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## The Central American Integration System (SICA) at the Dawn of a New Century: Will the Central American Isthmus Finally be able to Achieve Economic and Political Unity?

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# THE CENTRAL AMERICAN INTEGRATION SYSTEM (SICA) AT THE DAWN OF A NEW CENTURY: WILL THE CENTRAL AMERICAN ISTHMUS FINALLY BE ABLE TO ACHIEVE ECONOMIC AND POLITICAL UNITY?

*Thomas Andrew O'Keefe\**

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## I. INTRODUCTION

In November of 1999, a dispute developed between Nicaragua and Honduras over the Honduran government's decision to ratify a treaty with Colombia that, in effect, recognized Colombian sovereignty over waters and two small islands in the Caribbean long claimed by Nicaragua.<sup>1</sup> The Nicaraguan Congress responded in December by revoking duty-free access to its market for Honduran exports and slapping on a 35% duty.<sup>2</sup> The tariff

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1. *Nicaraguans In Tariffs Wrangle*, FINANCIAL TIMES, Dec. 2, 1999, at 6.

2. *Id.*

hike was followed by two February 2000 shooting incidents involving Honduran and Nicaraguan patrol boats in contested waters in the Gulf of Fonseca on the Pacific side.<sup>3</sup> The Honduran-Nicaraguan dispute, and the subsequent signing of an agreement by El Salvador, Guatemala, and Nicaragua to establish a joint customs authority which excluded Honduras, has raised fears about the future viability of the Central American economic integration process that was so painstakingly revived at the start of the 1990s.<sup>4</sup>

The purpose of this Article is to examine the current state of the Central American Integration System or SICA (the Spanish acronym by which it is better known) through a discussion of both its achievements as well as deficiencies that, if left unattended, will cause the process to stagnate and eventually collapse. The Article begins with a short overview of the historical underpinnings for the current efforts at both political and economic integration in the region. The Article then explains how the regional economic integration process is actually functioning today. There also is a discussion of the Central American institutional framework. Finally, the Article concludes with an assessment of whether the Central American economic integration system can serve as an effective vehicle for attracting increased foreign direct investment to the region and facilitating its insertion into the global economy.

## II. HISTORICAL OVERVIEW

Economic integration in Central America has a long history, beginning in 1824 when Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua formed the Central American Federation following independence from Spain and Mexico.<sup>5</sup> The Federation collapsed in 1838, however, as a result of petty jealousies and resentments that arose among different nationally based interest groups.<sup>6</sup> Despite this, the idea of a united Central America has remained a constant in regional intellectual thought and helps to explain why some Central American countries grant automatic citizenship to nationals from other Central American states.<sup>7</sup> In

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3. *Central America's Border Order*, THE ECONOMIST, Mar. 11, 2000, at 42.

4. *Central America Struggles to Bury its Past*, FINANCIAL TIMES, Mar. 23, 2000, at 6; *Pact Leaves Honduras Feeling Snubbed*, FINANCIAL TIMES, May 5, 2000, at 7.

5. Chamorro Marin & R.E. Najera, *Orígenes, Evolución y Prespectivas de la Integregración [Origins, Evolution, and Perspectives of the Intergratión]*, in LA INTEGRACION COMO INSTRUMENTO DE DESARROLLO: SUS PERSPECTIVAS Y DESAFIOS PARA CENTRO AMERICA [INTEGRATION AS AN INSTRUMENT OF DEVELOPMENT: PERSPECTIVES AND CHALLENGES FOR CENTRAL AMERICA] 37-40 (INCEP 1996).

6. *Id.*

7. EL SAL. CONST. of 1983, art. 90, para. 3 (amended July 10, 1996), in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Gisbert H. Flanz ed. & Reka Koerner trans., Oceana Pubs. Vol.

addition, most of the Central American republics still include references in their constitutions to a common aspiration that seeks the eventual reunion of all five countries.<sup>8</sup>

Given the small size of the markets and economies of the Central American countries, a united Isthmus is something that has always made good economic if not political sense. During the 1950s, the Mexico City office of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) drew up plans to create a Central American Common Market (CACM) among Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.<sup>9</sup> The basic rationale for CACM was that an economically integrated Central America would create the necessary economies of scale required to support a viable industrial park.<sup>10</sup> In order

VI 1998) (stating that included as Salvadorans by birth are "natives of the other states that constituted the Federal Republic of Central America who, having a domicile in El Salvador, declare before the competent authorities, their desire to be Salvadoran, without requiring them to renounce their nationality of origin."); GUAT. CONST. of 1983, art. 145 (amended Nov. 17, 1993), in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (Gisbert H. Flanz ed. & Reka Koerner trans., Oceana Pubs. Vol. VIII 1997) (explaining that "native Guatemalans are born nationals of the republics making up the Central American Federation if they establish their domicile in Guatemala and declare before competent authorities their domicile in Guatemala and their wish to become Guatemalan citizens. In such case they can retain their citizenship of origin without prejudice to what is established in Central American treaties or agreements.").

8. See EL SAL. CONST. of 1983, *supra* note 7, art. 89 (The Constitution states that El Salvador shall encourage and promote human, economic, social and cultural integration with the American Republics, and especially those of the Central American isthmus. The integration can be carried out through treaties or agreements with the interested republics, which can contemplate the creation of institutional bodies with supranational functions. It shall also encourage the total or partial reconstruction of the Republic of Central America, in unitary, federal or confederate form, with complete guarantees of respect for democratic and republican principles and the individual and social rights of its inhabitants."); GUAT. CONST. of 1983, *supra* note 7, art. 150 (The Constitution asserts that "Guatemala, as part of the Central American community, will maintain and cultivate relations of cooperation and solidarity with the other States which formed the Central American Federation; it should adopt adequate measures to put into practice, in part or entirely, the political or economic unity of Central America. The competent authorities are obligated to strengthen Central American integration on the basis of equity."); HOND. CONST. preamble. of 1983, art. 145 (amended Jan. 30, 1991), in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (Gisbert H. Flanz ed. & Reka Koerner trans., Oceana Pubs. Vol. VIII 1997) (expressing "with our faith placed in the restoration of the Central American union"); NICAR. CONST. of 1982, art. 5 (amended July 4, 1995), in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (Gisbert H. Flanz ed. & Reka Koerner trans., Oceana Pubs. Vol. XIII 1998) (stating "Nicaragua encourages regional integration and advocates the reconstruction of the Great Central American Fatherland"); NICAR. CONST. of 1982, art. 9 (amended July 4, 1995), in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (Gisbert H. Flanz ed. & Reka Koerner trans., Oceana Pubs. Vol. XIII 1998) (stating further that "Nicaragua firmly defends Central American unity, supports and promotes all efforts to achieve political and economic integration and cooperation in Central America").

9. THOMAS ANDREW O'KEEFE, *LATIN AMERICAN TRADE AGREEMENTS* 1-3 (1997).

10. *Id.*

to encourage the creation of new industries, CACM contemplated a regional free trade area that would be protected from the outside world by high tariff barriers.<sup>11</sup> However, it would have been more accurate to call CACM a customs union rather than a common market because no provisions were made for the free movement of persons, capital or services or for the coordination of macroeconomic policies among the participating states.<sup>12</sup>

CACM performed extremely well during its first decade in existence, with exports by member countries to their CACM partners increasing from about 7% of the sub-region's total global exports in 1960 to 25% by 1968.<sup>13</sup> By the end of the 1960s, however, CACM began to stagnate as conflicts ensued because countries with more developed industrial parks such as Costa Rica and Guatemala were disproportionately benefiting from the regional free trade program at the expense of less developed Honduras and Nicaragua.<sup>14</sup> In 1970, Honduras pulled out of CACM, ostensibly because of its so-called Soccer War with El Salvador the year before.<sup>15</sup> Conflicting macroeconomic policies and unilateral currency devaluations sparked by the Oil Crisis of 1973 created havoc in intra-regional trade patterns shortly thereafter, and led to the re-imposition of trade restrictions by CACM's remaining members.<sup>16</sup> By 1980, as the region (with the notable exception of Costa Rica) became engulfed in domestic civil strife, the CACM project was dead.<sup>17</sup>

The emergence of the European Union and the formation of other regional trading blocs such as MERCOSUR in South America and the North American Free Trade Agreement (NAFTA) encouraged the presidents of Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador to meet during the early 1990's with a view towards reviving the concept of an integrated Central America.<sup>18</sup> In 1991 the presidents of the five Central American countries plus Panama met in the Honduran capital and signed the Protocol of Tegucigalpa to the 1962 Charter of the Organization of Central American States (ODECA), thereby establishing a new institutional framework called SICA designed to facilitate the

11. *Id.*

12. General Treaty on Central American Economic Integration, Dec. 13, 1960, *reprinted in* THOMAS ANDREW O'KEEFE, *LATIN AMERICAN TRADE AGREEMENTS*, at App. 18. Only El Salvador, Guatemala, Honduras, and Nicaragua signed the General Treaty, which entered into force on June 3, 1961. Costa Rica did not become a signatory until 1962.

13. JOSEPH GRUNWALD, *LATIN AMERICAN ECONOMIC INTEGRATION AND THE UNITED STATES* 45 (1972).

14. *Id.*

15. O'KEEFE *supra* note 9, at 1-4.

16. *Id.*

17. *Id.* at 1-5.

18. *Id.* at 13-1.

eventual economic and political integration of Central America.<sup>19</sup> In 1993, the five Central American countries plus Panama met in Guatemala City and signed the Central American Economic Integration Protocol to the General Treaty on Central American Economic Integration of 1960.<sup>20</sup> This so-called Protocol of Guatemala sought to gradually create a Central American customs union, a common customs authority, the eventual free movement of labor and capital among the member states, and establishment of a monetary union.<sup>21</sup> Despite signing both the Protocols of Tegucigalpa and Guatemala, Panama has never ratified either treaty and therefore plays the role of an observer rather than an active participant in SICA.<sup>22</sup> In addition, Costa Rica has opted out of the part of the Protocol of Guatemala that seeks to create a Central American monetary union, and calls for the free movement of labor among the signatory states.<sup>23</sup> Costa Rica also remains aloof from SICA's overall efforts at political integration.<sup>24</sup>

### III. HOW THE CENTRAL AMERICAN ECONOMIC INTEGRATION SYSTEM CURRENTLY FUNCTIONS

#### A. *Intra-Regional Free Trade*

At the present time, most goods originating in the five Central American countries or which can meet SICA's rule of origin requirements are traded among all five countries free of all tariffs and non-tariff barriers such as quota restrictions.<sup>25</sup> Among the important items that are exempt from this general rule, however, are coffee and sugar, two major items produced in the region.<sup>26</sup> Coffee is subject to domestic import duties, while each country is allowed to maintain quota restrictions on the importation of sugar.<sup>27</sup> Each individual Central American country is also permitted to

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19. Protocol of Tegucigalpa to the Organizational Letter of the Organization of Central American States (O.D.E.C.A.), Dec. 13, 1991, at <http://www.sice.oas.org/trade/sica/SG121391.asp> (last visited Jan. 20, 2001) [hereinafter Protocol of Tegucigalpa].

20. Protocol to the General Treaty on Central American Economic Integration, Oct. 29, 1993, at <http://www.sice.oas.org/trade/sica/S102993a.asp> (last visited Jan. 20, 2001) [hereinafter Protocol of Guatemala].

21. *Id.*

22. O'KEEFE *supra* note 9, at 13-2.

23. *Id.*

24. *Id.*

25. *Id.* Currently the big exception to this rule is the 35% duty that Nicaragua has imposed on Honduran imports in retaliation for Honduras having ratified the Treaty on Maritime Limits with Columbia. *Nicaraguans In Tariffs Wrangle*, *supra* note 1, at 6.

26. O'Keefe *supra* note 9, at 13-3.

27. *Id.*

charge its own particular tariff rates with respect to petroleum derived products traded amongst them, as well as automobiles and pharmaceuticals.<sup>28</sup> In addition, individual Central American countries maintain a limited list of products that are currently exempt from the overall free trade scheme.<sup>29</sup> For instance, Guatemala and El Salvador currently restrict the importation of flour from the other SICA countries as well as tobacco from Costa Rica.<sup>30</sup> Many of the Central American countries also impose quota restrictions on the importation of alcohol.<sup>31</sup>

### B. Rule of Origin Requirements

In 1996, SICA adopted new rule of origin requirements that were deemed to be more consistent with the World Trade Organization (WTO). obligations of the Central American countries.<sup>32</sup> Goods originating within or made with inputs native to Central America are generally entitled to intra-regional free trade treatment.<sup>33</sup> Goods made with inputs from outside SICA but which are substantially transformed within the subregion so as to change their tariff classification heading under SICA's harmonized tariff classification system or *Sistema Arancelario Centroamericano* (SAC) will be deemed to originate within Central America.<sup>34</sup> A shift in the SAC can be of either two, four, six, or eight digits.<sup>35</sup> However, this shift can not be due to, *inter alia*, the mere adding of water or the mixing of inputs which do change the essential characteristics of the original materials.<sup>36</sup> The new rules also contain detailed formulas for establishing the origin of fungibles.<sup>37</sup>

Under the new SICA rules of origin, goods made with foreign inputs which do not undergo a substantial transformation so as to change its tariff classification heading in the SAC, will still be allowed intra-regional tariff free trade treatment if no more than 10% (until year 2000) or 7% (after 2001) of the final product's transaction value or "normal price" does not represent the cost of foreign inputs.<sup>38</sup> The new SICA rules of origin contain elaborate formulas for establishing the transaction value as well as the so-

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28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Reglamento Centroamericano Sobre el Origen de las Mercancias [Central American Rule of Origin Requirements] at <http://www.sicca.org.gt/publico/marco-legal/reglamentos/NORMASDEORIGEN.HTM> (last visited Mar. 25, 2001).

33. *Id.* art. 6.

34. *Id.* art. 6.

35. *Id.* art. 4.

36. *Id.* art. 7.

37. *Id.* art. 9.

38. *Id.* art. 10.

called "normal price" of a product.<sup>39</sup> All goods traded among the SICA countries wishing to take advantage of the intra-regional free trade program must be accompanied by a properly filled out certificate of origin found in the uniform Central American Customs Form that is now used for all cross-border transactions.<sup>40</sup>

### C. *The Common External Tariff*

Goods which are imported from outside Central America, or do not meet SICA's rule of origin requirements and therefore do not qualify for intra-regional duty-free treatment, are theoretically subject to a Common External Tariff (CET).<sup>41</sup> The CET, as initially implemented in 1992, was divided into three categories of products and was applied by everyone but Costa Rica.<sup>42</sup>

In February of 1995, El Salvador caused a stir within SICA when it proposed that the Central American CET be dropped to new levels consisting of either 1% on primary and capital goods (subsequently dropped to 0%), 5% or 10% on so-called "intermediate" goods that competed with products already produced in Central America, or a maximum duty of 15% on finished goods.<sup>43</sup> The other SICA countries hesitated to go along with this proposal, but when El Salvador threatened to adopt the reductions unilaterally, they eventually acquiesced.<sup>44</sup> By January 1, 2000 the import duties of all five Central American countries (including Costa Rica) had converged at the new 0% to 15% range, although the actual percentage charged may still vary from country to country on some items.<sup>45</sup> In addition, each country is permitted to charge whatever import duty they feel is most appropriate on automobiles and products deemed to be "sensitive" such as certain pharmaceuticals.<sup>46</sup>

### D. *Safeguard Measures*

SICA's new regulations concerning the imposition of safeguard measures were issued in 1996 in an attempt to make them more compatible with Article XIX of the GATT.<sup>47</sup> The new regulations apply only to

39. *Id.* art. 14.

40. O'KEEFE *supra* note 9, at 13-3.

41. *Id.* at 13-6.

42. *Id.* at 13-7.

43. *Id.* at 13-7.

44. *Id.*

45. *Id.*

46. *Id.*

47. Reglamento Centroamericano Sobre Medidas De Salvaguardia [Central American Regulations on Safeguard Measures] art. 2, at [http://www.sieca.org.gt/publico/marco\\_legal/reglamentos/salvaguardia.htm](http://www.sieca.org.gt/publico/marco_legal/reglamentos/salvaguardia.htm) (last visited Mar. 25, 2001).



products imported from third countries that are not members of SICA.<sup>48</sup> Safeguard measures can be imposed whenever foreign imports have increased to such a level that they cause or threaten to cause grave damage to a national industry producing similar or directly competitive products.<sup>49</sup> In general, parties who are detrimentally affected by such imports should present a petition to the relevant national body in their home country that is specifically authorized to investigate the merit of such a petition.<sup>50</sup> If the authority makes a determination that a safeguard such as a tariff increase or quota restriction is warranted, the measure can be imposed for as long as required but, in general, must not exceed a maximum of four years.<sup>51</sup> During the investigation period, provisional safeguard measures limited to tariff rate increases can be imposed for a period not to exceed 200 days.<sup>52</sup>

### E. *Unfair Trade Practices*

As of December 12, 1995, SICA has new rules to combat unfair trade practices (*i.e.*, dumping and subsidized exports) engaged in by both non-SICA countries as well as fellow member states.<sup>53</sup> The new regulations were designed to make SICA's legislation conform to new obligations assumed by the Central American states under the WTO. A petition to investigate whether third countries have carried out unfair trade practices is made by the relevant national authority in the home country of the detrimentally affected party(ies).<sup>54</sup> Remedies consisting of either the imposition of anti-dumping or countervailing duties may be imposed if an investigation establishes that these practices are causing or threaten to cause important damage or grave prejudice to a national industry, or will severely retard the creation of a national industry.<sup>55</sup> Anti-dumping or countervailing duties can, in general, be imposed for a period that does not exceed five years.<sup>56</sup> During the investigation period (which should last no more than a year) provisional measures can be imposed for a period not to exceed four months (or up to nine months in certain dumping cases).<sup>57</sup>

48. *Id.* art. 5.

49. *Id.* art. 6.

50. *Id.* arts. 1, 9.

51. *Id.* art. 29.

52. *Id.* art. 19.

53. Reglamento Centroamericano Sobre Practicas Desleales de Comercio [Central American Regulations on Unfair Trade Practices] at [http://www.sieca.org.gt/publico/marco\\_legal/reglamentos/reglamento\\_ca\\_sobre\\_practicas\\_desleales.htm](http://www.sieca.org.gt/publico/marco_legal/reglamentos/reglamento_ca_sobre_practicas_desleales.htm) (last visited Mar. 25, 2001).

54. *Id.* arts. 1, 5.

55. *Id.* art. 5.

56. *Id.* art. 36.

57. *Id.* arts. 14, 16.

In situations involving allegations of unfair trade practices committed by a fellow SICA member, the procedure followed is similar to that involving third countries, although the final report of the national authority can be reviewed and theoretically reversed by SICA's Executive Committee of Economic Integration.<sup>58</sup> In addition, whenever an allegation of unfair trade practice is made by a state party (as opposed to private companies or trade associations), the petition for an investigation must also be filed with the Secretaría de Integración Económica Centroamericana (SIECA), in Guatemala City which may then chose to carry out the investigation on its own and recommend adoption of a final determination by the Executive Committee.<sup>59</sup>

### F. *Dispute Settlement*

Article 12 of the Protocol of Tegucigalpa calls for the creation of a Central American Court of Justice in order to "guarantee respect for the law, the interpretation and implementation of the present Protocol and its associated instruments or acts arising thereunder."<sup>60</sup> Article 12 also states that a Statute of the Central American Court of Justice would regulate the membership, procedural rules, and precise powers of the Court.<sup>61</sup> Article 35 of the Protocol of Tegucigalpa further requires referral to the Central American Court of Justice of any dispute concerning the application or interpretation of the provisions found in the Protocol or any other bilateral or multilateral convention, agreement, or protocol affecting Central American economic integration that has not been superseded by the Protocol of Tegucigalpa.<sup>62</sup> The historical precedent for the current Central American Court of Justice lies in a Central American tribunal that was established in 1907 and was the first international court of justice in the world.<sup>63</sup>

The Statute of the Central American Court of Justice was signed by all five Central American presidents and Panama in 1992 but has, to date, only been ratified by El Salvador, Honduras, and Nicaragua.<sup>64</sup> The Central

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58. *Id.* arts. 19-23.

59. *Id.* arts. 24-32.

60. Protocol of Tegucigalpa, *supra* note 19, art. 12.

61. *Id.*

62. *Id.* art. 35.

63. *Orígenes, Evolución y Perspectivas de la Integración Centroamericana [Origins, Evolution, and Perspectives on the Integration of Central America]*, in LA INTEGRACIÓN COMO INSTRUMENTO DE DESARROLLO: SUS PERSPECTIVAS Y DESAFÍOS PARA CENTROAMÉRICA [INTEGRATION AS AN INSTRUMENT OF DEVELOPMENT: PERSPECTIVES AND CHALLENGES FOR CENTRAL AMERICA] (INCEP 1996).

64. Estatuto De La Corte Centroamericana De Justicia [Statute of the Central American Court of Justice], Dec. 10, 1992, at [http://www.ccej.org.ni/doc\\_base/normjurd/estatuto.htm](http://www.ccej.org.ni/doc_base/normjurd/estatuto.htm) (last visited

American Court of Justice sits in Managua and each state that has ratified the Statute is entitled to have one permanent and one substitute judge sitting on the bench.<sup>65</sup> The judges are elected for a ten-year term by the respective Supreme Court of each SICA country that has ratified the Statute and are expected to have the same qualifications required to exercise the highest judicial functions in each country.<sup>66</sup>

Article 22 to the Statute of the Central American Court of Justice spells out the powers of the Court, including the power to:

- Resolve disputes that may arise among the member states (except for territorial or border disputes which can only be resolved by the Court if all the concerned parties so agree) and for which the respective Foreign Ministries are unable to reach an acceptable resolution;
- Nullify decisions made by the SICA institutional bodies that are not in conformity with the treaties, agreements, and protocols that create SICA as well as declare an institutional body not to be in compliance with those obligations;
- Determine whether a SICA member has issued norms, regulations, and administrative rulings that detrimentally affect SICA's legal order and institutional decisions;
- Act as an arbitration panel in any matter that all the parties to a dispute have specifically asked the Court to resolve;
- Offer advisory opinions to the Supreme Courts of the individual SICA member states on any matter, as well as issue advisory opinions to all other Central American courts on specific questions dealing with SICA, so as to insure the uniform interpretation and application of all SICA obligations;
- Offer advisory opinions to the different SICA institutional bodies regarding the interpretation and application of the Protocol of Tegucigalpa and other legal instruments that are compatible with or derived therefrom;
- Resolve disputes that may arise among and between the different branches of government within a SICA country or whenever a national court's decision is ignored by another institutional body within that country;
- Entertain complaints brought by persons affected by the actions of any SICA institution (including serving as the

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Mar. 25, 2001) [hereinafter Statute of CACJ].

65. Statute of CACJ, *supra* note 64, art.7 (explaining that the Court is permitted to hold sessions in the territory of any of the SICA member states if they agree to do so).

66. Statute of CACJ, *supra* note 64, arts. 9-11.

court of last resort with respect to administrative decisions undertaken by one of those bodies against an employee);

- Resolve disputes that may arise between a SICA member and a non-member state if all the parties so agree; and,
- Carry out comparative studies of Central American legislation in order to harmonize and encourage uniformity in the laws of the Central American states.<sup>67</sup>

Interestingly, individuals are permitted by Article 22 (c) of the Statute of the Central American Court of Justice the right to bring an action in the Court complaining of a member state's issuance of a legal norm that contradicts its overall SICA obligations.<sup>68</sup> In addition, Article 60 (b) of the Rules of Procedure of the Central American Court of Justice indicates that a private party directly prejudiced by such action may bring an action against a member state for general non-compliance with its SICA obligations.<sup>69</sup>

All of the decisions of the Central American Court of Justice must be adopted by majority vote, and dissenting opinions are permitted.<sup>70</sup> All decisions are final and cannot be appealed, although requests for further clarification of judicial holdings are permitted.<sup>71</sup>

Although the Central American Court of Justice has been operating since 1994, its caseload has been light because only three countries (El Salvador, Honduras, and Nicaragua) actively participate in the Court.<sup>72</sup> Costa Rica has refused to ratify the Statute of the Central American Court of Justice because its Supreme Court ruled the Statute unconstitutional given that Article 22(f) authorizes the Central American Court to resolve disputes that may arise between the different branches of government within a country.<sup>73</sup> Unfortunately, Costa Rica cannot exempt itself from this specific provision because Article 48 of the Statute expressly forbids any reservations to the Statute by a ratifying state.<sup>74</sup>

67. Statute of CACJ, *supra* note 64, art. 22.

68. *Id.*

69. Ordenanza de Procedimientos Titulo Preliminar del Objeto y la Finalidad [Preliminary Title Order of Procedures of Objectives and Finality], at [http://www.ccej.org.ni/doc\\_base/normjurj/ordenanza.htm](http://www.ccej.org.ni/doc_base/normjurj/ordenanza.htm) (last visited Mar. 25, 2001).

70. Statute of CACJ, *supra* note 64, art. 36.

71. Statute of CACJ, *supra* note 64, art. 38.

72. Corte Centroamericana de Justicia [Central American Court of Justice] (displaying the index of decisions made by the court), at <http://www.ccej.org.ni/> (last visited Mar. 25, 2001).

73. Comisión Económica Para América Latina y el Caribe (CEPAL) & Banco Interamericano de Desarrollo (BID) [Economic Commission For Latin America and the Caribbean (CEPAL) & The Interamerican Bank of Development (BID)], LA INTEGRACIÓN CENTROAMERICANA Y LA INSTITUCIONALIDAD REGIONAL [THE CENTRAL AMERICAN INTEGRATION AND THE REGIONAL INSTITUTIONALIZATION] 48 (1998) [hereinafter CEPAL & BID].

74. Statute of CACJ, *supra* note 64, art. 48.

In an attempt to get around the limitations imposed by the Statute of the Central American Court of Justice, a draft proposal for a Central American Treaty for the Solution of Commercial Controversies was circulated among the member countries in 1999.<sup>75</sup> This new supplemental resolution system bears a remarkable resemblance to the three-step MERCOSUR mechanism for resolving disputes (which, in turn, was modeled on the original Canadian-U.S. Free Trade Agreement).<sup>76</sup> Under the proposed Central American Treaty for the Solution of Commercial Controversies, the State Parties would first try to resolve any trade controversy that may arise among them involving SICA obligations (as well as non-compliance with WTO obligations if the parties so agree) through direct negotiations and consultations.<sup>77</sup> If this step were unsuccessful, then the dispute would be referred to the Council of Ministers of Economic Integration, who would be authorized to utilize the technical assistance of outside experts.<sup>78</sup> If the Council, for its part, were unable to resolve the matter, the dispute would then be referred to a three-person arbitration panel.<sup>79</sup> All decisions made by the arbitration panel would be final and failure to comply would lead to a withdrawal of the benefits extended by the winning party to the non-complying state(s) under SICA.<sup>80</sup>

The inadequacies associated with SICA's current dispute resolution system have been underscored by the dispute that arose at the end of 1999 between Honduras and Nicaragua over the former's ratification of a treaty with Colombia recognizing Colombian sovereignty over territory long claimed by Nicaragua.<sup>81</sup> In November of 1999 Nicaragua presented a petition to the Central American Court of Justice requesting that it declare Honduras in violation of its SICA obligations by having ratified the Treaty on Maritime Limits between the Republics of Colombia and Honduras.<sup>82</sup> Despite a stinging dissent by one of the judge's that the Court's jurisdiction in this case was restricted by Article 22 (a) of the Statute of the

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75. Tratado Centroamericano sobre Solución de Controversias Comerciales [Proposed Central American Treaty on the Solution of Commercial Controversies], waiting approval of Legislative Assembly, at <http://www.sice.oas/trade/sica/solcontr.asp> [hereinafter Proposed Central American Treaty].

76. O'KEEFE, *supra* note 9, App. 7.

77. Proposed Central American Treaty, *supra* note 75, arts. 7-10.

78. *Id.* arts. 11-14.

79. *Id.* arts. 15, 19.

80. *Id.* arts. 24-25.

81. *Nicaraguans In Tariffs Wrangle*, *supra* note 1, at 6.

82. Resolución sobre Incumplimiento o Violación de Normas Comunitarias del Sistema de la Integración Centramericana (SICA) [Resolution on Incompliance or Violation of Community Norms of the Central American Integration System (SICA)], Estado de Nicaragua contra el Estado de Honduras [State of Nicaragua against State of Honduras], Nov. 30, 1999, at <http://www.ccj.ni/resolnes/resol25.htm> (last visited Mar. 30, 2001). The court also admittedly overlooked a number of procedural flaws in accepting the Nicaraguan petition.

Central American Court of Justice, which does not allow it to resolve territorial disputes unless all the Central American states involved agree to submit the matter before the Court, the Court accepted Nicaragua's petition.<sup>83</sup> It also issued a preliminary order calling on Honduras to suspend the ratification process of its Treaty on Maritime Limits with Colombia.

In January of 2000 Honduras, without waiving its right to contest the jurisdiction of the Court in the earlier petition filed by Nicaragua, presented its own petition to the Central American Court of Justice claiming that Nicaragua's implementation of a 35% duty on Honduran goods was in violation of its SICA obligations.<sup>84</sup> In response, the Court issued a preliminary order calling on Nicaragua to suspend the law until a definitive ruling could be issued, since it appeared to undermine the entire Central American free trade system.<sup>85</sup> Five days later the Court issued another resolution, this time rejecting Honduras' argument that the Court lacked jurisdiction to hear the petition brought against it by Nicaragua the previous November.<sup>86</sup> It also ordered that the other SICA countries be informed of the failure of the Honduran government to suspend ratification of its maritime treaty with Colombia so that they could take the appropriate measures to ensure compliance with the Court's preliminary order of November 30, 1999.<sup>87</sup>

Given the strong nationalist underpinnings of the case, it is hardly surprising that neither Honduras nor Nicaragua have obeyed any of the preliminary orders issued by the Court. This presumably was the reason why the drafters of the Statute of the Central American Court of Justice specifically excluded from its jurisdiction the right to resolve territorial disputes unless all the parties to such a conflict consented. In any event, the Honduran-Nicaraguan conflict surfaced again during WTO proceedings in Geneva in March 2000.<sup>88</sup> Given the inability of the Central

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83. *Id.*

84. Resolución sobre Revocación de Disposiciones Legales, Actos Administrativos y Actuaciones de Hecho [Resolution on Revocation of Legal Disposition, Administrative Acts, and Duties], Estado de Honduras Contra el Estado de Nicaragua [State of Honduras against State of Nicaragua], Dictó Medidas Cautelares, Jan. 12, 2000, at <http://www.ccj.org.ni/resolnes/resol26.htm> (last visited Mar. 30, 2001).

85. *Id.*

86. Resolución sobre Incumplimiento o Violación de Normas Comunitarias del Sistema de Integración Centroamericana (SICA) [Resolution on Incompliance or Violation of Community Norms of the Central American Integration System (SICA)], Estado de Nicaragua contra el Estado de Honduras [State of Nicaragua against State of Honduras], Jan. 17, 2000, at <http://www.ccj.org.ni/reolnes/resol27.htm> (last visited Mar. 30, 2001).

87. *Id.*

88. Andrew Bounds, *Central America Struggles to Bury its Past Border Conflicts: The New Century has Brought a Rash of Disputes Threatening Attempts at Integration*, FINANCIAL TIMES,

American system to successfully resolve the matter, it was hoped that the multilateral body might be better equipped to end it.

#### IV. SICA'S INSTITUTIONAL FRAMEWORK

With the entry into force of the Protocol of Tegucigalpa on February 1, 1993, SICA's highest institutional body became the Central American Presidents' Meeting that convenes at least two times a year to define the broad policy objectives and goals of the Central American integration process.<sup>89</sup> All decisions made by the Presidents Meeting are adopted by unanimous consensus.<sup>90</sup> A Vice Presidents' Meeting that also convenes at least twice a year assists the Presidents in their deliberations.<sup>91</sup> The involvement of the Central American Presidents and Vice Presidents in the integration process is intended to underscore the fact that SICA is both a high-level political as well as economic integration program which has as its ultimate goal the revival of the Central American Federation of the early 19th century.

Following the Presidents' and Vice-Presidents' meeting in hierarchical importance are the Councils of Ministers representing different ministries that are responsible for economic integration and regional development.<sup>92</sup> The Ministers of Foreign Relations coordinate the meetings of the Council of Ministers, and joint sectoral meetings representing different ministries can be held when appropriate. Each country is entitled to one vote in the Council.<sup>93</sup> Important decisions require unanimous consensus, while procedural matters only require a simple majority vote.<sup>94</sup> The Councils of Ministers help to ensure, among other things, that the decisions made at the President's Meetings are faithfully implemented.<sup>95</sup> The Protocol of Guatemala specified the creation of a Council of Ministers of Economic Integration consisting of the Ministers of Economics and the Presidents of the Central Bank (or equivalent) from each State Party.<sup>96</sup>

The third most important institution in SICA is the Executive Committee of Economic Integration made up of one representative from each member state, who is chosen by a country's respective President.<sup>97</sup>

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Mar. 23, 2000, at 6.

89. Protocol of Tegucigalpa, *supra* note 19, arts. 13-15.

90. *Id.*

91. *Id.* art. 12.

92. *Id.* arts. 16-22.

93. *Id.*

94. *Id.*

95. Protocol of Tegucigalpa, *supra* note 19, art. 38.

96. *Id.* Article 45 of the Protocol of Guatemala also creates a Central American Agricultural Council, while Article 47 creates a Central American Monetary Council. *Id.* art. 45, art. 47.

97. *Id.* art. 24.

The Executive Committee meets at least once a week and oversees the day-to-day implementation of the decisions issued by the bodies above it as well as regulations and agreements emanating from the technical secretariats.<sup>98</sup>

Although Article 55(3) to the Protocol of Guatemala states that regulations (as opposed to resolutions, recommendations, or agreements) issued by SICA's institutional bodies are directly applicable in the member states, suggesting supranational powers, this provision has not been followed in actual practice.<sup>99</sup> Accordingly, none of SICA's institutional bodies enjoy supranational authority, and all legal norms issued by them must be ratified by each member state before it comes into full force and effect within its respective domestic legal order.

A General Secretariat headquartered in San Salvador has oversight powers and coordinates the four specialized technical secretariats inherited from the old Central American Common Market including CACM's old General Secretariat or SIECA in Guatemala City.<sup>100</sup> This latter situation has created a certain level of ill will as the long-established SIECA in Guatemala City often resents the usurpation and subordination of many of its functions to the General Secretariat in El Salvador.

A number of other institutions are affiliated with the Central American integration process as well, including a Central American Bank for Economic Integration, the previously discussed Central American Court of Justice, and a Central American Parliament consisting of twenty representatives directly elected from each of the four member states (except Costa Rica).<sup>101</sup> The Parliament has no rule-making powers and plays a strictly advisory role.<sup>102</sup>

ECLAC and the Inter-American Development Bank (IADB) jointly published a scathing report on SICA's institutional framework in 1998.<sup>103</sup> The report noted the existence of eight formal institutional bodies, two consultative forums (although only one actually functioned), seven technical secretariats, eight coordinating committees (although their existence is suspended in "virtual reality" because they have no permanent headquarters or staff), and eleven specialized regional bodies.<sup>104</sup> SICA's confusing and frequently overlapping bureaucratic tangle is actually said to induce paralysis in decision-making. In addition, the elaborate bureaucratic structure poses a heavy financial burden on the countries

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98. *Id.*

99. Protocol of Guatemala, *supra* note 20, art. 55(3).

100. *Id.* arts. 25-26.

101. *Id.* art. 12.

102. *Id.*

103. See generally CEPAL & BID, *supra* note 73.

104. *Id.* at 25.



involved.<sup>105</sup> The joint ECLAC-IADB report on SICA's institutional framework also criticized poor implementation and follow-up to the numerous decisions issued by the presidents at their many meetings, a tendency to confuse "cooperation" with "integration" (leading to the proliferation of yet more regional institutional entities), lack of clarity as to the responsibilities of different technical support groups, and institutions that are top-heavy with administrators but enjoy little qualified technical support staff.<sup>106</sup> The Central American Parliament was particularly singled out for criticism in that it absorbs about half of the contributions paid in by the member states to SICA but has absolutely no decision-making powers.<sup>107</sup> Finally, the joint ECLAC-IADB report noted that the Central American integration process has "scant public support and social participation" in the region.<sup>108</sup>

The only really effective institutional body within the SICA bureaucracy is the Central American Bank for Economic Integration based in Tegucigalpa. Created in 1960, the Bank's mandate is to finance and promote regionally balanced and integrated economic growth throughout Central America.<sup>109</sup> Until 1992 the Bank financed mainly infrastructure projects, especially regional highway and telecommunication networks and hydroelectric power generation projects.<sup>110</sup> The Bank also had given money to build technical training schools and contributed to health and rural development projects.<sup>111</sup> Since then, the Bank has paid greater attention to the private sector, principally through intermediate financing to promote export production, and has co-financed projects to develop energy and tourism capabilities.<sup>112</sup>

## V. A CRITICAL ASSESSMENT OF SICA FROM A FOREIGN INVESTOR'S PERSPECTIVE

Since the time that the Central American economic integration process was revived at the start of this decade, intra-regional trade among the five core SICA states has gone from approximately U.S.\$ 800 million in 1991 to an estimated U.S.\$ 2.4 billion by 1999. According to statistics prepared by SIECA about 20% of what Central America exported to the world in

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105. See *id.* at 31-32. In fact, most countries simply cannot keep up with their contribution obligations and the accumulated arrearages are said to reach "impressive" levels.

106. *Id.* at 35-42 & 51-52.

107. *Id.* at 45-46.

108. *Id.* at 81.

109. General Treaty on Central American Integration, *supra* note 12, art. XVIII; see also O'KEEFE, *supra* note 9, at 13-12.

110. *Id.*

111. *Id.*

112. *Id.*

1999 actually remained in the sub-region, up from 10% in 1986 and close to the 25% average achieved by the old CACM in its heyday during the 1960's. Guatemala is responsible for about a third of all of Central America's intra-regional exports, El Salvador and Costa Rica each have around a 25% share, while Honduras's share is 10% and Nicaragua lags far behind at 5%. One of the more encouraging aspects of the increased trade flows within SICA during the 1990's is that it has been accompanied by steady growth in the region's global exports. In addition, while the bulk of the region's exports to the outside world have been concentrated in primary commodities and foodstuffs, the majority of goods traded within Central America are value-added manufactured products such as chemical products and textiles.<sup>113</sup>

Despite the encouraging figures for trade flows within Central America sparked by SICA's intra-regional free trade program, the opportunities that this latest manifestation of Central American economic integration provides for U.S. investors are not as significant as those provided by other Latin American economic integration programs such as the Andean Community or MERCOSUR. For one thing, the size of the five Central American markets is relatively small both in terms of population (*i.e.*, 32 million) and, more importantly, in terms of consumer purchasing power. With the exception of Costa Rica, Central America is a region of impoverished masses with some of the lowest per capita incomes in the Western Hemisphere.<sup>114</sup> As a result, SICA has not attracted the great flows of foreign direct investment that MERCOSUR has encouraged in South America's Southern Cone, or that even the Andean Community or the G-3 Agreement have done in Colombia and Venezuela.

The most important contribution SICA has made in terms of foreign investment is to permit companies to rationalize their regional production and distribution centers. Guatemala and Costa Rica have been the chief beneficiaries of this phenomena, as regional production and distribution have tended to concentrate in either country or both.<sup>115</sup> Many Mexican companies, for example, have tended to use Guatemala as a regional

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113. See Florencio Ballesteros & Ennio Rodriguez, *Central America: Towards A Harmonized Economic Area*, INTEGRATION & TRADE No. 1, 15 (Jan.-Apr. 1997). As both authors also emphasize "since manufacturing output tends to have a greater value added than the output of primary products, the economic impact of intraregional exports is significant and, furthermore, these products could be the basis for prospective extra-regional sales." *Id.*

114. Inter-American Development Bank, (indicating that in 1998 per capita GDP in Costa Rica was U.S.\$ 3,614.40, in El Salvador U.S.\$ 1,983.90, in Guatemala U.S.\$ 1,753.70, in Honduras U.S.\$ 853.50, and in Nicaragua U.S.\$ 442.30), at <http://www.iadb.org/int/sta/ENGLISH/ipaxnet/ab/b2a.htm> (last visited Mar. 30, 2001).

115. Peter Hudson, *Central America: Ahead of the Curve*, BUSINESS LATIN AMERICA, Dec. 2, 1996, at 5.

distribution center for their products throughout Central America.<sup>116</sup> For example, in 1997 IMSA, a Mexican coated steel producer, acquired a major galvanized steel production plant in Guatemala City so that it could better serve its customers in Central America.<sup>117</sup> For its part, Goodyear has concentrated tire production in Central America in two plants in Guatemala and Costa Rica.<sup>118</sup> The Mexican glass manufacturer Cabisas has followed a similar strategy.<sup>119</sup> On the other hand, Anglo-Dutch Unilever has picked El Salvador as the center of its operations in which to produce and then distribute its ice cream products throughout the entire Central American market.<sup>120</sup>

One important area where SICA is expected to encourage new investment opportunities that can benefit U.S. companies in the near future is in regional infrastructure projects.<sup>121</sup> In 1991, all five presidents of the Central American countries and Panama approved a ten-year US\$ 2.3 billion plan to upgrade or build some 2,900 miles of road and 1,100 miles of new or upgraded railway.<sup>122</sup> The project also envisions upgrading nine key regional seaports and seven airports.<sup>123</sup> An initial sum of US\$ 450 million has already been approved to begin the first leg of this major project, which, by the time it is finished, will for the first time link all the major cities of Central America, by train.<sup>124</sup> In another project which is being funded by the Inter-American Development Bank, a 1,000 mile long transmission line stretching from Guatemala to Panama will be built at a cost of approximately half a billion U.S. dollars.<sup>125</sup> When completed, the line will interconnect the electric power grid of all the Central American countries and improve the reliability of service while lowering costs to consumers.<sup>126</sup>

## VI. CONCLUSION

Although SICA has failed to attract significant levels of foreign direct investment to Central America, SICA's intra-regional free trade program

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116. Interview with Senior Personnel of the Guatemalan-American Chamber of Commerce, in Guatemala City, Guatemala (Dec. 8, 1997).

117. *Id.*

118. Interview with Edgar Chamorro Marin, Secretariat of Central American Economic Integration (SIECA), in Guatemala City, Guatemala (Dec. 9, 1997).

119. *Id.*

120. Peter Hudson, *Unilever Central America: Critical Mass*, BUSINESS LATIN AMERICA, Mar. 17, 1997, at 6.

121. O'KEEFE, *supra* note 9, at 13-36.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

has proved especially beneficial to the region through the generation of new trade flows, particularly of manufactured goods, among the member states. Particularly encouraging is that this new growth has not come at the expense of the region's global exports. In addition, SICA's CET has not contributed to major trade diversion in terms of regional imports being diverted away from more efficient international sources. Unfortunately, SICA's bloated and overlapping bureaucracy hinders efforts at deepening political and economic integration on the Central American isthmus. The institutional mechanisms designed to resolve conflicts among the member states have also proven to be ineffective, as evidenced by the recent spat between Honduras and Nicaragua that was eventually directed to the WTO for resolution.

The many institutional bodies that have proliferated under SICA have degenerated into a Central American Full Employment Act that does not facilitate the region's effective integration into the global economy. The result is that the Central American countries (unlike the MERCOSUR bloc, for example) not only do not speak with a single voice at the Free Trade Area of the Americas (FTAA) negotiating sessions or multilateral gatherings such as the WTO, but they do not even coordinate their negotiating positions in these *fora* (as does the Andean Community, for example). Accordingly, SICA appears to be failing in what should be its most important role, positioning Central America for better insertion into the hemispheric and international market places.

