTAA and the structure of the negotiations. The section also identifies some elements of the unique nature of the proposed grouping. Part Two discusses the challenges facing Caribbean countries as they participate in multilateral trade negotiations, including the FTAA. In Part Three, the Article critically reviews the early stages of the integration process in the Caribbean and examines the most recent developments in the process, particularly in the context of the process of globalization and liberalization. This is followed by Part Four, which discusses the Caribbean's participation in the FTAA.

I. PROPOSALS FOR THE ESTABLISHMENT OF THE FTAA

In December 1994, the Heads of State and Government of thirty-four States in the hemisphere agreed to establish the "Free Trade of the Americas," in which barriers to trade and investment were to be progressively eliminated.³ They further resolved to conclude the negotiation of the FTAA no later than 2005.

The rationale for the establishment of the FTAA was that it would provide the key to economic prosperity of the hemisphere.⁴ Therefore, they envisaged an area where trade exists without barriers, without subsidies, without unfair practices, and with an increasing stream of productive investment. In a word, the political leaders of the hemisphere wanted the elimination of all impediments to trade in goods and services.

Hemispheric leaders recognized the existence of bilateral and sub-regional agreements and decided to build on these arrangements in order to broaden and deepen hemispheric economic integration. In addition, they acknowledged that wide differences in the levels of development and size of economies exist within the hemisphere. Therefore, they resolved that such differences would be taken into account in the construction of the FTAA.

It was agreed that the negotiations for the FTAA Agreement would cover nine principal areas. These include: market access;

3. First Summit of the Americas: Declaration of Principles, Miami, Florida, Dec. 11, 1994, *reprinted in* 34 I.L.M. 810 (1995) [hereinafter Miami Declaration].

4. See FTAA — Free Trade Area of the Americas, Second Draft Agreement, Nov. 1, 2002, art. 2d, FTAA.TNC/w/133/Rev.2, *available at* http://www.ftaa-alca.org/ftaadraft02/eng/preamb_e.asp (not yet entered into force) [hereinafter Second Draft Agreement].

investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies, anti-dumping and countervailing duties; and competition policy.⁵ Each of these areas would be dealt with in a separate negotiating group, with clearly identified objectives.

In the area of market access, all tariffs would be subject to negotiation, with the possibility for the negotiation of “[d]ifferent trade liberalization timetables.”⁶ In agriculture, the objectives include the elimination of “agricultural export subsidies affecting trade in the hemisphere;” the identification of “other trade-distorting practices” in relation to agricultural products and the imposition of greater disciplines thereon; the development of an efficient and transparent system of rules of origin to facilitate free trade in such goods; and the simplification of customs procedures to facilitate trade and reduce administrative costs.⁷

In the area of investment, the aim is “to establish a fair and transparent legal framework to [promote] investment through the creation of a stable and predictable environment that protects the investor, his investment and related flows.”⁸ The broad objective of the negotiations in the area of standards and technical barriers to trade is to eliminate and prevent unnecessary technical barriers to trade in the FTAA.

With respect to subsidies and antidumping and countervailing duties, the aims of the negotiations are to seek “to deepen . . . existing disciplines provided for under the WTO Agreement on Subsidies and Countervailing Measures and [to] enhance compliance” therewith; and to improve, “where possible, the rules and procedures regarding the operation and application of trade remedy laws” within the hemisphere.⁹

In the area of intellectual property rights, the aim is to reduce distortions in hemispheric trade and promote and ensure adequate and effective protection to intellectual property

5. Free Trade Area of the Americas: Fourth Trade Ministerial Meeting, Declaration of Ministers, San Jose, Costa Rica, Mar. 19, 1998, *available at* http://www.ftaa-alca.org/ministerials/costa_e.asp. [hereinafter San Jose Ministerial Declaration].

6. *Id.* at ann. II (Market Access).

7. *Id.* at ann. II (Agriculture).

8. *Id.* at ann. II (Investment).

9. *Id.* at ann. II (Subsidies, Antidumping and Countervailing Duties).

rights.¹⁰ The main objective of the negotiations in government procurement is to “expand access to the government procurement markets of the FTAA countries.”¹¹

The objectives of the negotiations in the area of services are “to establish disciplines to progressively liberalize trade in services under conditions of certainty and transparency;”¹² and “to ensure the integration of smaller economies into the FTAA process.”¹³ In the area of competition policy, the general objective is to “guarantee that the benefits of the FTAA liberalization process [will] not be undermined by anti-competitive business practices.”¹⁴

With respect to dispute settlement, a principal aim is “to establish a fair, transparent and effective mechanism for dispute settlement among FTAA countries, taking into account, *inter alia*, the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.”¹⁵ Another aim is to “design ways to facilitate and promote the use of arbitration and other alternative dispute settlement mechanisms.”¹⁶

Hemispheric leaders agreed to establish a Consultative Group on Smaller Economies “to follow the FTAA process, keeping under review the concerns and interests of the smaller economies, and [to] bring to the attention of the [Trade Negotiating Committee] the issues of concerns to the smaller economies and make recommendations to address these issues.”¹⁷ A Committee on the Participation of Civil Society was also established to ensure that the views of civil society on trade matters are conveyed to the Negotiating Groups.¹⁸

The substantive negotiations for the establishment of the FTAA officially commenced in April 1998 when the Heads of State and Government, at their second summit, in Santiago, Chile, launched the negotiations based on the above structure.¹⁹

10. *Id.* at ann. II (Intellectual Property Rights).

11. *Id.* at ann. II (Government).

12. *Id.* at ann. II (Services).

13. *Id.*

14. *Id.* at ann. II (Competition Policy).

15. *Id.* at ann. II (Dispute Settlement).

16. *Id.*

17. *Id.* at ¶ 13.

18. *See id.* at ¶ 17.

19. *See* Second Summit of the Americas: Declaration of Principles, Santiago, Chile, April 18 - 19, 1998, *reprinted in* 37 I.L.M. 947 (1998) [hereinafter Santiago Declaration].

They further agreed that the FTAA Agreement would be “balanced, comprehensive, WTO-consistent and constitute a single undertaking.”²⁰ The hemispheric political leaders also re-affirmed the principle that “the FTAA negotiating process will be transparent, and take into account the differences in the levels of development and size of the economies in the Americas, in order to create the opportunities for the full participation by all countries.”²¹

The FTAA Agreement that is being negotiated is intended to create, by 2005, the world’s largest free trade area, involving thirty-four countries with a combined population of approximately 800 million people and a purchasing power of more than U.S. \$12 trillion.²²

The thirty-four participating States of the proposed FTAA constitute a highly diverse group of States. There are massive differences in the size of populations, land mass, availability of natural resources, and output. The following statistics clearly highlight the differences between Caribbean States and the major players in the FTAA process. The population of participating States in the FTAA negotiations ranges from 39,000 in St. Kitts and Nevis²³ to 294 million in the United States.²⁴ The land area in each of eight States in the Caribbean is less than 1000 square kilometers compared to almost ten million square kilometers in both Canada and the United States.²⁵

Therefore, the FTAA will be unique among regional trading blocs. It will bring within the same economic space the world’s largest and most powerful economies and the smallest, poorest, and most vulnerable economies. It will encompass a regional economy resting on one of the most diverse social and cultural universes imaginable. It will not only include two powerful developed countries but at least three Latin American middle-income States, which have the potential to pursue individual strate-

20. *Id.* at 951.

21. *Id.*

22. See Press Release, Office of the United States Trade Representative, U.S. Advances Bold Proposals in FTAA Negotiations to Create World’s Largest Free Market in 2005 (Feb. 11, 2003), available at <http://www.ustr.gov/releases/2003/02/03-08.htm>.

23. See THE WORLD ALMANAC AND BOOK OF FACTS 2004, at 832 (William A. McGeveran, Jr. et al. eds., 2004).

24. See *id.* at 850.

25. See *id.* at 855 (detailing land area of United States and Canada); *id.* at 757-850 (listing populations of eight Caribbean countries).

gies for feasible insertion into the global economy, and which can become major financial markets and areas for the concentration of production by global corporations. No other regional trading bloc offers a profile of such disparity and diversity, while at the same time reflecting, almost perfectly, the characteristics of the evolving, new global economy.

In addition, the proposed design of the FTAA goes beyond the structure of what has been contemplated in other regional trading blocs, and even of the multilateral trade regime that is being fashioned by the WTO. While it is intended that its provisions should be WTO compatible, it is being designed to develop and apply rules in areas and disciplines such as competition policy, investment, and government procurement. Such areas have never been successfully incorporated into the multilateral trade negotiations, and may yet have difficulty in being incorporated into the new round of multilateral trade negotiations. In a sense, the proposed FTAA, while having to be WTO compatible, can be WTO-plus in terms of both scope of coverage and depth of obligations.

II. *CHALLENGES FOR THE CARIBBEAN IN MULTILATERAL TRADE NEGOTIATIONS*

A. *Special Characteristics of Caribbean Countries*

The Caribbean faces a number of challenges in participating in international trade negotiations, including the FTAA, as it seeks to position itself in the new global economy and to exploit the potential benefits from the negotiated arrangements. In order to appreciate the magnitude of these challenges and assess its capacity to derive such benefits, it is necessary to examine the special characteristics of Caribbean countries and their attempts to cope with them.

The Caribbean comprises a number of small developing States, the majority of which are island economies. The population in most of these countries is less than one million. And even in a country like Jamaica, which is one of the largest of the countries in the region, the population is short of three million.²⁶

26. See *id.* at 798 (listing Jamaica's population at 2.6 million). Haiti is the most recent member of CARICOM. See CARICOM, *The History of CARICOM*, available at <http://www.caricom.org/archives/caricom-history.htm>. Haiti has a population of ap-

The limited size of the domestic market inhibits the development of viable enterprises that can specialize in the production of a wide range of goods and services. This in turn tends to discourage any large-scale investment in these countries. In some cases, the lack of serious competition can give rise to the emergence of monopolies, the operations of which could prove to be detrimental to the sound development of these countries.

In these small States, production is confined to a narrow range of goods and services due to their limited resource endowment. Production is usually targeted for a very small number of export markets, namely, the United Kingdom, in terms of primary products; the United States, in terms of a very limited range of manufactured goods; and Canada.

All of these countries are heavily dependent on a wide range of imported goods.²⁷ Such imports include goods for consumption purposes, raw materials, intermediate goods and machinery, and equipment for the productive sectors.

The high degree of openness of the Caribbean economies and their concentration on a limited range of exportable goods and services make these countries extremely vulnerable to fluctuations in the price of exports and to other disruptions in the international market. These disruptions can seriously affect external demand for the goods and services of the Caribbean. Income volatility is a natural consequence of the concentration of exports. The situation can be exacerbated by the occurrence of natural disasters, such as hurricanes and volcanoes, when they place constraints on the ability to produce goods and services. In this context, it should be noted that the Caribbean lies in the path of hurricanes, and on several occasions, these natural disasters have inflicted serious damage on the economies in the region, thus disrupting the developmental process.²⁸

Given the economies of scale that are usually associated with large-scale production of goods and, to some extent, services, it

proximately eight million and is a United Nations-designated Least Developed Country ("LDC"). See THE WORLD ALMANAC AND BOOK OF FACTS 2004, *supra* note 23, at 790.

27. See, e.g., *EU-Latin America & the Caribbean*, EU/LAC Madrid Summit, May 17-18, 2002, available at <http://europa.eu.int/comm/world/lac/cardata.htm> (providing details of yearly EU-Caribbean trade deficits).

28. See, e.g., Roger A. Pielke, Jr., *Hurricane Vulnerability in Latin America and the Caribbean: Normalized Damage and Loss Potentials*, NATURAL HAZARDS REV. 101 (Aug. 2003) (reviewing history of hurricane damage in the Caribbean).

is reasonable to expect that the availability of a wide range of imported goods for consumption should result in internationally competitive prices for the consumer. However, in the Caribbean, even when importers benefit from such prices, there is no guarantee that they will be passed on to consumers. Since the early 1990s, most Caribbean countries have not been permitted to maintain price control regimes.

The openness of these small economies and their high dependence on imported raw materials, intermediate goods, and machinery and equipment place them in a situation in which they invariably are forced to accept whatever prices are demanded for these imports. This can markedly increase the cost of production, thus affecting the international competitiveness of their goods and services.

Small Caribbean economies experience high transportation costs which affect the overall cost of doing business.²⁹ These countries usually incur high costs per unit of imports because of the relatively small volume of cargo in respect of any particular good and the need for bulk breaking. Similarly, exports are adversely affected by high costs which lead to a reduction in competitiveness and to relatively low returns.

Caribbean countries also face severe human resource constraints which impact adversely on the development process. Such constraints also affect their ability to effectively service and participate in multilateral trade negotiations. As was stated earlier, most of these countries have populations of less than one million. One can therefore readily appreciate the gravity of the situation confronting them.

The budgets of these countries are constantly under pressure as governments seek to provide the range of goods and services to support and facilitate the development process. Invariably, the level of savings falls far short of what is normally required to finance and sustain a reasonable level of development in these countries. Governments, therefore, are forced to turn

29. See *The Cost of International Transport, and Integration and Competitiveness in Latin America And the Caribbean*, UNITED NATIONS ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN, FAL Bulletin No. 191 (July 2002), available at <http://www.eclac.cl/Transporte/noticias/bolfall/2/11072/FAL191e.htm>. On average, countries of Latin America and the Caribbean spend almost 50% more than the world average on freight and insurance costs relating to their international carriage, with the Caribbean economies recording the highest indices. *Id.*

to external sources for vitally needed capital to finance a number of their development projects.

B. *Other Challenges*

In relative terms, the Caribbean will have to make a greater economic and fiscal adjustment than any other country or group of countries participating in the FTAA exercise.

For one thing, much of the Caribbean economic structure will be put at risk of being dismantled, with no obvious replacement in sight, by participation in a regional trade arrangement based on reciprocity. This structure has evolved largely due to the extension of a wide range of preferential trade agreements unlike any other region. As a result, the region has an economic structure with a higher ratio of trade-related preference-induced activity to gross domestic product ("GDP") than can be found in any other place.

As a consequence, the fiscal systems of many Caribbean countries feature a predominant dependence on import duties. In societies with small consuming markets, low populations and only rudimentary systems of fiscal administration, it will be a major challenge for some to successfully introduce consumption and income-based taxes³⁰ to replace import duties, as will be required by participation in the FTAA.

In essence, to participate effectively in the FTAA, most Caribbean economies, over the next decade, will have to carry out the adjustment to their production structures and their fiscal regimes that the developed countries had the luxury of effecting over a period of more than fifty years. Moreover, the Caribbean economies will have to manage such far-reaching liberalization without the options or scope for adjustments those countries enjoyed. This, therefore, will be a major undertaking for Caribbean countries.

The situation is complicated by a number of other policy imperatives, which are peculiar to the Caribbean. The Caribbean not only has to be involved in negotiating an FTAA which is WTO-compatible, but it will also have to conclude those nego-

30. See *The Fiscal Covenant: Strengths, Weaknesses, Challenges — Caribbean Perspectives*, U.N. Economic Commission for Latin America and Caribbean, U.N. Doc. LC/CAR/G.564, at 50 (1999) (noting that Antigua and Barbuda, Bahamas and St. Kitts and Nevis currently do not have any personal income tax regimes).

tiations in advance of its negotiation of a new trade arrangement with Europe by 2008, under which it will be bound to accord to the EU treatment similar to that given to developed FTAA countries.³¹ Therefore, the Caribbean has to involve itself in the FTAA, fully aware of the extent to which those commitments that it makes could prejudice its position in ongoing negotiations in the FTAA and those with the EU.

Additionally, the region will have to manage all of this in circumstances where it has not yet evolved regional positions, in the context of the CARICOM Single Market and Economy, on matters such as government procurement and investment which are an integral part of the FTAA agenda.³²

Ideally, the Caribbean would have required at least ten years of a functioning, full-fledged Single Market and Economy of its own, that afforded its members broader and deeper liberalization in all of the areas that are now being negotiated under the FTAA, before launching out into the wider hemispheric and global negotiations.

III. THE REGIONAL INTEGRATION PROCESS

A. Early Efforts

Caribbean efforts at regional integration commenced in 1968 when the Caribbean Free Trade Area ("CARIFTA") was established. This arrangement essentially concentrated on facilitating and promoting free trade in goods among its Members.³³ Some five years later, the Caribbean Community ("CARICOM")³⁴ was established by the Treaty of Chaguaramas.³⁵

31. See CARICOM, *Excerpts From The Caribbean Trade and Investment Report 2000*, available at <http://www.caricom.org/ctirexcerpts.htm>. Under the Agreement signed in Cotonou on June 23, 2000, CARICOM's relationship with the EU will change with the introduction of reciprocity and WTO conformity principles after the preparatory period expires on December 31, 2007. *Id.*

32. See *Review Of The Implementation Of The Cairo Programme Of Action In The Caribbean (1994–2004): Achievements And Constraints*, U.N. Economic Commission for Latin America and Caribbean, U.N. Doc. LC/CAR/G.767, at 6 (2003) (noting that although policies have been undertaken to open economies to trade and vast privatization programs have been initiated, progress toward regional economic integration has been slow).

33. There were originally eleven countries involved in this arrangement. These are Antigua and Barbuda, Barbados, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts/Nevis/Anguilla, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. Belize joined subsequently.

34. See CARICOM, *The History of CARICOM*, available at <http://www.caricom.org/>

The basic objectives of the Caribbean Community were the economic integration of its Member States; cooperation in the development of social services (functional cooperation); and the coordination of the foreign policies of Member States.³⁶ Economic integration was to be pursued through the establishment of a Common Market with the following aims:

- (i) [T]he strengthening, coordination and regulation of the economic and trade relations among Member States in order to promote their accelerated harmonious and balanced development;³⁷
- (ii) [T]he sustained expansion and continuing integration of economic activities, the benefits of which shall be equitably shared taking into account the need to provide special opportunities for the less developed countries;³⁸
- (iii) [T]he achievement of a greater measure of economic independence and the effectiveness of its Member States in dealing with [s]tates, groups of states, and entities of whatever description.³⁹

The progress made by the Caribbean in its attempts at achieving the goals of the Caribbean Community and, particularly, those of the Common Market regime, has been limited. The reasons for this are:

- The limited size of the regional market. The total population of the Common Market did not exceed six million, thus making it difficult to sustain any viable regional economic activities.
- The existence of a narrow resource base in the region. This militates against the development of any meaningful industrial activity. It is not surprising that Trinidad and

archives/caricom-history.htm. CARICOM consists of the twelve members of CARIFTA plus Bahamas, which became the thirteenth Member State of the Community on July 4, 1983, Suriname, which became the fourteenth Member State of the Caribbean Community on July 4, 1995, and Haiti, which after securing provisional membership on July 4, 1998, became the first French-speaking Caribbean State to become a full member of CARICOM on July 3, 2002. *Id.*

35. See Treaty Establishing the Caribbean Community (1973), available at <http://www.caricom.org/archives/treaty-caricom.htm> [hereinafter Treaty of Chaguaramas].

36. See *id.* art. 4.

37. *Id.*

38. *Id.* The less developed countries are Antigua and Barbuda, Belize, Dominica, Grenada, Montserrat, St. Kitts and Nevis, Anguilla, St. Lucia, St. Vincent and the Grenadines.

39. *Id.*

Tobago, a country which has oil and gas reserves, is the Member State that has benefited most from intra-regional trade arrangements.

- The absence of complementary productive activities in the development of the regional manufacturing sector. This was reflected in the duplication of manufacturing enterprises, producing the same type of goods, throughout the region. Such a situation was certainly not conducive to the development of intra-regional trade.
- Failure on the part of individual Member States to implement the Regional Industrial Programming Scheme, whereby feasible industrial projects would be allocated among Member States in accordance with their resource endowment.
- The absence of an effective intra-regional mode of transportation for the movement of goods throughout the Community.
- The orientation of the region towards the importation of extra-regional goods, given the openness of the Caribbean economies.⁴⁰

Notwithstanding the above, the region did achieve a reasonable level of functional cooperation in a number of areas, including health, education and training, and meteorological services. There was also some measure of foreign policy coordination, especially in the area of international trade negotiations.

B. *CARICOM Single Market and Economy*

The CARICOM Single Market and Economy ("CSME") is an arrangement among the Member States of CARICOM⁴¹ that would allow for CARICOM goods, services, people and capital to move freely throughout the Community.⁴² The decision to establish the CSME was taken by the Conference of Heads of Government of the Caribbean Community in 1989 in Grand Anse,

40. At no time has intra-regional trade in goods ever exceeded 20% of the region's overall trade in goods.

41. It should be noted that the Bahamas has not yet decided to participate in the CARICOM Single Market Economy ("CSME"). *Establishment of the CARICOM Single Market and Economy Summary of Status of Key Elements*, available at <http://www.caricom.org/singlemarket-index.htm> (last visited Feb. 10, 2004).

42. See CARICOM, *CARICOM Single Market and Economy*, available at <http://www.caricom.org/archives/2spcsmebackground.htm>.

Grenada.⁴³ The motivating factor behind this decision was the perceived need to “deepen the integration process and strengthen the Caribbean Community in all of its dimensions to respond to the challenges and opportunities presented by changes in the global economy.”⁴⁴

The concept of the CSME as espoused and accepted by the Heads in 1989 envisaged that the region should be reconstituted to become a *single market space* in which not just goods, but also services, people, capital, and technology should freely circulate. It also envisaged that the right of establishment of enterprises anywhere in the region should be enjoyed by the removal of the fiscal, legal, physical, technical, and administrative barriers which tended to place limits on such activities taking place.

The concept also embodied the notion of a *single Caribbean economy*, based upon the pursuit of, as far as practicable, unified and harmonized economic and monetary policies. Specifically, it called for the pursuit of a common trade policy provision for the coordination of efforts to develop all of the productive sectors, a common competition policy, a common approach to consumer protection, dumping, subsidies and business development, and a regional transportation policy. It also provided for fiscal harmonization, a harmonized approach to capital market development, macro economic policy convergence, and special measures to treat to the needs of disadvantaged sectors, regions, and countries. In addition, it called for the creation of new institutional arrangements to support and regulate cross-border economic liberalization and to resolve and settle disputes.

The Treaty of Chaguaramas was accordingly revised to give legal effect to the above concept and was signed in 2001. It is being applied on a provisional basis, pending its ratification by all the Member States.⁴⁵

To give practical effect to the CSME, all remaining barriers to intra-regional trade in goods were removed by the mid-1990s. In addition, priority was given to the removal of restrictions on the provision of services, the right of establishment, movement of specified categories of skilled nationals, and capital.

43. See GRAND ANSE DECLARATION (1989), available at <http://www.caricom.org/archives/grandanse.htm>

44. *Id.* at intro.

45. See *id.*

As will be noted, one of the major features of the CSME is the inclusion of services in the regional free trade regime. The Treaty of Chaguaramas concentrated on the free movement of goods and contained only token provisions for trade in services and movement of capital. No provision was made for the free movement of people throughout the Community. The unrestricted movement of capital, labor, and indeed services, is critical to the development of the region and to its effective insertion into the new global economy.

The CSME is considered to be an economic and strategic necessity, given the unrelenting process of globalization and liberalization, and the inability of the small States in the region to cope, on their own, with this process.⁴⁶ Furthermore, the preferential trade arrangements, on which these countries have developed their trade and economic relations with most of the developed world, are now disintegrating under the pressure of a reformed multilateral system which places a new and unprecedented emphasis on reciprocal and non-discriminatory trade practices. The CSME is, therefore, seen as a prerequisite to the region's meaningful and effective participation in the WTO, FTAA, and the proposed economic partnership agreement ("EPA") between the Caribbean and the EU.

The magnitude of the task confronting the Caribbean, as it participates in the ongoing WTO negotiations, as well as the negotiations for the establishment of the FTAA and partnership arrangements with the EU, has been clearly recognized by the political leaders of the region. These negotiations are being conducted simultaneously and are scheduled to be concluded about the same time. In addressing this concern, the Caribbean Heads of Government have created the Caribbean Regional Negotiating Machinery ("CRNM"). The structure, powers, and scope of this body bear a necessary relationship to the needs of the region as it participates in multilateral trade negotiations.

46. See Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, July 5, 2001, at pmbl., available at <http://www.caricom.org/infoserv.htm> (recognizing "that globalization and liberalization have important implications for international competitiveness"); see also Owen Arthur, Prime Minister of Barbados, *Small States in a Changing World*, 24 FLETCHER F. OF WORLD AFF. 3, 10 (Fall 2000) (arguing that "globalization confronts small [S]tates in general with daunting challenges, arising principally from its new international trade and financial arrangements").

The function of the CRNM is to develop, coordinate, and execute an overall negotiating strategy for various external trade-related negotiations in which the region is involved. A major task of the institution is to bring a systematic and focused approach to new pressing issues. The ultimate goal is to ensure that the development of Caribbean countries is not impeded by changes in global trade and that maximum benefit can be secured from such trade at all times.

IV. CARICOM PARTICIPATION IN THE FTAA

CARICOM's participation in the FTAA is predicated on the assumption that not only would there be benefits to be derived from such but that these benefits would be equitably shared by all participants. The region's involvement in this hemispheric undertaking was also based on the fact that the FTAA is to build on "existing sub-regional and bilateral integration and free trade agreements."⁴⁷ In addition, it is to "take into account differences in the levels of development and size of the economies in our Hemisphere, to create opportunities for the full participation of the smaller economies and to increase their level of development."⁴⁸ The Heads of State and Government committed themselves to ensuring the full participation of this particular group of countries in the construction of the FTAA.

The insistence that special and differential treatment be accorded to the smaller economies in the FTAA has been a major plank of the negotiating stance of the Caribbean.⁴⁹ CARICOM considers it necessary that this principle be accepted by all of its negotiating partners. Special and differential treatment for these countries should not be seen as a concession from developed to developing countries. Instead, it should be viewed as an important set of policy instruments deliberately designed to address the wide disparities, including size and level of development, among the participating States.

For the Caribbean, special and differential treatment for the smaller economies within the FTAA must entail longer phase-in periods; special derogations from agreed liberalization schedules, where necessary; high thresholds in certain sectors

47. San Jose Ministerial Declaration, *supra* note 5, at ¶ 2.

48. *Id.* at ¶ 5.

49. *See id.* at ann. 1 (General Principle h).

before liberalization kicks in — for example, in the area of government procurement; exemption of all sensitive industries from the liberalization program; special arrangements to allow the small economies affordable access to costly dispute settlement mechanisms; technical assistance in relation to capacity building and institutional reform; and access to adequate and effective development funding.

In pursuit of the above, CARICOM countries have been participating in the FTAA negotiations as a bloc and have been very active in the Consultative Group on Small Economies. In fact, the first chair of this Group was held by Jamaica.⁵⁰ It was the Consultative Group on Small Economies that recommended to the Trade Negotiations Committee (“TNC”) a set of basic guidelines/directives to be followed by the Negotiating Groups in respect to the treatment of the differences in the levels of development and size of economies.⁵¹

As a result, the TNC adopted the following measures relating to the treatment to be accorded in respect of such differences. The treatment should:

1. provide a flexible framework that accommodates the characteristics and the needs of each one of the countries participating in the FTAA negotiations;
2. be transparent, simple and easily applicable, while recognizing the degree of heterogeneity among the FTAA economies;
3. be determined by each of the negotiating groups;
4. be determined on the basis of case by case analysis (according to sectors, topics and country/countries);
5. include transitional measures, which could be supported by technical cooperation programs;
6. take into account existing market access conditions among the countries of the [h]emisphere;
7. consider longer periods for compliance with obligations.⁵²

These measures are to be complemented by a Hemispheric Cooperation Program (“HCP”) and technical assistance and train-

50. *See id.* at ¶ 13 (establishing Jamaica as Chair).

51. *See* FTAA Trade Negotiations Committee, *Guidelines Or Directives For The Treatment Of The Differences in the Levels Of Development And Size Of Economies*, FTAA.TNC/18, Nov. 1, 2002, available at http://www.ftaa-alca.org/TNC/tn18_e.asp.

52. *Id.*

ing during the negotiations and implementation process.⁵³

CARICOM played a “not insignificant” role in the formulation of the HCP. The HCP which was adopted by the Trade Ministers in Quito, Ecuador, in November 2002 is considered to be a central element of support for the FTAA.⁵⁴ The objectives of this program are to:

- strengthen the capacity of countries to implement and participate fully in the FTAA in order to contribute to growth with equity and broad-based economic development;
- assist countries to effectively address and overcome the challenges and maximize the benefits associated with trade liberalization in the FTAA;
- promote greater interrelationship between the objectives and requirements of development and those of trade liberalization;
- complement current and future multilateral, sub-regional and national programs aimed at:
 - strengthening productive capacity and fostering the competitiveness of the economies;
 - encouraging the development of innovation capacity and the transfer of appropriate technology;
 - improving mechanisms for responding to economic shocks.
- enhance institutional strengthening and capacity building for policy-making, development of negotiating strategies and implementation of the FTAA;
- increase coordination among donors and between donors and recipients with the objectives of maximizing cooperation and technical assistance.⁵⁵

The principles of the HCP require that it should:

- be conceived in the context of national development objectives and strategies and be part of an agenda for economic growth and development and poverty reduction;

53. *See id.* at Complementary Supporting Measures.

54. Free Trade Area of the Americas: Seventh Trade Ministerial Meeting, Declaration of Ministers, Quito, Ecuador, Nov. 1, 2002, available at http://www.ftaa-alca.org/ministerials/quito/Quito_e.asp [hereinafter Ministerial Declaration of Quito].

55. *Id.* at ann. III, Hemispheric Cooperation Program, Objectives.

- respond in an effective manner to the requirements and challenges to development arising from trade liberalization, in general, and implementation of the FTAA, in particular;
- involve the private sector as well as other sectors of civil society in the identification of proposals and execution of programs;
- enable countries, especially the smaller economies, to participate beneficially and equitably in the FTAA.⁵⁶

While the characteristics of the HCP require that it should:

- contain plans or subprograms, objectives and goals reflecting the priorities identified by countries for the short, medium, and long term;
- comprise activities that address concrete needs;
- include mechanisms for monitoring and evaluation.⁵⁷

The HCP is designed to provide assistance in three principal areas, namely: preparations for the negotiations, implementation of trade commitments under the FTAA Agreement, and facilitation of the adjustment that will be required by the smaller economies.⁵⁸ CARICOM, while appreciating these provisions, has been at pains to stress the critical importance of the third dimension of this Program to the Caribbean.

It should also be noted that all CARICOM Member States submitted their dossiers outlining their needs for capacity strengthening at the first donors/beneficiaries meeting held in Washington, D.C. under the aegis of the Inter-American Development Bank ("IDB") in November 2003.⁵⁹ Meetings are to be convened at the regional level with interested donors to further consider these dossiers and to determine the level of funding required for the programs.

CARICOM has been particularly active in the FTAA negotiations relating to market access. These negotiations cover the ar-

56. *Id.* at ann. III, Hemispheric Cooperation Program, Principles.

57. *Id.* at ann. III, Hemispheric Cooperation Program, Characteristics.

58. *Id.* at ann. III, Hemispheric Cooperation Program, Guidelines for Implementation.

59. See Press Release, Inter-American Development Bank, *IDB to Hold Business Seminar November 7 to Explain Bank Financing for Modernization and Reform of the State Projects* (Oct. 30, 2003), available at http://www.iadb.org/NEWS/DISPLAY/PRView.cfm?PR_Num=205_03&Language=English.

eas of agriculture, non-agricultural goods (i.e., manufactured goods), services, investment, and government procurement. Despite the fact that the political leaders of the hemisphere have acknowledged that particular attention should be paid to the smaller economies and their concerns, CARICOM has had to consistently emphasize the need to include in the draft FTAA Agreement specific provisions that address the peculiar situation of the smaller economies.⁶⁰ The task of persuading some of the participants in the negotiations to accept this position has not been an easy one.

The Caribbean has nevertheless recorded some success in the negotiations thus far. On the issue of tariff elimination, CARICOM was able to persuade its negotiating partners to agree to four phases, namely, immediate, no more than five years, no more than ten years, and longer.⁶¹ This will allow CARICOM to phase out tariffs on sensitive items over a period exceeding ten years, thus providing much-needed breathing space for the industries that produce these goods. CARICOM has also been pressing for the exclusion of certain highly sensitive goods produced in the smaller economies from the trade liberalization arrangements.

Additionally, the Caribbean has secured agreement that the base tariffs to be used by CARICOM countries for a limited number of goods, in their tariff elimination programs, should not be higher than what is allowed under their WTO obligations.⁶² This means that, in respect of these products, CARICOM countries can use their WTO-bound rates⁶³ as against their applied rates which are lower.

In the area of government procurement, CARICOM has succeeded in persuading its negotiating counterparts that cer-

60. See *U.S.-CARICOM Trade Talks*, 18(9) CARIBBEAN UPDATE (Oct. 1, 2002) (stating that United States acknowledges need to develop Caribbean economies).

61. See FTAA Trade Negotiations Committee, *Methods and Modalities for Negotiations*, FTAA.TNC/20/Rev.1, at Schedules and Paces for Tariff Elimination, Oct. 18, 2002, available at http://www.ftaa-alca.org/TNC/tm20r1_e.asp.

62. See *id.* at Base Tariff.

63. All members of the WTO had to commit their tariff schedules to a maximum level, known as bound rates. This does not mean, however, that the tariffs which they actually applied to goods had to be at the bound rates. They could be lower than the bound rates. This is certainly the case as far as CARICOM countries are concerned. See generally WTO, *Tariffs: More Bindings and Closer to Zero*, available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm (last visited Mar. 21, 2004).

tain services should be exempted from the FTAA Agreement. In addition, it has been agreed, in principle, that there should be higher thresholds for the smaller economies.⁶⁴ Furthermore, these countries would be allowed to insist on a higher local content requirement in the bidding process.

A main concern at this stage of the negotiations is whether the schedule for completion of the process and the level of ambition agreed upon can be adhered to, given the complexity of the exercise and the pace at which the negotiations have been proceeding. This matter has been the subject of a great deal of discussion at both the ministerial and officials' levels. While Ministers have recently recommitted themselves to meeting the schedule, there is still some doubt, both at the officials' level and in some capitals, that the negotiations can be successfully completed by January 31, 2005 and at the same level of ambition in all of the nine negotiating areas.⁶⁵

CONCLUSION

The creation of the FTAA offers the promise of the single richest regional trade and economic prospect and program open to humankind. It will remove barriers to trade in goods and services, investment, technology, and even ideas. It will create a market of some 800 million consumers with a spending power of over U.S.\$12 trillion. Such an arrangement certainly will provide tremendous opportunities for the peoples of this hemisphere.

Conversely, the FTAA will present a number of challenges as well. This is particularly so in respect of the countries in the Caribbean whose unique situation will require special attention. These countries are small, open, vulnerable, and highly dependent economies. However, given the few options open to them in a world economy that is rapidly being transformed, Caribbean countries simply must seek to take the fullest advantage of the opportunities offered by the creation of the FTAA.

The realization of the potential benefits from participation

64. FTAA Trade Negotiations Committee, *supra* note 61 (stating "differences in the levels of development and size of economies shall be taken into account in the development of proposals, offers and throughout the negotiation process").

65. See Don Bohning, *Smaller Counties Seek Consideration*, MIAMI HERALD, Oct. 26, 2003, at 11AC.

in the FTAA by CARICOM will require a clear understanding and appreciation of the extent of the adjustment that Caribbean countries will have to make. It will also require a conscious decision on the part of their hemispheric partners to structure the mechanisms of the FTAA to fully accommodate and reconcile the vastly divergent interests of all participating countries, but especially its smallest and most vulnerable. It is no small wonder that the major plank of CARICOM's negotiating stance has been the insistence that provisions for special and differential treatment be included in the FTAA agreement.⁶⁶

The negotiations for the establishment of the FTAA have been very challenging for CARICOM in terms of the complexity and depth of the issues involved and the human and financial resources required to participate effectively in them. It is expected that the Caribbean will face this challenge up to the very end. It cannot afford to resile from the task before it.

66. For further discussion on what such provisions for special and differential treatment would entail, see *supra* Part IV.