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Implementing trade policy in Latin America: The cases of Chile and Mexico

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Abstract

Implementation problems have emerged as one of the key items in the international negotiating agenda. This paper analyses the experiences of Chile and Mexico in implementing trade agreements. The negotiations of FTAs have implied changing the institutional environment of Latin American countries. Transparency obligations are changing the way policies in general are formulated, adopted and implemented. Other obligations have created the need to introduce new legislation where it did not exist. Implementation takes place at different moments in time and at different stages of the negotiations and operation of the trade agreements. How implementation problems have been addressed and to what extent it has been effective is a major concern. In fact, these aspects are related to the activities developed by multilateral and regional organisations, both in support of multilateral and regional trade negotiations. But within the context of recent bilateral negotiations, specific chapters dealing with trade capacity building have been negotiated (CAFTA), current negotiations (CAN-US).

The paper focuses it attention on the Chilean and Mexican experiences with trade agreements and provides explanations regarding their relative success.

Introduction

This paper analyses the salient issues that have emerged in the context of negotiations and implementations of free trade agreements (FTA) in Latin America, focusing on the experiences of Mexico and Chile. These countries have been chosen because they have the most extensive network of free trade agreements with countries within and outside the region. The first section discusses the different models of trade agreement followed in the region and the main differences between them. Section II focuses on the Mexican case especially with NAFTA—and on Chile with different negotiating experiences—. Section III analyses the contentious issues that have emerged in trade relationship between Mexico, Chile and their trading partners. The fourth section addresses the issues of implementation and institutional building. Some final remarks are presented at the end of the paper.

I. Free Trade Agreements in the Americas: The Models

Since the early nineties, Latin American countries (LAC) embarked in an intensive integration process. Some countries decided to build their new economic partnership through the old integration framework, but following a new approach that would reflect the economic policy reforms undertaken since the end of the eighties. Others decided to adopt a fresh approach building in the "new integration paradigm".

For instance, Argentina, Brazil, Paraguay and Uruguay created the Mercado Común del Sur (MERCOSUR) in Asunción, Paraguay, in November, 1991. This agreement was negotiated under the framework of the Asociación Latinoamericana de Integración (ALADI)[1] Treaty signed in Montevideo, Uruguay in August, 1980.

ALADI is a highly flexible framework that contemplates three types of agreements among its members: a regional tariff preference, regional scope agreements,[2] and partial scope agreements,[3] including economic complementation agreements.[4] Trade agreements negotiated under ALADI so far have covered mainly trade in goods, although they may also include services, investment and other trade provisions. ALADI was notified to the WTO under the Enabling Clause (see table 1).

1 Latin American Integration Association.
2 Regional scope agreements are those in which all member countries participate.
3 Partial scope agreements are those in which not all member countries participate.
4 Aimed, among other objectives, to promote maximum utilisation of production factors, stimulate economic complementation, ensure equitable conditions for competition, facilitate entry of products into the international market, and encourage the balanced and harmonious development of member countries, (article 11, ALADI Treaty).

The members of the Andean Pact decided to renew the 1969 Cartagena Agreement, and to create the Comunidad Andina de Naciones (CAN) in March 1996. This renovated agreement entered into force in June 1997; thereafter a number of additional protocols have been negotiated in order to adjust the legal structure of the old agreement to the new framework. This is one of the most elaborated trade pacts in Latin America, its covers a wide range of issues, including a Court of Justice, and a Parliament modelled after the European Union experience. This approach is different from the one followed by the MERCOSUR, which in its ten years of existence has relied on a very weak legal and institutional framework.

Although this is not a trivial difference, between the two custom unions of the region, MERCOSUR has shown a stronger partnership among its members. In fact, if we analyse the agreements negotiated in the region by both trade blocks, only MERCOSUR has a set of agreements negotiated as a single entity. On the other hand, both the Andean Community and its members have trade agreements of their own, which raises questions with regard to the commitments of its members with regards to the common integration framework. In fact, today, Colombia, Ecuador and Peru are negotiating an FTA with the U.S., which will probably be modelled under the NAFTA.

Table 1

REGIONAL TRADE AGREEMENTS NOTIFIED TO THE GATT/WTO AND IN FORCE

		GATT/WTO notification			GATT/WTO notification	
Agreement	**Date of entry into force**	**Date**	**Related provisions**	**Type of agreement**	**Related provisions**	**Type of agreement**
MERCOSUR[1]	29-Nov-91	05-Mar-92	Enabling Clause	Customs union		Not notified
EFTA - Chile	01-Dec-04	10-Dec-04	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
Republic of Korea - Chile	01-Apr-04	19-Apr-04	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
Chile - El Salvador	01-Jun-02	16-Feb-04	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
EC - Chile	01-Feb-03	18-Feb-04	GATT Art. XXIV	Free trade agreement		Not in force
United States — Chile	01-Jan-04	19-Dec-03	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
Chile — Costa Rica	15-Feb-02	14-May-02	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
EFTA - Mexico	01-Jul-01	25-Jul-01	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
Chile — Mexico	01-Aug-99	27-Feb-01	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
EC — Mexico	01-Jul-00	01-Aug-00	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
Mexico — Israel	01-Jul-00	27-Feb-01	GATT Art. XXIV	Free trade agreement		
Canada — Chile	05-Jul-97	26-Aug-97	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
NAFTA[2]	01-Jan-94	01-Feb-93	GATT Art. XXIV	Free trade agreement	GATS Art. V	Services agreement
CAN[3]	25-May-88	12-Oct-92	Enabling Clause	Preferential arrangement		Not Notified
ALADI[4]	18-Mar-81	01-Jul-82	Enabling Clause	Preferential arrangement		Not covered

Source: World Trade Organization.

Notes: Trade agreements notified until January 5, 2005.

(1) Mercosur: Mercado Común del Sur: Argentina, Brazil, Paraguay and Uruguay

(2) NAFTA: North American Free Trade Agreement: Canada, Mexico and United States.

(3) CAN: Comunidad Andina de Naciones: Bolivia, Colombia, Ecuador, Peru and Venezuela.

(4) ALADI: Asociación Latinoamericana de Integración: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela

Mexico decided in 1990 to start negotiating an FTA with the U.S. After almost a year of talks, a new integration model was created. Although the architecture of the agreement and its content are designed on the US-Canada Free Trade Agreement, the jurisprudence of the multilateral trading system, and the parallel negotiations of the Uruguay Round, the treatment of key aspects of the agreements —intellectual property, investment and services— is deeper and more advanced than any other integration scheme negotiated before, with the exception of the European Union. This model, with some adjustment and updates, has been promoted by Mexico, first, and Chile later, in its bilateral negotiation within and outside the region.

These two approaches, NAFTA and ALADI integration models have clashed in the context of the Free Trade Agreements of the Americas (FTAA), neutralising the negotiating process. Finally, the U.S. decided to follow a NAFTA-plus-type agreement in its bilateral negotiations, both with LAC and outside the hemisphere, spreading the model.

Table 2

THE OLD AND THE NEW INTEGRATION PROCESSES

OLD	NEW
TRADE COVERAGE	
Mainly trade in goods liberalisation	Broad (goods, services, investments, intellectual property, government procurement, SPS, TBT, etc.)
TRADE LIBERALISATION IN GOODS	
Mainly preferential trade agreements with limited trade coverage and partial tariff reduction	Negative lists and automatic schedules, limited exceptions (less than 10 percent of trade)
RULES OF ORIGIN	
Simple rules across tariff universe	Complex rules and families of rules of origin
OVERALL ECONOMIC AND TRADE POLICY	
Import substitution/inward-looking development strategies, high, differentiated and disperse tariffs structure	Export-led oriented strategies, lower tariff protection, differentiated structure but less disperse
INTEGRATION MODEL	
European-type integration approach based on ALADI framework	Free Trade Agreements modelled in NAFTA-type provisions
INSTITUTIONAL ARRANGEMENTS	
Bureaucratic style approach, supra national secretariats and weak dispute-settlement mechanism	Members driven, no bureaucratic institutional arrangements, except CAN agreement, stronger dispute settlement, except in ALADI-type agreements.

Source: based in Devlin & Estevadeordal (2001) and Devlin & Giordano (2004), and own elaboration.

Although the new integration wave in LAC follows new models and is based on outward-looking policies, the ALADI framework continues to be intensively used by its members. In fact, if we take into account the number of agreements signed under the ALADI's umbrella, it is quite impressive although some of them in terms of trade may not be significant (www.aladi.org).

But the new spirit is reflected in the substantive content of the agreements signed in the region. Table 2 summarises some of the most salient features of today's integration process. In the first place, as pointed out by various authors, the integration process is part of, and coherent with the overall reform process that was initiated in late eighties and early nineties. In fact, unilateral trade reforms reduced the average tariff rate in the region from 40% to 12%, and reduced the dispersion of the tariff, from 30% in the mid eighties to 9% (Devlin and Estevadeordal, 2001).

Regional trade agreements have been used to complement unilateral and multilateral liberalisation, and as a vehicle for further deepening economic reforms. Finally, trade agreements, embedded in a legally binding contract, are considered a lock-in instrument to prevent policy reversal.

One important characteristic of the ALADI-type agreements negotiated during the 90s is that although they covered a substantial share of trade, they were based on a set of simple rules, modelled in the General Agreement on Tariffs and Trade (GATT) disciplines. This aspect helps to exemplify the proliferation of agreements. But this characteristic also explains the institutional weaknesses of those agreements.

The NAFTA had a special impact at the regional level. It was the first agreement negotiated between a developing country and two G7 members. This was a not only an economic impact, but a political phenomenon. Shortly after the conclusion of NAFTA, Mexico began negotiating with

countries in the Hemisphere based on the new model (table 3), much more complex than the ALADI-type agreement, not only regarding investment and services disciplines, two important "new trade dimensions", but also regarding requirements and administration of trade in goods.

The NAFTA-type agreements differ in a number of aspects with the ALADI models. To begin with, trade in goods rules are more elaborated and demanding in terms of implementation. In particular, customs and rules of origin procedures, and rules of origin requirements. Also, in terms of issue coverage, the agreements are more complex. Regarding investment and services provisions, for instance, the agreements contemplate stronger rules and commitments. Finally, the adoption of a solid dispute settlement mechanism is probably the most significant institutional improvement adopted by the LAC in their new wave of negotiations. Only MERCOSUR has marginalised itself from the use of these models and has emphasised WTO-type rules on its negotiations in the region and with other trading partners, like the EU.[5]

In terms of institutional arrangements, with the exception of CAN, all the new agreements adopted a member's driven approach. There are no supranational secretariats to run the administrative and substantive issues of the agreements, and governments have had to strengthen their domestic bureaucracies in charge of trade matters to monitor their functioning. This is an important difference with regards to the old integration process that relies in an international bureaucracy and supranational institutions that never reached the importance of its source of inspiration: the European Union.

Chile and Mexico have been the most active countries in international trade negotiations. Both of them have embarked in negotiations with countries within and outside the Western Hemisphere, and both have an appeal for NAFTA type agreements.

[5] It is interesting to notice that Uruguay, a member of MERCOSUR, signed a full bilateral FTA with Mexico following a NAFTA-type agreement (table 3).

II. FTA and Institutional Reforms

Chile and Mexico share common policy features. First, they began their policy reform relatively early: Chile in the mid seventies, and Mexico in the mid eighties. This implies that economic policy and trade reforms have been more stable, in spite of deep economic crises. The maturity of the reform process has provided, in both cases, enough time for reforms to yield results and acquire a reasonable degree of political consensus in the society. Both started an active integration process through trade agreements in the early 1990s, which because of time frame can best be assessed. In both cases trade agreements have played a key role to support policy stability during critical period by narrowing the policy options and limiting policy reversal; for instance, tariff rate increases (GAO, 1997).

A. The case of Mexico

Mexico embarked in policy reforms triggered by the Debt Crisis in 1982. This reform process aimed at stabilising the economy; in the area of trade reform the process contemplated accession to the old GATT that concluded in 1986 (Ortiz Mena, 2004).

During this period, trade relations with the U.S. were pursued under the framework of different bilateral arrangements that—in retrospect—created the playing field for what later became the NAFTA. Bilateral integration with the U.S. was quickly perceived as a means to attract investments and support the export-led development strategy; economic reform per se did not ensure export growth and was not sufficient to attract investment, as examined in Cameron &

Tomlin (2000) and Katz (2001). Therefore, the move to a strategy of bilateral trade negotiations was driven by economic consideration from the Mexican perspective. From the U.S. perspective, both economic and foreign affairs considerations were very significant. For Canada, the need to preserve its preferential access to the U.S. market was the main driving force.

Prior to the beginning of negotiations, during the second half of the eighties and early nineties, further reforms were undertaken. A privatisation program was carried out, foreign investment restrictions were severely limited, non-tariff restrictions were further reduced, subsidies were limited or eliminated, and a deregulatory reform was started (Cameron and Tomlin, 2000).

During the negotiations, several legal reforms were prepared that had to be ready before the entry into force of the agreements: the foreign investment statute was further liberalised to reflect NAFTA commitments. Telecommunications, intellectual property and trade remedy laws were enacted in that first stage (GAO, 1997).

Others aspects, more politically sensitive for all countries, were left aside by the negotiators or special arrangements were found —energy sector, cultural industries, automobiles, textiles and apparel and, last but no least, some agricultural products— reducing the political risk of approval and implementation (Katz, 2001); (Hufbauer and Schott, 2004). This aspect clearly shows the interest of the parties involved in reaching a meaningful, but politically viable agreement. The players were all conscious of the historic step they were taking and the very unique political juncture in the three countries (Katz, 2001).

By agreeing to address politically sensitive issues in a mutually convenient manner, countries were devising compensatory arrangements in exchange for concessions. For instance, Mexico was allowed to maintain its limitations in the energy sector, but a Chapter on energy, initially resisted by Mexico, was included. At the same time, Mexico opened PEMEX procurement to NAFTA partners as part of the deal (Hufbauer and Schott, 1993). In other cases, (e.g. financial services), the compensatory measure took the form of a transition period for liberalisation, coupled with special safeguards to promote an orderly adjustment of the market to the new scenario.

Table 3

MEXICO'S TRADE AGREEMENTS

PARTNER	TYPE OF AGREEMENT	LEGAL STATUS	MODEL
Mexico-Chile	FTA	In force since 1 January 1992.	ALADI – upgrade to NAFTA model in 1999
NAFTA between Mexico, United States and Canada	FTA	In force since 1 January 1994	Original model
G3 FTA between Mexico, Venezuela and Colombia	FTA	1 January 1995	NAFTA-type model
Mexico-Costa Rica	FTA	1 January 1995	NAFTA-type model
Mexico-Bolivia	FTA	1 January 1995	NAFTA-type model
Mexico-Nicaragua	FTA	1 July 1998	WTO-based agreement
Mexico-Uruguay Economic Co-operation Agreement	Preferential agreement		ALADI type
Mexico-Uruguay	FTA	15 November 2003.	NAFTA-type model
Mexico-EU	FTA	1 July 2000	WTO-based agreement
Mexico-Israel	FTA	1 July 2000	Covers trade in goods
Mexico-European Free Trade Association	FTA	1 July 2001	WTO-based agreement
Mexico-Northern Triangle (El Salvador, Guatemala and Honduras)	FTA	14 March 2001	NAFTA-type model
Mexico-Japan	FTA	1 April 2005	NAFTA-type model
Mexico-Mercosur	ECA	July and September 2002	ALADI-type framework agreement and automobile agreement
Mexico-Colombia-Venezuela	ECA	7 December 2004	ALADI-type automobile agreement
Mexico-Panama	Preferential agreement	24 April 1986	ALADI-type agreement

Source: www.sice.org

Notes: ECA: Economic complementation agreements, ALADI.

FTA: Free trade agreements.

Finally, the agreements' institutional arrangements helped to better implement provisions and resolve certain problems. In fact, through commissions, working groups, and the dispute settlement mechanism, in particular during the consultations phase. Moreover, these sets of working options have created a general framework for dealing with increasingly complex issues, like the post-September 11 security agenda (Hufbauer and Schott, 2004).

An important aspect that emerged in several Latin American countries was related to the responsibility for trade negotiations. Mexico was no exception. In fact, President Salinas transferred all responsibility for trade negotiations from the Ministry of Foreign Affairs to the Ministry of Trade and Industrial Development (SECOFI) today the Ministry of Economy. At the governmental level, all the negotiations were handled in a "petit comité", and an articulated consultation scheme between the public and the private sector was created (Ortiz Mena, 2001). This is a key institutional aspect to formulate and conduct trade policy that has been maintained relatively stable until now.

Mexico undertook other significant institutional changes to address the challenges and opportunities opened by economic reforms and trade agreements. One major concern was how to create a more business-friendly environment and to promote the operation of market forces.

As was mentioned, as part of NAFTA obligations on competition policy, countries "shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognising that such measures will enhance the fulfilment of the

objectives of this Agreement" (Article 1501). Mexico approved an antitrust law in December 1992 that became effective in June 1993. This law incorporated all the necessary elements to prevent anti-competitive practices by private operators and even state-owned companies, and is a very important legislation that complemented the economic reforms undertaken since mid 80s. Over the years, the Federal Competition Commission responsible for the administration of the law has overcome the cultural resistance to these important institutions, and today it is considered a respectable and credible entity (see OCDE/BID, 2004).

In 2000, a new independent commission was created: the Federal Commission for Regulatory Improvement (Comisión Federal de Mejora Regulatoria). This Commission is the successor of the Economic Deregulation Unit (Unidad de Desregulación Económica) created at the end of the 1980s at the old Ministry of Trade. The Law mandates all Mexican Federal entities to submit for review any regulation that they are planning to enact and, among other things, to present a regulatory assessment (cost/benefit) of the measures. The Commission sends back the proposal with its approval or presents all its negative comments to the draft. All the exchanges of opinions between the Commission and the submitting agency are public and the comments are taken into account by the President's Legal Advisor, who must approve the final proposal before publication. These two Commissions have improved significantly the regulatory environment for business, transparency and quality of state intervention in the Mexican economy.

Transparency requirements in FTAs are a very significant obligation. They provide a minimum standard for trade regulation, reduce transaction cost and enhance public participation in public policy formulation, adoption and application. All NAFTA chapters contain transparency provisions that enhance good regulatory practices and participation.

NAFTA provisions contain several lock-in arrangements that tie up the three partners, reducing the scope for liberalisation outside the NAFTA framework. For instance, the investment and services chapters' most favoured clause ensure that post-NAFTA negotiations of any partner must be extended automatically and unconditionally to the other partners. In general, all three partners have extended NAFTA parity in their trade negotiations with others partners, but have not gone beyond the liberalisation contemplated in the agreement between the three. No significant liberalisation of their respective regime has taken place in the context of FTA liberalisation.

This does not mean that NAFTA partners have not pursued liberalisation. In fact, in key areas like financial services and telecommunications, important regulatory reforms and liberalisation have taken place and have been reflected in WTO negotiations. But no liberalisation has been the result of post-NAFTA bilateral trade negotiations.

B. The case of Chile

In Chile, economic and trade reforms were undertaken in two phases. The first took place in the mid-seventies and its purpose was to reduce tariff protection and dispersion, and eliminate all unjustified non-tariff measures (i.e., quotas, licensing requirements and permits), and to eliminate bias against exports. This process ended in 1979 when a uniform 10% tariff rate was adopted and the exchange rate was fixed. After a severe debt crisis between 1982 and 1985, and some policy reversal, a new economic reform process was carried out; with a second wave of privatisations that included electricity, telecommunications and other big public enterprises. Also a new tariff reduction was adopted, together with several instruments to promote exports.

When bilateral negotiations started, Chile had a relatively open and stable trade regime, tariff rates were 15%, non-tariff measures were almost non existent and the role of the state in the

economy was reduced. The reform process had begun to show its benefits and there was political consensus with regard to the future policy direction (see Aninat, Londregan, Navia and Vial, 2004).

Nevertheless, there were certain areas where Chile had to introduce legislation. In fact, in the early 90s intellectual property was a high priority in the U.S. trade agenda. In 1991, Chile was the first Latin American country to enact a patent law. The environmental legislation was out of date and dispersed in different laws; finally, there were no mandatory environmental assessment for investors. The new environmental law addressing all urgent matters entered into force in March 1994. The labour code was reviewed to improve workers' rights, but this latter aspect was much more a domestic political issue aimed at strengthening labour movement.

Table 4

CHILE'S FREE TRADE AGREEMENTS

PARTNER	TYPE OF AGREEMENT	LEGAL STATUS	MODEL
Bolivia	ECA Nº22	7 July 1993	ALADI, covers a limited number of products
Canada	FTA	5 June 1997	NAFTA (-), goods, services, investments
Central America	FTA	18 October 1999	NAFTA (-), goods, services, investments
Colombia	ECA Nº24	1 January 1994	ALADI, goods
Costa Rica		14 February 2002 (Bilateral Protocol)	NAFTA (-), goods, services, investments
Cuba	Partial scope agreement	Under Congress consideration	ALADI, covers a limited number of products
Ecuador	ECA Nº32	1 January 1995	ALADI, goods
EFTA	FTA	In force since end 2004	GATT, GATS + some Investments provisions
El Salvador		3 June 2002 (Bilateral Protocol)	NAFTA (-), goods, services, investments
United States	FTA	1 January 2004	NAFTA (+)
Guatemala		Bilateral Protocol not concluded	NAFTA (-), goods, services, investments
Honduras		Bilateral Protocol not concluded	NAFTA (-), goods, services, investments
MERCOSUR	ECA Nº35	1 October 1996	ALADI, goods
Mexico	FTA	1 August 1999	NAFTA (-), goods, services, investments
Nicaragua		Bilateral Protocol not concluded	NAFTA (-), goods, services, investments
Peru	ECA Nº38	1 July 1998	ALADI, goods
Republic of Korea	FTA	1 April 2004	NAFTA (-), goods, services, investments
European Union	Association Agreement	1 February 2003	GATT, GATS + some Investments provisions
Venezuela	ECA Nº23	1 July 1993	ALADI, goods

Source: www.direcon.cl

ECA: Economic complementation agreements, ALADI.

FTA: Free trade agreements.

NAFTA (+): Provisions included go beyond NAFTA in several chapters, intellectual property rights, electronic commerce, labour and environment.

NAFTA (-): Agreement is modelled in NAFTA but does not contains all its provisions, for instance, in intellectual property, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS) and others.

The decision to start bilateral or regional negotiations was taken at the beginning of the nineties, as part of the economic program of the new democratic government. But it was rather a foreign policy instrument, whose purpose was to re-insert Chile in the international community,

than a trade policy strategy aimed at promoting exports. Later on, when Chile's exports started to face trade restrictions, (apple exports to the EU), the government acknowledged the importance of the economic fundamentals of trade agreements, as analysed in Sáez and Valdés (1999) and Sáez (1999).

At the beginning, the government had to overcome opposition from different fronts; private sector associations and orthodox economists argued that the best policy still was unilateral trade liberalisation. Bilateral or regional trade agreements, they claimed, created distortions and were a second-best policy. The biggest opposition was against negotiations with Latin American countries because of their macroeconomic instability and microeconomic distortions (subsidies). It was never quite clear what were in reality the reasons for this opposition, probably ignorance was one aspect: both the public and the private sectors were beginning to learn. In the medium term, private sector representatives got involved actively in the process and became very enthusiastic about trade negotiations.

Some opposition emerged from labour representatives and non-governmental organisations related to the "social movement". But this latter opposition has never been very influential and articulated.

Although the general economic framework in Chile was appropriate for trade negotiations, there were important institutional issues that had to be addressed. In fact, unilateral trade liberalisation implied that there was very little expertise on what trade agreement really meant, and trade agreements were associated with the old integration paradigm. The *Dirección General de Relaciones Internacionales* at the Foreign Affairs Ministry in charge of the issue had a few experts on GATT-type agreements, but more expertise on ALADI-type treaties. Because of this weakness, it was not clear which agency was better suited for negotiations. Both the ministries of Finance and of Economy considered themselves to be better prepared for dealing with negotiations and, during 1990-1994; three ministries shared responsibility for these topics. After the negotiations between Canada and Chile, Foreign Affairs took charge of the responsibility of negotiations; several co-ordination entities were created with few changes until today. Private sector participation was also encouraged through consultative committees and also on modalities similar to the one created by the Mexican authorities.

Trade negotiations in Chile have always been tensioned by the agricultural sector. In fact, despite the fact that agricultural products have been one of the most dynamic export areas accounting for more than 15% of total exports, the main opposition to FTA has been articulated from the "traditional", inward oriented agricultural crops. To tune down opposition, this sector has been granted longer transitional periods, especial tariff and quota regimes for gradual liberalisation, and it has pressed for financial support (see below).

Depending on the country confronted in negotiations, the textile and apparel sectors have adopted different stances vis á vis FTAs. When dealing with countries that are net exporters of these products, this sector tends to take a conservative approach. But during the negotiations with the EU and the U.S. it was eager to have access to these markets as a way to compensate for the continuing decline of its share in the domestic market in favour of imports from Asian countries.

In recent years, new sectors concerned with globalisation have emerged and demanded to be excluded from FTA provisions. In particular, the so-called "cultural industries" interested in preserving cultural diversity have demanded that cultural exceptions be included in the agreements. The government has negotiated this type of clause and reserves in the agreements with Canada, EU and U.S. but their scopes differ.

III. Implementation Issues

Implementation is ensured through different mechanisms and during several stages of the process. Prior to the beginning of negotiations, certain conditions are established, and amendments to certain laws (intellectual property rights, or elimination of certain trade barriers) are made. During the negotiations, several legal reforms may be introduced in order to prepare the overall legal framework to the new set of obligations. Before the agreement is made effective some changes or new legislation may be introduced in order to ensure consistency of domestic law with the new provisions. At this stage, other problems may arise. In many cases, the treaty contemplates a transitional period until the new obligations are fully in effect, during which the parties have time to draft and approve the necessary bills or introduce the required administrative regulations.

For instance, during the approval process of the association agreement between Chile and MERCOSUR, the strong opposition of the "traditional" agricultural sector (producers of wheat, sugar beet, and oilseeds) forced the government to commit financial resources to compensate for the "negative effects" of the agreement. Everyone in the political spectrum, both government and opposition, could potentially be affected because this was a cross-cutting issue. To avoid the loss of congressmen from the governing coalition, the government offered a budget reallocation of the equivalent to 3% of 1999 the fiscal

budget (Aninat, Londregan, Navia and Vial, 2004).[6]

Also, to help pass the NAFTA in the U.S. Congress, creative initiatives were elaborated: the side agreements on labour and environment, and the Trade Adjustment Assistance program.

If not adequately controlled, the promises made and engagements adopted may produce outcomes incompatible with the obligations under the agreement itself and possibly conflicts with its trading partners.

Finally, the agreements' institutional arrangements help to better implement provisions and resolve certain problems: commissions, working groups and periodical meetings help to monitor the implementation of obligations.

Nevertheless, certain good faith implementation problems may arise. One source of difficulties are the procedures whereby treaties are approved under domestic law. In the Latin American legal tradition, as well as in other countries, the legislative power approves the agreements as such and prevailing over their previous legislation. Congress approves the treaty and not directly the amendments of the laws that are affected by the obligations thereunder. It is difficult to know how and to what extent the new agreements have amended or derogated domestic regulations that might conflict with some of the provisions in the new treaty. This problem must be resolved internally by the national Courts or by the dispute settlements procedures, including the consultations phase.

Whenever a government tries to modify its domestic legislation to accommodate the disciplines of a treaty after its approval, it may face bigger opposition from interest groups that resist the changes. In these cases, interested parties may fully realise the scope of the obligations, or they may have their own interpretation of their nature and try to influence the outcome. Because the agreement had been approved by congress and is already in force, the government will be less pressed to pass the implementing law, violating the international obligation. For instance, it took Chile almost four years to approve a law to specifically "adapt" certain domestic legislation to WTO obligations, although the agreement was "law" under the Chilean legal system.

Another legitimate source of problems is difference of interpretation of the substantive law, i.e., what is the correct meaning of the obligation. In this case, normally the problem will be resolved through consultations and possibly through the dispute settlement system.

More difficulties may arise from lack of resources to implement the obligations. As has been pointed out by Finger and Schuller (2002), in many cases the problem is not the obligation itself contained in the agreement, but all the necessary additional elements that are needed for its adequate implementation. A case in point is the customs valuation agreement of the WTO. The agreement itself provides for the different criteria that must be applied by countries when assessing the transaction value of import products. Nevertheless, this obligation supposes that the customs authority has the necessary infrastructure to perform its duties. In fact, normally they do not have adequate trained personnel, information technology infrastructure is minimal and they lack modern administrative processes, risk assessment policies and/or are not capable of performing physical control in all ports.

Intellectual property rights are another example. The TRIPS agreements, and NAFTA provisions are not only legally complex, but the different infrastructure requirements are very

[6] The financial resources were assigned: "to spend more money on government efforts to promote exports; to emphasize lower tariffs on inputs for traditional agriculture when forming commercial treaties; to spend more money on the technological development of agriculture; to spend more money subsidizing grazing land, tree farms, and to include small farmers, to expand subsidies for vocational education and for government centers designed to help businesses develop in rural areas; to provide cheap loans (in dollars) to farmers; to support "environmentally sustainable" farming and to spend more money on soil restoration" (Aninat, Londregan, Navia and Vial ,2004).

costly, and go beyond the direct administration of the system: even the courts system may be affected. Actually, Mexico invested $32 million dollars for the establishment of an agency to implement industrial property law (Finger and Schuller, 2002).

In the case of the IPR Chapter of the FTA between Chile and the U.S., transitional periods were negotiated to gradually modify the Chilean domestic legislation in conformity with the new obligations and to ensure that any budgetary increases will be provided on a timely basis.

It is not easy to assess the degree of implementation of the obligations contained in a trade agreement. Proxies that may be used are the number of consultations that a country has to face as a respondent. Another proxy are the complaints that may be filed by a trading partner but that do not derive into a formal dispute. Other sources are the trade-related legislation that a country submits to the Congress. For instance, Chile includes in a draft law to adequate its legislation to certain WTO obligation, some additional changes that were part of its bilateral obligations. Taking into account these limitations we may try to assess how implementation has proceeded in Chile and Mexico.

The NAFTA agreement has three types of dispute settlement mechanisms: (i) chapter 11, which governs disputes arising between two states or between the State and an investor relating with the investment provisions of the agreement; (ii) chapter 19, dealing with disputes involving final determinations in antidumping and countervailing duty cases; and (iii) chapter 20, addressing the disputes that arise from all the other provisions of the agreement.

Table 5

MEXICO: CONSULTATIONS REQUESTED AT THE WTO: 1995-2005

Cases	Date
Mexico - Provisional Countervailing Measures on Olive oil from the European Communities - Request for Consultations by the European Communities	24/08/2004
Mexico - Tax Measures on Soft Drinks and Other Beverages - Request for Consultations by the United States	18/03/200.4
Mexico - Certain Pricing Measures for Customs Valuation and Other Purposes - Request for Consultations by Guatemala	25/07/2003
Mexico - Definitive Anti-Dumping Measures on Beef and Rice - Request for Consultations by the United States	23/06/2003
Mexico - Certain Measures Preventing the Importation of Black Beans from Nicaragua - Request for Consultations by Nicaragua	20/03/2003
Mexico - Measures Affecting the Import of Matches - Request for Consultations by Chile	28/05/2001
Mexico - Provisional Anti-dumping Measure on Electric Transformers - Request for Consultations by Brazil	04/01/2001
Mexico - Measures Affecting Telecommunications Services - Request for Consultations by the United States	29/08/2000
Mexico - Measures Affecting Trade in Live Swine - Request for Consultations by the United States	13/07/2000
Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States - Request for Consultations by the United States	15/05/1998
Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States - Request for Consultations by the United States	15/09/1997
Mexico - Customs Valuation of Imports - Request to Joint Consultations - Communication from Switzerland	30/09/1996
Mexico - Customs Valuation of Imports - Request for Consultations by the European Communities	09/09/1996

Source: World Trade Organization.

In more than 10 years, Mexico has faced nine disputes under chapter 11 from investors of the other NAFTA countries; fourteen claims under the chapter dealing with the unfair trade practices decision adopted by Mexican authorities, not all resolved as yet; and no claims under chapter 20. In our view, this is an indication that implementation under the traditional trade areas has been fairly

acceptable. To test this first conclusion, it is useful to look at the number of consultations that have been requested against Mexico at the WTO. In particular, trade in goods provisions of NAFTA and the WTO are very similar, so in many cases instead of having to recourse to NAFTA's dispute settlement mechanism, WTO is an appropriate forum to deal with the issue. Furthermore, using the WTO may provide an indication of the fulfilment of other trade obligations vis á vis other trading partners. Table 5 shows the number of consultations requested by the WTO members against Mexico since 1995.

Since the WTO entered into force, Mexico has faced thirteen consultations requests, five of them dealing with unfair trade practices decisions adopted by Mexico, three dealing with customs valuation procedures, the others related to miscellaneous trade issues. One important dispute dealing with implementation of obligations was related to the telecommunication sector and the services agreement.

Box 1

MEXICO-US RELATIONS UNDER THE NAFTA

- «In December 1995, the U.S. Secretary of Transportation suspended processing of applications by Mexican trucking firms to serve U.S. border states pending resolution of safety concerns that had been raised especially by the U.S. Teamsters union. Despite protests that this was in violation of the NAFTA and that U.S. cross-border trucking interests were being hurt, the issue remains unresolved.
- The USTR determined in April 1996 that Mexico was not in compliance with NAFTA requirements for accepting U.S. telecommunications test data and standards relating to telecom terminal equipment authorization. Subsequent consultations appear to have resolved this dispute.
- The USTR has expressed concern about piracy and counterfeiting of U.S. intellectual property in Mexico. The Mexican Congress passed a reform of intellectual property law in December 1996 that may serve to address U.S. concerns.
- In October 1996, a 5-year suspension agreement was signed specifying that tomatoes imported from Mexico will be sold in the United States at, or above, and established reference price, and that no antidumping duties would be assessed on Mexican tomatoes as long as the agreement remained in effect. The dispute settlement request for consultation on this issue filed in the WTO by Mexico was subsequently withdrawn.
- In 1996, efforts were made in the U.S. Congress to change the U.S. Marine Mammal Protection Act and lift the embargo on tuna caught and processed by Mexico. This embargo has remained in effect despite the GATT 1991 tuna/dolphin panel decision that had ruled against the U.S. position. Mexico has since complied with newly specified U.S. standards on dolphin protection, but the U.S. Congress did not pass the new legislation because of opposition from some environmental groups.
- In January 1997, the U.S. Department of Agriculture instituted a partial lifting of an 83-year old embargo on avocados imported from Mexico, despite opposition from California avocado growers. The original embargo had been imposed to prevent possible fruit fly contamination.
- Safeguards action on broomcorn brooms. The USITC found evidence of serious injury, and tariffs were increased for a three-year period on two categories of brooms. Mexico retaliated in December 1996 by raising tariffs on eight U.S. products. In January 1997, Mexico requested establishment of a dispute settlement

Source: Discussion Paper No. 416, "Constituent Interest Group Influences on U.S. Trade Policies Since the Advent of the WTO", Robert M. Stern, University of Michigan, December 4, 1997

These data also tend to confirm the impression that Mexico has had a good record of implementation of commitment.

Box 1 presents a number of issues that emerged between the U.S. and Mexico under the NAFTA and how they were handled. The most contentious issue was related with land transportation safety and still continues to be. Other problems that have surfaced in the bilateral relationship do not seem to be specifically a consequence of NAFTA implementation.

In the case of Chile, in almost ten years only two types of issues have emerged, regarding taxes on alcoholic beverages, and safeguard measures and band price systems (table 6).

Table 6

CHILE: CONSULTATIONS REQUESTED AT THE WTO: 1995-2005

Cases	Date
Chile - Safeguard Measures on Sugar - Request for Consultations by Colombia	22/03/2001
Chile - Price Band System and Safeguard Measures Relating to Certain Agricultural Products - Request for Consultations by Guatemala	10/01/2001
Chile - Price Band System and Safeguard Measures Relating to Certain Agricultural Products - Request for Consultations by Argentina	12/10/2000
Chile - Taxes on Alcoholic Beverages - Request for Consultations by the United States – Corrigendum	05/02/1998
Chile - Taxes on Alcoholic Beverages – Request for Consultations by the European Communities	18/12/1997
Chile - Taxes on Alcoholic Beverages – Request for Consultations by the United States	16/12/1997
Chile - Taxes on Alcoholic Beverages – Request for Consultations by the European Communities	11/06/1997

Source: World Trade Organization.

All theses cases ended in dispute and each time Chile lost the claims. But this is not an accurate indication of implementation issues. In fact, in 1999 Chile presented to the Congress a draft law with several amendments to domestic legislation to make it conform with WTO obligations, in particular, but not limited to, regarding customs valuation, border measures for enforcement of intellectual property rights and TBT agreements.

Another draft law that was presented to the Congress and is still under consideration introduced a number of changes to the current legislation. This has been a very complicated piece of legislation to move forward because of the number of conflicting interests, the high complexity of the issues addressed and the politically sensitive aspects that are at stakes.

Another indication of implementation issues at the bilateral level are the cases that Chile has to tackle in the context of bilateral trade agreements in the Region. In this case, again disputes are concentrated with “traditional” agricultural products and their special trade regime (price bands). In particular, Chile lost a dispute settlement procedure raised by Bolivia regarding the export of oilseeds. Bolivia argued successfully that certain administrative changes introduced by the customs agency for oilseeds imports, was an impairment of the conditions agreed on in the bilateral preferential agreement in force.

In a similar case, Colombia requested a panel to analyse measures adopted by the customs authority regarding certain sugar products imported from Colombia and other origins. In this case Chile won two of the three allegations, and as this paper is been written a bilateral dispute has arisen regarding a retaliatory measure imposed by Colombia against Chile for allegedly not implementing the panel findings.

In the context of the approval of NAFTA, side agreements on labour and environmental co-operation were negotiated. Chile adopted this model in the negotiations with Canada. But in the

bilateral negotiations with the U.S., labour and environmental provisions were included in the body of the agreements and were subjected to the general dispute settlement procedures of the treaty.

In a report to the U.S. Congress in 1997, the General Accounting Office addressed the issue of implementation three and a half years into the agreement. Regarding the setting up of the institutionality of the side agreements, there were a few operating problems. In the case of the environmental agreement, a work program was agreed and several sub-missions by citizens organisations were filed against three NAFTA partners. NAFTA provisions and side agreements on the environment have been criticised by some representatives of the environmental community. Esty (2004) considers that, overall, the experience has been positive and no implementation issues have been raised. Some problems are related with some provisions of NAFTA that may have undermined the ability to establish higher environmental standards (like investment provisions), but its assessment is rather positive.

In the case of the labour agreements, similar advances were made, although funding and staffing problems were identified. So far, no dispute settlement procedure has been triggered for non-compliance of the obligation to enforce its domestic legislation. All submissions have been resolved in the consultations stages. Critics argue that this is because the side agreements do not contain substantial obligations and the dispute settlement system is too cumbersome, and not because of the quality of the agreements (Elliot, 2004).

IV. Implementation Problems: Some Hypotheses

Why Mexico and Chile were successful in adopting and implementing a trade strategy based on export-led growth and the rest of LAC have been less so? This is a very difficult question to answer. There are many factors that have influenced economic performance in LAC in the past decades and it is difficult to draw common features. Nevertheless, some hypotheses may be outlined. In the first place, both countries, unlike others in LAC, have emphasised macroeconomic stability has a key component of their overall economic strategy, but not withstanding economic crisis, have been more persistent in their approach providing clear signals to economic agents of the intertemporal consistency of policies and reducing the risk of policy reversal.

In the second place, and related to the former, the reform process in Mexico and Chile is more mature, meaning that both countries undertook a persistent approach to economic reform, addressing different aspects that affected economic activity like the role of the State, the quality of intervention of the state agencies in economic activity through their regulatory activities. But not only economic policy instruments were modified; also institutions were changed or created.[7]

A third aspect is related to public officials. Chile has a long tradition of reasonably well-educated and capable bureaucracy,

[7] According to Lederman, Maloney and Servén (2003) institutional reforms "especially those aimed to improve the rule of law and fight corruption, will be critical for the future economic development" in LAC. Even for a country like Mexico, which has done a great effort, this is an aspect that must be tackled in order to reduce the institutional gap with the U.S.

although some problems remain (Aninat, Londregan, Navia and Vial, 2004). On the other hand, when Mexico embarked on a deep economic reform, including trade policy, authorities decided to attract well trained and educated professionals that had been in charge of the formulation and application of trade policy, as reviewed by Ortiz Mena (2001, 2004) and Cameron and Tomlin (2000).

In fact, one important problem in LAC is related with the infrastructure of the public sector, in terms of equipment, but also in terms of working material. For instance, normally there are no libraries, or they are badly supplied ones in ministries with no journals and few books dealing with the subject public officials must decide on. Usually, public officials acquire their own books and gather information from whatever sources are available. Today, the Internet has helped to redress this situation, but only to some extent.

Because of the role that trade policy institutions played after the Second World War in LAC, they were not well suited to handle the new approach. In general, trade institutions are very weak, have limited budget resources, low technical capacity, and are understaffed. Until a decade ago, they played a secondary role mostly to administer prices, trade restrictions, and respond to protectionist interests and fiscal needs: trade institutions have been low priority for most governments up to now. Because public service salaries are low, public servants that acquire a marginal expertise may be offered a better salary in the private sector.

Box 2

CAPACITY BUILDING PROVISIONS OF CAFTA

Chapter Nineteen

Administration of the Agreement and Trade Capacity Building

Section B: Trade Capacity Building

Article 19.4: Committee on Trade Capacity Building

1. Recognizing that trade capacity building assistance is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction, and adjustment to liberalised trade, the Parties hereby establish a Committee on Trade Capacity Building, comprising representatives of each Party.

2. In furtherance of the Parties' ongoing trade capacity building efforts and in order to assist each Central American Party and the Dominican Republic to implement this Agreement and adjust to liberalized trade, each such Party should periodically update and provide to the Committee its national trade capacity building strategy.

3. The Committee shall:

(a) seek the prioritization of trade capacity building projects at the national or regional level, or both;

(b) invite appropriate international donor institutions, private sector entities, and nongovernmental organizations to assist in the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;

(c) work with other committees or working groups established under this Agreement, including through joint meetings, in support of the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;

(d) monitor and assess progress in implementing trade capacity building projects; and

(e) provide a report annually to the Commission describing the Committee's activities, unless the Committee otherwise decides.

4. During the transition period, the Committee shall meet at least twice a year, unless the Committee otherwise decides.

5. The Committee may establish terms of reference for the conduct of its work.

6. The Committee may establish ad hoc working groups, which may comprise government or non-government representatives, or both.

7. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

8. The Parties hereby establish an initial working group on customs administration and trade facilitation, which shall work under and report to the Committee.

Source: www.sice.org

As already mentioned, Mexico resolved it when the decision to integrate with the U.S. was adopted; Colombia followed a similar approach when it created the Trade Ministry taking off this responsibility from Foreign Affairs, and it took Chile almost seven years (1990-1997) to reach its current level of expertise (Silva, 2001).

Capacity building activities have addressed part of the problem LAC faces in the trade policy area. In fact, capacity building activities have been designed, in general, as a knowledge transferring device, but cannot address the structural problem of the civil service at LAC: namely, salaries and career opportunities. Normally, capacity building activities are short-lived, because of public servants turnover.

To strengthen trade ministries in LAC, two important problems must be overcome. The first one, salaries, is difficult to resolve because almost every economy is under very severe budgetary constraints. The second one, career opportunities, is easier to implement, but it is not exclusively a problem of this area: it is normally a problem of the whole sector. Public sector in LAC expanded inorganically during several decades and appointments were often a consequence of political influence.

In the context of recent negotiations, the need to address the institutional weakness of trading partners has been acknowledged. The CAFTA agreement has included in chapter 19 "Administration of the Agreement and Trade Capacity Building", a framework to deal with this issue (Box 2). The ability of CAFTA countries to take advantage of this provision is conditional upon their ability to design a national trade capacity building strategy, and on the possibility of donor institutions to provide the needed support. In the context of the FTAA negotiations, ECLAC, IDB and OAS were requested by the participant countries to help to identify their needs and establish a methodology to design their national strategies.

This is a convenient process, because it is the responsibility of the countries to identify their needs as demandeurs; and for donors it is an appropriate means to co-ordinate their efforts and avoid duplication.

In the context of the current negotiations between the U.S. and Colombia, Ecuador and Peru, a similar chapter is being negotiated and probably the approach will be very similar. In the FTAA negotiations, capacity building activities have been organised by ECLAC, IDB, and the OAS, with the support of other international organisations like the WTO and UNCTAD. Also, as was mentioned, at the Ministerial Meeting of Ministers Responsible for Trade held in Quito, Ecuador, in November 2002, ministers approved the Hemispheric Co-operation Program (HCP), "Program is intended to strengthen the capacities of those countries seeking assistance to participate in the negotiations, implement their trade commitments, and address the challenges and maximise the benefits of hemispheric integration, including productive capacity and competitiveness in the region".

The Program includes a mechanism to assist countries to develop national and/or sub-regional trade capacity building strategies that "define, prioritise and articulate their needs and programs pursuant to those strategies, and to identify sources of financial and non-financial support".

The Tripartite Committee integrated by ECLAC, IDB, and OAS is entrusted with facilitating meetings of the Consultative Group-Small Economies (CGSE), inviting appropriate development and financial officials, international financial institutions, international agencies, and interested private entities, to discuss financing and implementation of the HCP.

Although this capacity building initiative at the regional, sub-regional and individual levels are important to support trade liberalisation in the Western Hemisphere, it is still a question mark, whether they will last because they are not dealing with the structural problems mentioned above.

V. Some Policy Lessons

Latin American countries embarked in an active integration process through regional and bilateral trade agreements. These agreements have been negotiated under the general and flexible framework of ALADI that was also the framework used to sign preferential trade agreements in the context of import substitution policies. Today integration process is different from the old regionalism in several aspects, in particular, the general economic policy orientation where it takes place.

Under this new approach trade agreements are more complex, contain more elaborated disciplines modeled in the GATT/WTO provisions and NAFTA, and include a number of highly complex issues, notably, investment, services, intellectual property rights disciplines. Also regulatory issues, dealing with formulation, adoption and application of policies, including transparency provisions, are changing the institutional environment under which economic policy takes place and forcing institutional changes in the region.

This development has been identified as a source of implementation problems of international agreements for several Latin American countries. Chile and Mexico stand as countries that have pursued active integration policies, under the NAFTA type agreements and have faced with relative success the challenges that implementation implies.

Although problems may still exist in both cases, they do not seem to be too large and have not paralyzed trade policy in those countries. One important reason for this is the fact that both countries embarked in economic reforms earlier, the reforms are more mature

and have produced results, allowing for the continuation of reforms over time, in particular their improvements.

This means that the provisions contained in trade agreements did not demand significant modifications in economic policies, and in those cases where chances were significant; countries have invested in new institutions and policies reforms. This was specially the case of the Mexican experiences prior to the entry into force of NAFTA, but Chile also confronted changes on a timely basis. Investment in institutional reform both in terms of human capital and infrastructure, is still underway, and has proved to be an important element of endogenous capacity building that have last over time and have not been eroded with political changes.

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