

FTAA NEGOTIATIONS: SHORT OVERVIEW

*José Antonio Rivas-Campo** and
*Rafael Tiago Juk Benke***

ABSTRACT

As the year 2005 approaches, negotiations of what would be the largest free trade area on the globe, the FTAA, are entering the phase that will determine the architecture of Western Hemisphere trade. The underlying question in this article is the degree of trade liberalization that the FTAA could reach. Thus, this article first presents an overview of the structure of the negotiations, its principles, institutions and main events. Then it discusses some of the issues in the balance, including agricultural negotiations, modifications to the subsidies, antidumping and competition policy regimes, intellectual property rights, the regional application of the MFN principle as well as the interplay between the FTAA and other regional trade agreements. After presenting the main arguments of the key negotiating players, this article develops different scenarios, varying according to the degree of trade liberalization, which could be reached in each of the issues discussed

The Free Trade Area of the Americas ('FTAA'), if successful, will be the free trade area with the largest market and territory on the globe. Not only will it encompass a marketplace of more than 854 million people, from Alaska to the Patagonia,¹ involving 34² countries of the hemisphere, but all of its fea-

* Professor of Law, Los Andes University; S.J.D. Candidate Georgetown University Law Center ('GULC'); LL.M., GULC; Attorney at Law and Economist, Los Andes University; currently consultant to the International Centre for Settlement of Investment Disputes.

** Attorney at Law; Ph.D. Candidate, World Trade Institute; LL.M., University of Warwick; MSc., Catholic University of São Paulo; Former Legal Adviser to the Brazilian Secretary of Foreign Trade; currently JIEL editorial assistant and consultant to the Trade Unit of the Organization of American States.

We would like to thank Professors Gary C. Hufbauer, Donald M. McRae, and Peter Van den Bossche for their insightful comments and in particular, Ms Joanna Sokolow for her assistance. Of course, the errors in this article remain our own. The views expressed in this article are our own and should not be attributed to the institutions which we are related to.

¹ World Health Organization and Pan American Health Organization, *Health in the Americas* (2002), http://www.paho.org/english/DBI/MDS/HIA_facts.pdf, (site visited on 26 February 2003).

² Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela. (Denver Ministerial Declaration, at http://www.ftaa-alca.org/ministerials/denver_e.asp).

tures will be diverse, including cultures, means of production, and levels of development (see Appendix 2, 2001 Data on FTAA Negotiating Countries). The ambitious project of creating a single hemispheric market is currently a dynamic negotiating process that started in 1994 and has made substantial progress during the last eight years. However, the completion of the FTAA during its final phase depends on the ability of its negotiating parties to solve various controversial issues and to handle simultaneous trade negotiations.

The objective of this article is to present a short overview of the structure of the FTAA Negotiations, and to draw attention to some of its main issues. The approach in this FTAA overview is to take into consideration the background of multiple negotiations, i.e. the evolution of a hemispheric negotiation parallel to the sub-regional negotiations within the hemisphere itself, as well as negotiations of countries of the region with third countries, and the World Trade Organization ('WTO') multilateral negotiations.

The first part of the article provides an overview of the structure of the FTAA Negotiations, its main principles and involved Institutions. It also highlights some relevant facts in the FTAA Summits and Ministerials, and the preparation for the current final phase of negotiations. The second part of the article discusses some of the main topics in the FTAA Negotiations, including the importance of agricultural negotiations; the issue of remedies (more precisely, anti-dumping, and its relation to competition policy); intellectual property rights; discussions on the adoption of a regional most-favored-nation clause; and the inclusion of labor and environment standards within the regional trade negotiations. Part three refers to the issue of regionalism parallel to other trade negotiations and addresses the prospects of the FTAA Negotiations by presenting multiple possible scenarios that vary according to their degree of trade liberalization.

I. THE NEGOTIATIONS' PRINCIPLES AND STEPS TOWARDS THE FTAA

A. From Miami to Quito: the fundamentals of the negotiations

In December 1994, the Heads of Government and State of the 34 democracies of the Americas met in Miami. At the so-called 'Summit of the Americas' they launched the process of construction of a Free Trade Area for the whole American Continent through an agreement to be adopted by 2005. This agreement should comprise the progressive elimination of barriers to trade and investment, and be based on the Principles³ declared at this First Summit.

³ 'Eliminating impediments to market access for goods and services among our countries will foster our economic growth. A growing world economy will also enhance our domestic prosperity. Free trade and increased economic integration are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment.' (Summit of the Americas, Declaration of Principles). See Appendix 2, 2001 Data on FTAA Negotiating Countries.

Since its initiation in 1994, the FTAA negotiating process has advanced through three Summits⁴ and seven Ministerial Meetings⁵, and emerged with a structure for negotiations within a set timeframe and a final deadline. Within this structure, relevant guiding principles for the negotiations have been agreed upon; namely:

- Taking decisions by consensus;
- Concluding a single undertaking;
- FTAA compliance with WTO agreements (particularly GATT Article XXIV and GATS Article V);
- Foreseeing an FTAA which could coexist with other bilateral and sub-regional agreements in the Western hemisphere;
- Permitting the countries of the Americas to negotiate the FTAA either individually, or as a 'block' of member countries of sub-regional trade agreements;
- Facilitating technical assistance;
- Considering the different levels of development and the size of the economies in the Western hemisphere;
- Transparency and involvement of the civil society.

As would be expected from an agreement that will have effects throughout the Western hemisphere, the FTAA negotiations have prompted concerns and pressure from various interests groups, including non-governmental organizations and the business community. In response, innovative practices like fostering a dialogue with these groups through the 'Invitations to Civil Society',⁶ have been put into place.

In addition, and consistent with the principle of transparency, the FTAA negotiations have evolved with the unparalleled practice of making publicly available the draft texts of the future agreement. The first text was made available to the public in all four official languages⁷ just after the Third Summit of the Americas. The second draft⁸ was made public just after its acceptance in the Quito Ministerial Meeting.

⁴ First Summit of the Americas in Miami, USA (December 1994); Second Summit of the Americas in Santiago, Chile (April 1998); and Third Summit of the Americas in Quebec City, Canada (April 2001).

⁵ First Ministerial Meeting in Denver, USA (June 1995); Second Ministerial Meeting in Cartagena, Colombia (March 1996); Third Ministerial Meeting in Belo Horizonte, Brazil (May 1997); Fourth Ministerial Meeting in San Jose, Costa Rica (March 1998); the Fifth Ministerial Meeting in Toronto, Canada (November 1999); the Sixth Ministerial Meeting in Buenos Aires, Argentina (April 2001); and the Seventh Ministerial Meeting in Quito, Ecuador (November 2002).

⁶ <http://www.ftaa-alca.org/spcomm/derdoc/dcs9e.asp>.

⁷ The four official languages are: English, French, Portuguese, and Spanish.

⁸ http://www.ftaa-alca.org/ftaadraft02/eng/draft_e.asp.

Other innovative practices of these negotiations include later added Principles stating that the FTAA Agreement should improve upon WTO rules and disciplines wherever possible; aim at a balanced and comprehensive result; and take into consideration environmental and labor rights (but reject those with solely protectionist intentions).⁹

Throughout the meetings, the authorities have also approved several business facilitation measures, for instance, in the field of customs procedures whose aim is to facilitate the commercial exchange among countries of the Americas. Other aspects of these negotiations include the participation (through recommendations) by the Joint Government-Private Sector Committee of Experts on Electronic Commerce (the 'Joint Committee') and the technical, analytical, and financial support of a 'Tripartite Committee', comprised of the Inter-American Development Bank, the Organization of American States, and the United Nations Economic Commission for Latin America and the Caribbean. The FTAA negotiating process has also provided for the creation of the 'Hemispheric Cooperation Program – HCP' as a central support in areas such as capacity building; development; negotiating strategies and implementation of the FTAA agreement.

B. The steps toward the agreement

The formal initiation of the negotiations was launched in April 1998, at the Second Summit of the Americas, in Santiago, Chile, and was a consequence of the achievements of the Ministerial Meeting in San Jose, Costa Rica (March 1998).¹⁰

Also in San José, the Ministers established the Trade Negotiations Committee ('TNC') at the Vice-ministerial level. Its responsibility is to guide the work of nine negotiating groups, which have been divided by topic (i.e. market access, investment, services, government procurement, dispute settlement, agriculture, intellectual property rights, subsidies, anti-dumping and countervailing duties, and competition policy),¹¹ as well as the Special Committees on 'Participation of Civil Society', 'Smaller Economies', 'Electronic Commerce', and 'Institutional Issues'.¹² In addition, the chairmanship of the FTAA process rotates among different countries,¹³ with the co-chairmanship of Brazil and the United States for the period from 1 November 2002 until the end of the negotiations.

⁹ See especially Annex I of the Ministerial Declaration of San Jose, Costa Rica (http://www.ftaa-alca.org/ministerials/costa_e.asp), and Ministerial Declaration of Quito, Ecuador (http://www.ftaa-alca.org/ministerials/quito/minist_e.asp).

¹⁰ See Appendix 1, FTAA Process: Chronological Table of Major Events.

¹¹ See Ministerial Declaration of San Jose, Costa Rica.

¹² See http://www.ftaa-alca.org/Scomm_e.asp, visited 20 April 2003.

¹³ From 1 May 1998 to 1 Nov. 2002, the following countries rotated (serving terms of 18 months) as chair and vice-chair respectively: Canada and Argentina; Argentina and Ecuador; Ecuador and Chile.

The next relevant meeting was the Third Summit of the Americas in Quebec City, Canada (April 2001), just after the Sixth Ministerial meeting held in Buenos Aires, Argentina. The first draft text of the FTAA Agreement resulted from these meetings as did the so-called ‘democracy clause’ of the Declaration of Quebec City, where it was ‘. . . acknowledge[d] that the values and practices of democracy are fundamental to the advancement of all [] objectives . . . Consequently, any unconstitutional alteration or interruption of the democratic order in a state of the hemisphere constitutes an insurmountable obstacle to the participation of that state’s government in the Summit of the Americas process.’¹⁴ This clause came to officially confirm the exclusion of Cuba from these negotiations.

Also in these meetings, the final deadlines for conclusion and implementation of the FTAA Agreement were reiterated. The negotiations are to be concluded no later than January 2005, and the entry into force should be sought as soon as possible thereafter, but no later than December 2005.

The Buenos Aires Declaration (April 2001) recommended the elaboration of a second draft of the FTAA Agreement; the initiation of market access negotiations in agricultural and non-agricultural goods, services, investment, and government procurement by 15 May 2002; and the approval of the methods and modalities for negotiation.

Prior to the VII Ministerial Meeting of Quito, Ecuador, the FTAA Trade Negotiations Committee (‘TNC’) provided a ‘guidance’¹⁵ document on methods and modalities, organizing the *ways and forms* of the development of the negotiations. In this document, the TNC establishes that the scope of the negotiations includes the whole tariff universe; the base tariff shall be the MFN-applied tariff; and linear tariff cuts¹⁶ shall be used, with the possibility of non-linear exceptions. Moreover, a specific schedule was set for the presentation of proposals as well as for the progressive elimination of tariffs. The timeframe and schedule were confirmed by the Quito Ministerial Declaration (November 2002).¹⁷

The progressive elimination of tariffs might comprise four phases. The first phase would be that of immediate tariff elimination of a significant number of negotiated products; the second, elimination within no more than 5 years; the third, elimination within no more than 10 years; and the final phase,

¹⁴ See The Third Summit of the Americas, Declaration of Quebec City, at http://www.sice.oas.org/FTAA/quebec/declara_e.asp, visited on 20 April 2003.

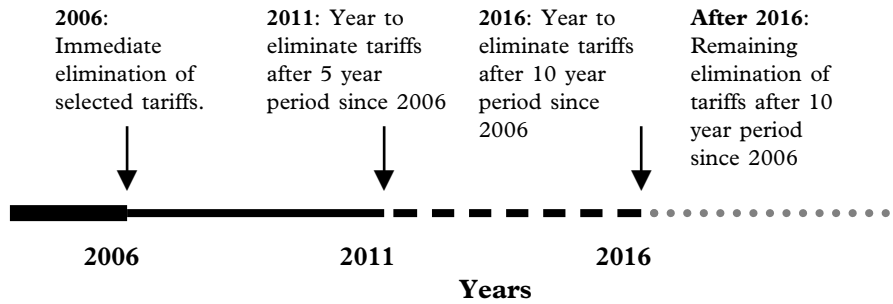
¹⁵ See Ministerial Declaration of Quito, Section 19, http://www.ftaa-alca.org/ministerials/quito/minist_e.asp, visited on 19 November 2002.

¹⁶ ‘Linear tariff cuts’ are tariff cuts of equal magnitude, usually expressed in percentage points, across whole classes of products.

¹⁷ Ministerial Declaration of Quito, Section 21, http://www.ftaa-alca.org/ministerials/quito/minist_e.asp, visited on 19 November 2002.

elimination taking longer than 10 years.¹⁸ In this context, the TNC declared that ‘each country shall make significant offers for immediate tariff elimination.’ (See Figure 1).

Figure 1. Timeframe of Tariff Elimination



The exchange of offers should follow the general rule that a ‘country may have access to the offers made by the other countries only once it has submitted its own offer.’¹⁹ The market access negotiations initiated on 15 May 2002, and the presentation of offers was planned to follow this timetable (See Table 1):

Table I. Timetable of Exchange of Offers

Presentation of offers	15 December 2002 – 15 February 2003
Improvement to offers	16 February – 15 June 2003
Presentation of revised offers	By 15 July 2003

In practice, the exchange of proposals may not precisely follow the agreed-upon schedule, but will instead depend on factors and circumstances particular to the moment. For instance, for the presentation of offers, Brazil had just empowered its newly elected president, and some flexibility on the deadline was required. Moreover, events like the war in Iraq and Middle East tensions, internal pressures within the negotiating countries, and other negotiations, such as the Doha Round, might affect the pace of the FTAA negotiations as a whole.

¹⁸ Identifying the specific industries in the region that will be liberalized in a longer period than 10 years is beyond the scope of this article. However, such study is encouraged and would be most useful to determine whether the industries which are politically sensitive and thus will be liberalized after such period of time, coincide with the industries representing a major share of hemispheric trade.

¹⁹ See ‘Document on Methods and Modalities for Negotiations’, http://www.ftaa-alca.org/alca_e.asp, visited on 18 November 2002.

II. CONTROVERSIAL ISSUES

The FTAA negotiations entered a challenging phase in 2003, upon the submission of tariff reduction proposals by every member and the pursuant trade-offs. The negotiations of the final agreement are meant to be concluded by January 2005, at the latest. Hence, the two forthcoming years should be crucial.

The second draft version of the agreement was released on November 2002. Although providing a text with around 40% fewer brackets than the first draft,²⁰ this version still has a large number of brackets (meaning that the text is being negotiated and a consensus on the final text is still to be reached). Most of the issues in the FTAA have not been decided and there is strong controversy in areas where the member countries seem to have precise demands in addition to opposing commercial interests. The highly controversial issues include conflicting positions between the US, which constitutes the biggest export and import market in the hemisphere, and Brazil, which represents 40% of South America's economy²¹ and plays a pivotal role amongst MERCOSUR member states and other South American countries. The issues presented below are so sensitive, particularly for these two big players, that a satisfactory resolution thereof will be necessary for a successful FTAA.

The controversial issues include agricultural liberalization,²² trade remedies,²³ intellectual property rights, and labor and environmental standards.²⁴

A. Agricultural liberalization

Prospects of agricultural trade liberalization in the region seem weak due to a surge of trade barriers against agricultural products in recent years.

²⁰ Record on file, Comments made by Bennett Harman, Deputy Assistant USTR for Latin America on the Andean Trade Promotion and Drug Eradication Act (ATPDEA), meeting sponsored by the Women in International Trade – WITA (21 November 2002).

²¹ See the *Wall Street Journal*, 'A Global Journal Report: US, Brazil Key to Trade Quest' (4 November 2002).

²² See Devlin *et al*, The FTAA: Some Longer Term Issues (INTAL-ITD, 1999), (visited on 10 February 2003) <http://www.iadb.org/int/pub>, at 14. Analysts have argued that the FTAA will be a forum leading to greater market access for textiles, agriculture and food products, since there is already a world of industrial products that enjoy duty free access or low tariffs to enter other countries in the Americas.

²³ See *Financial Times*, Raymond Colitt, 'Lula's Party Backs Free Trade Area Talks' (8 November 2002).

²⁴ The controversial issues presented in this paper do not relate to the sustainability of the FTAA agreement in the event that, and once, it comes into effect after 2005. The extent to which the Hemispheric agreement will be able to endure the political and economic consequences of lifting barriers throughout the Americas has been explored in international trade literature. Gary Hufbauer and Jeffrey Schott, *Western Hemisphere Economic Integration* (Washington, DC: Institute for International Economics, 1994); Jeffrey Schott, *Prospects for Free Trade in The Americas* (Washington, DC: Institute for International Economics, 2001); Readiness indicators, developed by Hufbauer and Schott, include a set of political (index of political rights and civil liberties, index of health,

According to a report released by Brazil in October 2002,²⁵ trade barriers covering approximately 60% of US imports from Brazil increased in the past two years.²⁶ In addition, in May 2002 the US Farm Bill arguably raised agricultural subsidies by 80%.²⁷ In other countries of the Americas, such as Mexico, there are claims that distortions on trade of agricultural products, including US subsidies that Mexico is unable to match, have severely affected the sector and its farmers.²⁸

The FTAA negotiations on agriculture liberalization are highly sensitive, if not the most controversial (see Appendix 2). One critical issue is whether the FTAA Agreement will eliminate or regulate agricultural subsidies and other trade-disrupting practices. Some of these allegedly restrictive practices include minimum entry price schemes and a price band system for imported commodities,²⁹ tariff escalation and tariff peaks, mandatory labeling and certification,³⁰ and non-scientific criteria applied to imports of agricultural goods in the areas of technical barriers to trade and sanitary and phytosanitary measures.³¹ In this context, an additional question is whether the negotia-

education and per-capita income) micro (government's reliance on market-oriented policies and on trade taxes as a form of tax revenue) and macro (price stability, budget discipline, national savings, external debt and currency stability) economic variables. See also Liliana Rojas Suarez *Toward Sustainable FTAA: Does Latin America Meet the Necessary Financial Preconditions?* (2002), www.sice.oas.org/geograph/western/rojas.pdf (visited on 28 April 2003). Rojas Suarez argues that once the FTAA is concluded its success does not only depend on political, micro and macro economic stability, but also depends upon financial debt sustainability and exchange rate compatibility of Latin American Countries.

²⁵ See Brazilian Embassy in the US, *US Barriers on Brazilian Goods and Services* (October 2000), http://www.brasilemb.org/trade_barrier2002.shtml (visited on 26 November 2002).

²⁶ *The Wall Street Journal*, 'A Global Journal Report: US, Brazil Key to Trade Quest' (4 November 2002).

²⁷ See *Bridges Weekly* (15 May 2002), <http://www.ictsd.org/weekly/02-05-15/story2.htm>, (visited on 10 November 2002).

²⁸ See *Business Week*, 'Farmers Are Getting Plowed Under with Tariffs Disappearing, US Exports to Mexico May Soar', 18 November 2002; see *The Economist*, 'The Border Region between the United States and Mexico Is Growing so Wildly That a New Way Must Be Found to Govern', (7 July 2001) It has been contended that competition against the big-scale American farming industry has disintegrated the Mexican small-scale farming sector; see also *Trade-Americas*, 'Mexico Prepares to Host Final Phase of FTAA Talks' (8 November 2002). More than 10 million hectares of farmland disappeared since 1994, and 15 million peasant farmers abandoned the countryside; *Corporate Mexico*, 'Mexico Imports Nearly Half Its Food', November 19, 2002 search in Westlaw All News Data base, www.westlaw.com, (visited on 26 November 2002). Only one-eighth of Mexico's current producers of agricultural products are expected to survive once the sector is fully opened under NAFTA.

²⁹ Association of American Chambers of Commerce in Latin America, *The Uses of Adversity Laying The Foundation for Free Trade in the Americas*, October 2002, www.worltradeonline.com (visited on 24 November 2002), at 13 and 14.

³⁰ Association of American Chambers of Commerce in Latin America, *The Uses of Adversity Laying The Foundation for Free Trade in the Americas*, October 2002, www.worltradeonline.com (visited on 24 November 2002), at 13 and 14. See Appendix 2, fn 3.

³¹ See Brazilian Embassy in the US, *US Barriers on Brazilian Goods and Services*, (October 2000), http://www.brasilemb.org/trade_barrier2002.shtml (visited on 26 November 2002).

tions on agriculture, including discussions on alleged forms of protectionist measures, could achieve meaningful liberalization in the FTAA forum or whether these negotiations need to take place at the WTO.

Part of the complexity of the negotiations results from significant protection afforded importing countries to agricultural products sensitive to foreign competition,³² including sugar, orange juice and citrus products,³³ tobacco, cotton, soybeans and meat.³⁴ Countries negotiating trade liberalization over these products expect the process to be politically difficult, as the US President's Trade Promotion Authority ('TPA') demands a broad process of consultations with the US Congress.³⁵

While Latin American countries, headed by Brazil, seek an FTAA agreement that ensures the elimination of trade barriers on agricultural products throughout the Americas, the US prefers the use of WTO negotiations to dismantle these barriers multilaterally; arguably, because dismantling barriers against agricultural goods (e.g. subsidies) in a regional agreement would have effects worldwide without any trade-off from countries outside the region (e.g. Japan and the European Union where agricultural sectors are heavily subsidized). In this sense, the US made liberal proposals in the multilateral arena, especially with regard to European protectionist standards on agriculture, when it offered to eliminate US\$100 billion in agricultural subsidies globally and to reduce its agricultural subsidies by 50%.³⁶ Given the US position (as of December 2002) to encourage global instead of regional liberalization in agriculture, Latin American countries have underlined the minimal gains that an FTAA without agricultural liberalization would signify for developing and agriculture-dependent countries.³⁷

³² See Sections I and III of the US Farm Security and Rural Investment Act of 2002 (Farm Bill of 2002).

³³ See *The Economist*, 'Clouds over Quito to Come' (2 November 2002). Approximately 100,000 jobs in Florida depend on the citrus industry.

³⁴ See Raymond Colitt, above, n 23; see also Brazilian Embassy in the US, *US Barriers on Brazilian Goods and Services*, (October 2000), http://www.brasilemb.org/trade_barrier2002.shtml (visited on 26 November 2002).

³⁵ See Section 3107 of the US Trade Act of 2002 (Public Law 107-210); see Title II of the Trade Act of 2000, Public Law 106-200.

³⁶ See *Bridges Weekly* (15 May 2002), <http://www.ictsd.org/weekly/02-05-15/story2.htm>, (visited on 26 November 2002).

³⁷ See Marcos Jank, *US Agricultural Protectionism: FTAA Seed of Discord*, www.sice.oas.org/geograph/westernh/jank2.pdf (visited on 27 April 2003). Brazil has been warned against giving in to an FTAA which allows US products to access the Brazilian market without reciprocal trade-offs. The argument rests on the high degree of dependence of Brazilian trade in its agricultural sector (agricultural sector represents 27% of Brazil's GDP and nearly 40% of its exports) and on the fact that on many of Brazilian agricultural exports the US imposes high tariffs, thus impeding market access penetration for those products (out of 130 tariff items in which the US tariffs reach more than 35%, 100 tariffs are on the most relevant agricultural Brazilian exports: orange juice, sugar, fuel alcohol tobacco, dairy products and cocoa); see also BBC Monitoring of Brazilian news agency Estado, *Brazilian official calls for US concessions within FTAA*, 5 November 2002.

Considering Latin American countries' interest in eliminating agricultural barriers and the US opposition against hemispheric agricultural subsidies negotiations, the FTAA outcome could be rather frustrating unless the WTO negotiations reach a meaningful outcome. Yet, an alternative requiring further study could be to make the FTAA a region free of subsidized agricultural imports. This proposal might enable the US to overcome the impediment of eliminating domestic subsidies without a similar behavior from the EU, because subsidized farm products would simply not reach the region. The weakness of this alternative is that exporting subsidized agricultural products is not WTO inconsistent and therefore banning them could go beyond WTO members' rights to regulate trade.³⁸

As long as the US remains reluctant to eliminate its agricultural subsidies, Latin American countries may also be unwilling to favor substantial agricultural liberalization in the region. They can argue that dropping or eliminating tariffs on agricultural products while maintaining the option of agricultural subsidies would be inequitable because it would deprive developing countries of the means to protect their own agricultural sectors, while enabling developed countries to protect their agricultural sectors, as agricultural subsidies are too expensive for developing countries.³⁹

The critique against agricultural subsidies in the sense that they represent protectionist measures for wealthy countries seems reasonable. However, it is debatable whether tariff elimination in agriculture, without subsidies elimination, would not still be in the best interest of all countries in the Americas. NAFTA presents an example in which the elimination of agricultural tariffs

³⁸ See General Agreement on Tariffs and Trade 1947, as amended (Including Understandings and Marrakesh Protocol) Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Articles XI and XXIV, 33 I.L.M.; see also WTO Dispute Settlement Appellate Body Report on Turkey Restrictions on Imports of Textile and Clothing Products [hereinafter *Turkey—Textiles (AB)*], WT/DS34/AB/R, para 58, search of LEXIS, GATT Panel and World Trade Decisions File, at 25 fn 13 (22 Oct. 1999). An argument in the sense that a ban against heavily subsidized agricultural goods originated in non-FTAA countries, would be inconsistent with the WTO agreements, relies on the prohibition set forth by GATT Article XI. This provision prescribes that WTO Members shall not institute or maintain 'prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures' with respect to other WTO Members. Nonetheless, it could be argued that such ban would be liberalizing in nature because the ban would make the Western hemisphere a region free of subsidized products. Thus, it could be argued that *the GATT Article XXIV defense* would apply. This provision is an exception to the MFN principle where WTO Members create a regional trade agreement ('RTA') – a free trade area, a customs union or an interim agreement – and thus eliminate tariffs and other restrictive regulations of commerce on substantially all trade. However, considering paragraph 5 of GATT Article XXIV, the members of an RTA do not appear to be authorized to increase tariffs or other regulations of commerce vis-à-vis non-RTA countries, unless (see para 58 of *Turkey – Textiles (AB)*) such measures are necessary in order to create the RTA. Thus, the issue appears to be whether such ban would be necessary for the creation of the FTAA.

³⁹ See J. Ernesto López Córdova, *NAFTA and the Mexican Economy: Analytical Issues and Lessons for the FTAA* (INTAL-ITD, 2001) (visited on 10 February 2003) <http://www.iadb.org/int/ENG/index.htm>, at 4.

has been beneficial despite non-elimination of agricultural subsidies. Between 1993 and 1999 Mexico's agricultural sector grew by almost 10% and its agricultural exports to the US rose by 60%. This growth in capturing a larger share of the US market was only second to Canada.⁴⁰ Therefore, it may also be argued that even partial trade liberalization in the agricultural sector is likely to create benefits for the countries of the Americas.

The underlying economic interests of the US and Brazil, which are the countries with the largest markets in the region, have generated a controversy that evinces the complexity of the negotiations.⁴¹ Brazil has expressed its willingness to negotiate trade agreements with other countries of the Americas, and other regions, if the FTAA does not comprise agricultural liberalization.⁴² Meanwhile the US has publicized its complementary strategy of negotiating bilateral agreements notwithstanding the outcome of FTAA negotiations.⁴³ US bilateral and sub-regional negotiations on free trade areas are already happening with Chile and Central American countries,⁴⁴ with a view to broaden these bilateral negotiations to other South American countries. Other states in the Andean region⁴⁵ are eagerly awaiting launching negotiations to gain access to the US market.

⁴⁰ J. Ernesto López Córdova, above, at 22.

⁴¹ *Financial Times*, 'American Free Trade Area Talks to Begin in Quito' (31 October 2002); see also, *Wall Street Journal*, 'A Global Journal Report: US, Brazil Key to Trade Quest' (4 November 2002). The rhetoric reached its peak when newly elected Brazilian President, Luiz Inacio Lula da Silva, referred to the FTAA negotiations as a process of *annexation* of Latin America to the US, instead of *integration* of the Americas. Meanwhile US Trade Representative Robert Zoellick stated that Brazil could choose 'another direction . . . Antarctica', if it is reluctant to negotiate with the US.

⁴² See Raymond Colitt, above, n 23, see *Financial Times*, 'Finding an Agreement that Strikes the Right Transatlantic Balance' (7 November 2002); See also *Financial Times*, 'WTO Is the Only Route to Agricultural Policy Reform' (11 November 2002). MERCOSUR and the European Union are already negotiating a free trade agreement. Yet agriculture has stalled these negotiations.

⁴³ *Financial Times*, 'Countries Line Up to Sign US Trade Deals' (31 October 2002). US bilateral agreements with Chile and Singapore are near to conclusion. Meanwhile other countries, including Morocco, five Central American countries, five countries of the Southern African Customs Union, and Australia are waiting to start negotiations with the US *Wall Street Journal*, 'A Global Journal Report: US, Brazil Key to Trade Quest' (4 November 2002). US Trade Representative stated that if the FTAA lingers, the US is ready to make free trade agreements with other countries in the Americas; See *The Economist*, 'Clouds over Quito to Come' (2 November 2002); See Guillermo Fernandez de Soto, Secretary Chairman, Andean Community, *Fernández de Soto proposes Andean Community-United States Framework Agreement*, 8 November 2002, www.world-tradeonline.com (visited on 24 November 2002). See Devlin *et al.*, *The FTAA: Some Longer Term Issues* (INTAL-ITD, 1999), (visited on February 10, 2003) <http://www.iadb.org/int/pub>, at 2. For a while there were doubts regarding the chances that the FTAA would become a reality. Currently, the regional negotiations are under a dynamic momentum.

⁴⁴ See *Financial Times*, Sara Silver, 'Central America Trade Talks', (26 February 2003) www.ft.com, (visited on 28 February 2003).

⁴⁵ World Trade Online, *Zoellick Downplays Prospects for Bilateral FTA with Andean Countries*, (14 February 2003) www.insidetrade.com (visited on 20 February 2003). Zoellick expressed to Botero, the Colombian foreign trade minister, that the baseline for a bilateral trade treaty with Andean countries would be the same as that for FTAA negotiations. Hence the focus should be the latter.

Despite the controversy, all the countries of the Americas, with the exception of Cuba – including those with the largest markets – are engaged in FTAA discussions. Brazil is negotiating. Similarly, the US has signaled its willingness to move forward in the negotiations of agricultural products while assessing the impact that hemispheric agricultural liberalization would have on its economy.⁴⁶

Nevertheless, the rhythm of the FTAA negotiations seems to be viscerally related to the cadence of the WTO negotiations, especially due to the possibility of structural changes in this sector. Therefore eventual delays under the multilateral negotiations inevitably will influence the pace of the FTAA negotiations.

B. Modification to trade remedies: antidumping measures

Another critical issue in the FTAA negotiations relates to antidumping. The simple and most general issue is whether the countries of the Americas will modify the current provisions covering the application of these trade remedies by creating WTO-plus disciplines on antidumping. There are diametrically opposing views on this issue. On the one hand, Article 16.1 of the FTAA draft agreement states, in brackets, that FTAA ‘countries shall renounce the use of antidumping measures for reciprocal trade’.⁴⁷ On the other hand, the US’s TPA included as its principal negotiating objectives on trade remedy laws:

to preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping (. . .) and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, . . .

Although anti-dumping domestic legislation is cast as efforts to counter price discrimination and predatory prices,⁴⁸ the contention has been made that anti-dumping remedies are used to protect domestic manufacturers from foreign competition.⁴⁹

⁴⁶ See Colitt, above, n 23. US Trade Representative ordered a study from the US International Trade Commission on the impact that hemispheric agricultural liberalization would have on the US economy; See also *Financial Times*, ‘US Woos Brazil’s New Regime on Trade Ties’, (22 November 2002). As the core of the negotiations approaches, the US has acknowledged the need for a constructive relationship with Brazil. Peter Allegeier, deputy US trade representative, lately stated that ‘nothing was off the negotiating table’.

⁴⁷ See FTAA Official Website, http://www.ftaa-alca.org/ftaadraft02/eng/ngsue_1.asp#ARTICLE%2016 (visited on 25 November 2002).

⁴⁸ Predatory pricing is the practice of selling a commodity at low prices in order to drive competitors out of the market.

⁴⁹ Alan O. Sykes, ‘Antidumping and Antitrust: What Problems Does Each Address?’, in Robert Z. Lawrence (ed), *Brookings Trade Forum* (Brookings Institution Press, 1998) at 16. See also Michael Finger, *Legalized Backsliding: Safeguard Provisions in the GATT*, World Bank Conference, The Uruguay Round and the Developing Economies, International Trade Division (1995); Sam Laird, *WTO Rules and Good Practice on Export Policy*, World Trade Organization, Trade Policy Review Division, Staff Working Paper (1997).

Thus, the question becomes whether anti-dumping measures are likely to be maintained; and in this case, whether the disciplines on anti-dumping measures would be crafted as a system of import relief measures, or replaced by an already existing remedy such as safeguards measures. The Canada–Chile Free Trade Agreement provides an illustrative example of an agreement within the Americas wherein the anti-dumping measures have been eliminated.⁵⁰

A parallel issue is whether the concerns to avoid anti-competitive practices along the hemisphere can be better addressed by a regional antitrust FTAA chapter, especially when more than half the countries of the Americas lack laws regulating competition policy.⁵¹

Advocates of this approach could argue that anti-dumping measures would no longer be used as ‘unfair’ trade remedies, since fair competition would be guaranteed through common regional competition policies.⁵² In this context, it seems appropriate to consider that anti-dumping and anti-trust measures entail different objectives (the former protecting the national industry, the latter efficiency and consumers), and therefore, one system could not actually replace the other. Hence, in practice, competitive friendly measures, although extremely beneficial for efficiency and fairness in the region, would not always satisfy the national protectionist intentions secured through anti-dumping measures, and thus the interests of some domestic constituencies.

Given various proposals on anti-dumping and other trade remedies, and the different interests of the countries throughout the Americas, negotiating the chapters on trade remedies will be a challenging task. Arguably, if TPA were interpreted as a directive to maintain the *status quo* regarding anti-dumping, the US objective would be to support minimal modifications to the existing disciplines. Since Latin American countries’ underlying interest in the FTAA is to access the US market, they would favor dismantling anti-dumping measures, and their replacement by other forms of relief and/or the institution of competition principles. The interest of Latin American countries in modifying anti-dumping remedies seems evident from their interest in accessing the US market, and from the reliance of the US on this remedy against other countries in the hemisphere – between 1987 and 2000 the US was the prime user of anti-dumping measures against other countries in the Americas (30.3% of 485 anti-dumping measures).⁵³

⁵⁰ See Article M-01 of the Canada–Chile Free Trade Agreement, entered into force on 5 July 1997, http://www.sice.oas.org/trade/chican_e/chcatoc.asp (visited on 25 November 2002).

⁵¹ See http://www.alca-ftaa.oas.org/cp_comp/english/dlr2/compol_I.asp (visited on 21 April 2003).

⁵² José Tavares *et al.*, *Antidumping in the Americas*, OAS Trade Unit Studies (Organization of American States, 2001) at 13.

⁵³ Percentages calculated based on Table on Antidumping Measures Affecting FTAA Countries, 1987–2000 in José Tavares *et al.*, *Antidumping in the Americas*, OAS Trade Unit Studies (Organization of American States, 2001) at 3.

However, other countries of the hemisphere, with large- and medium-sized economies, were also frequent users of anti-dumping measures. For instance, between 1987 and 2000, the countries (after the US) that most applied anti-dumping measures against other countries of the hemisphere were Mexico (21.23%), Canada (17.31%), Argentina (12.57%) and Brazil (8.24%).⁵⁴ Therefore, since some developing countries are also regular users of anti-dumping measures, any assertion suggesting that only one country uses these trade remedies for protectionist purposes needs to be put into perspective.

Moreover, the targets of anti-dumping measures are those countries with the largest markets in the Western hemisphere (which are roughly those countries that applied them the most between 1987 and 2000) – of 638 of these measures the most targeted countries were the US (40.75%), Brazil (21.94%), Mexico (10.65%), Canada (9.09%), Venezuela (5.01%) and Argentina (4.54%).⁵⁵ Hence, the countries with the biggest markets have strong incentives to modify anti-dumping measures if they accept that there are more efficient remedies to provide import relief and to enforce fair competition.

An important corollary consideration is the trade-restricting effect of these measures and their particular impact on exporting countries with different levels of development and export capacity. In this context, the negotiations on the elimination of anti-dumping measures may be fundamental to the successful conclusion of an FTAA providing real market access to those countries affected by such measures.

If regional negotiations achieve WTO-plus modifications to the anti-dumping disciplines, the result might be a more ‘competition friendly’ application of anti-dumping measures.⁵⁶ In addition, the countries of the Americas could improve the competition policy within the Western hemisphere,⁵⁷ and thus encourage greater efficiency and competitiveness in the region.⁵⁸

C. Intellectual property rights

The negotiating countries will have to decide on various intellectual property rights (‘IPR’) issues involving the protection of copyrights, trademarks,

⁵⁴ Percentages calculated based on Table on Antidumping Measures Affecting FTAA Countries, 1987–2000 in José Tavares *et al.*, *Antidumping in the Americas*, OAS Trade Unit Studies (Organization of American States, 2001) at 3.

⁵⁵ Percentages calculated based on Table on Antidumping Measures Affecting FTAA Countries, 1987–2000 in José Tavares *et al.*, above, n 54.

⁵⁶ See Gary N. Horlick and Claire R. Palmer, ‘The Negotiation of a Free Trade Area of the Americas’, 23–25, at <http://www.sice.oas.org/geograph/westernh/horlic.pdf>, visited 21 April 2003.

⁵⁷ See, for instance, Jose Tavares de Araujo, Jr, ‘The Policy Implications of Schumpeterian Competition’, in Diana Tussie (ed), *Trade Negotiations in Latin America: Problems and Prospects* (New York: Palgrave MacMillan, 2003).

⁵⁸ See Jose Tavares de Araujo, Jr, above, n 57.

patents, and compulsory licensing, as well as an area that covers developmental aspects of IPR.⁵⁹

With respect to copyrights, the countries of the Americas are faced with the choice of whether or not to increase their commitment to the protection of copyrighted works in a digital network environment by becoming parties to the World Intellectual Property Organization ('WIPO') Copyright Treaty and to WIPO Performances and Phonographs Treaty.⁶⁰ While advocates in favor of increasing copyright protection commitments argue that the rights on new technologies as well as the right of authors using these media should be further guaranteed, the other side argues that creating more commitments would be too burdensome for developing countries. Specifically, Internet-related IPR would require the establishment of controls as well as technical and administrative bureaucracies to enforce IPR recognized in the FTAA.⁶¹

Advocates against creating TRIPS-plus type of disciplines in the copyrights area also argue that countries such as Brazil would be affected by the creation of obstacles against local use of new technologies and registration of copyrights of local companies.⁶² These obstacles would be arguably detrimental to the industrial policy of Latin American countries.

Concerning trademarks, the issues relate to whether the system of trademark registration can include a non-territorial modality of trademark filing.⁶³ Proponents of this modality argue that the protection of the rights of trademark owners would become expeditious and thorough because trademark registration in a single country of the Americas would generate the recognition of the respective rights in the whole region. On the other hand, opponents of this modality argue that allowing non-territorial filing of trademarks would mean that States would surrender competences normally held and managed by domestic authorities. Another related issue is whether the registration of trademarks will still be necessary to ascertain the validity of trademark rights.

In the area of patents a very controversial topic involves generic pharmaceuticals and the conditions for someone to be entitled to make, use, or sell a patented product or process in order to receive marketing approval and

⁵⁹ See Robert. B. Zoellick, Summary of the United States Negotiating Positions in the FTAA (2001), http://www.sice.oas.org/geograph/north/uspoip_e.asp, (visited on 26 November 2002); geographical indications is another issue related to IPR that is likely to be addressed at the FTAA negotiations. Yet, due to space constraints, this paper does not delve into it.

⁶⁰ See Robert. B. Zoellick, above, n 59 (visited on 26 November 2002). These treaties prescribe the exclusive rights of authors, program writers, and composers to make their work available online, and proscribe tampering with the technology designed to manage access to the internet.

⁶¹ Valor Econômico, *Proteção A Patente Pode Criar Atrito Na Alca*, 12 December 2002, www.valoronline.com (visited on 12 December 2002).

⁶² Valor Econômico, above, n 61.

⁶³ Robert. B. Zoellick, above n 60.

compete with the patent owner. One issue of concern is whether the objective of receiving marketing approval when a patent is near expiration would constitute the only justification to make, use or trade a patented product or process.

A related question is whether the FTAA will go beyond TRIPS commitments by prescribing longer patent lives. While it could be argued that, for Latin America, short patent lives would be convenient for the development of a stronger industrial policy, a counter-argument from the developed countries of the hemisphere is that foreign direct investment would be better attracted by an environment guaranteeing patent rights for longer periods of time. No matter which side prevails, the result of the negotiations on patent lives will determine part of the architecture on IPR and whether the FTAA will be TRIPS-plus.

An additional question about patents involves whether FTAA members will conclude an agreement with the same or fewer grounds than those that a government can rely on as justifications to deny patents.⁶⁴ While the US favors fewer grounds justifying the denial of patents, Latin American countries oppose strengthening drug-related patents because that would degrade public health measures allowed under the existing global trade rules.

Furthermore, there is the issue of whether the countries in the Americas will still be entitled to apply 'compulsory licensing.' While Brazil is likely to be in favor of maintaining the right of its administration to apply compulsory licensing when there is no local production of the specific product, the US favors limiting this possibility.⁶⁵

Another area of concern comprises developmental aspects of IPR. A question in this area is whether the FTAA chapter on IPR will afford protection to genetic resources and traditional knowledge. The contention has been made that in order to guarantee a balance between IPR and development, the FTAA needs to afford intellectual property protection to genetic resources and traditional knowledge.⁶⁶ In Quito, at the civil society forum on intellectual property and biodiversity, the contention was made that unless these concepts were included, the IPR chapter would contradict the principles of sustainable development.

Similar to the debate in the area of agricultural liberalization, where the

⁶⁴ For instance, the US proposes to deny patents related to diagnostic, therapeutic, and surgical procedures, as well as to products or processes whose use would threaten public order or morality, or human, animal, or plant health, or the environment.

⁶⁵ Valor Econômico, above, n 61.

⁶⁶ See *Bridges Weekly* (7 November 2002), <http://www.ictsd.org/weekly/02-11-07/story1.htm>, (visited on November 24 2002). In Quito, at the civil society forum on intellectual property and biodiversity, the contention was made that unless these concepts are included, the IPR chapter will contradict the principles of sustainable development.

US has argued that dismantling trade-distorting measures such as export subsidies should not be discussed regionally but in the WTO forum, Latin American countries prefer multilateral negotiations of IPR over FTAA negotiations. If FTAA members agree to provide protection beyond the commitments under TRIPS, that is to comply by stricter disciplines than those of TRIPS, then non-FTAA States would also benefit from the IPR reforms undertaken by FTAA States in their respective territories. Arguably, WTO negotiations on IPR are more viable because Latin American countries will receive more benefits as trade-offs from developed countries outside the Americas, such as the European Union ('EU').⁶⁷

D. Regional MFN or differential treatment

While the MFN principle is clearly established as a general rule in the multilateral trade arena, this principle is the subject of an ongoing debate in FTAA negotiations. One issue is whether FTAA members will adopt a *regional MFN*. This would mean that once an offer to eliminate certain trade barriers is made to one country, such an offer is extended to the others. An alternative to applying regional MFN throughout the Americas is to allow smaller economies to enjoy differential conditions of access to the biggest markets of the hemisphere. Smaller economies from Caribbean, Central American, and Andean countries would like to maintain the benefits that they currently enjoy from US unilateral schemes, mainly from the Caribbean Basin Economic Recovery Act ('CBERA')⁶⁸ and the Andean Trade Promotion and Drug Eradication Act ('ATPDEA').⁶⁹ The continuation of these benefits means that US market access conditions would not deteriorate for Central American, Caribbean, and Andean countries as a result of the FTAA.

Meanwhile, Brazil favors an FTAA that creates equal footing among hemispheric competitors to enter the US market, and thus favors a regional MFN applied throughout the Americas.⁷⁰ Advocates of regional MFN argue that allowing differential treatment for some countries would hinder the improvement of competitiveness and the process of integration in the region. Though countries with small-sized economies are certainly more sensitive, it remains

⁶⁷ Valor Económico, above, n 61.

⁶⁸ See Section 3107 of the US Trade Act of 2002 (Public Law 107-210); see Title II of the Trade Act of 2000, Public Law 106-200.

⁶⁹ See Section 3101 of the US Trade Act of 2002 (Public Law 107-210). See Inter Press Service, *Businessmen and Farmers Push for Free Trade Pact*, 12 November 2002. The objective of maintaining and incorporating into the FTAA those benefits unilaterally extended by the US through the Andean Trade Preferences Act ('ATPA') is only reasonable. The benefits from ATPA are evident. For instance US imports from Peru increased from \$16 million in 1993 to \$726 million in 2001.

⁷⁰ See Brazilian Embassy in the US, *US Barriers on Brazilian Goods and Services* (October 2000), http://www.brasilemb.org/trade_barrier2002.shtml (visited on 26 November 2002); See also *The Economist*, 'Clouds over Quito to Come' (2 November 2002).

very controversial whether maintaining their market access benefits on a non-regional MFN basis protects their infant industry.⁷¹ On the one hand, this differential treatment could be protecting those multinational companies based in these countries, and thus isolating them from competition in the production of certain products (e.g. some agricultural products, as well as textiles and electronics).⁷² On the other hand, allowing small companies from small-sized economies to have better market access into larger economies could positively impact these companies because this differential treatment could be a temporary shield against companies with economies of scale.

However, in addressing these different concerns, there is a 'middle ground' between whether or not to establish a regional MFN. The MFN principle would be conceived as one of the core principles instructing the negotiations and implementation of the FTAA agreement. Taking the WTO as an example, while the general rule would be MFN, FTAA members could agree upon waivers, different schedules to comply with, and exceptions to the general rule. Arguably, these options would be open to certain countries (for instance those with small economies or those which currently enjoy unilateral benefits on market access) provided that they meet certain conditions.

Another issue relates to the Caribbean countries' concern for the fiscal impact that the elimination of import barriers could have on their small economies, considering that their governmental income is heavily dependent on tariffs (i.e. approximately 50% of the revenues of many of these countries comes from import taxes). In order to counter the negative effects of trade liberalization on small economies, the US proposed country-by-country transition periods over which to gradually phase out the trade barriers throughout the hemisphere.⁷³

E. A glance at labor and environmental standards⁷⁴

The intersection of labor and environmental standards with trade is part of a discussion in which most of the Latin American countries and the US stand at different ends. On the one hand, the US, as directed by TPA,⁷⁵ is

⁷¹ For a discussion on the empirical evidence of the success of infant industry protection see Robert E. Baldwin, 'The Case against Infant-Industry Tariff Protection', 77(3) *The Journal of Political Economy* 295–305 (1969), at www.jstor.org (site visited on 29 May 2003).

⁷² See http://www.sice.oas.org/FTAA/FTAAAbf_E.ASP (visited 18 March 2003). During the Americas Business Forum in Quito, the Brazilian private sector expressed its concern regarding regional competition in a non-level playing field due to differential treatment in market access conditions.

⁷³ See *Financial Times*, 'American Free Trade Area Talks to Begin in Quito' (31 October 2002); see also *The Economist*, 'Clouds over Quito to Come' (2 November 2002).

⁷⁴ Regarding environmental and labor standards, this article, which is a short overview on the FTAA negotiations simply mentions the core issues on labor and environmental standards. Clearly, a further, deeper, and more detailed review of these topics is needed, but such review escapes the scope of this article.

⁷⁵ See Section 2102, 2113 of the US Trade Act of 2002 (Public Law 107–210).

concerned with promoting trade liberalization in compliance with labor and environmental standards.⁷⁶

On the other hand, Latin American countries tend to disapprove of including environmental or labor issues as trade conditionalities due to the potential use of these issues for protectionist purposes. The diplomatic language of the Quito Declaration acknowledges the tension on this issue. It reads,

Most ministers recognized that environmental and labor issues should not be utilized as conditionalities nor subject to disciplines, the non-compliance of which can be subject to trade restrictions or sanctions.⁷⁷

III. REGIONALISM AND PROSPECTIVE OUTCOMES

A. Parallel regionalism to the FTAA negotiations

An interesting phenomenon is the trend of simultaneous FTA negotiations between FTAA negotiating countries on the one hand, and between FTAA negotiating countries and countries from other regions on the other hand (see Appendix 3, Regional Trade Agreements (Customs Unions and Free Trade Areas), Preferential Arrangements of Countries of the Western Hemisphere).

As stated above, the Principles ruling these negotiations provide for the coexistence of the FTAA with other bilateral and sub-regional agreements, as well as the possibility of negotiating individually or as members of a sub-regional integration. Accordingly, the two main players of the FTAA negotiations, the United States and Brazil, have engaged in other regional negotiations within the Americas and elsewhere.

On the one hand, the members of MERCOSUR, led by Brazil, have the possibility of negotiating as a block, as well as forging strategic alliances with its associates, Chile and Bolivia; deepening relations with the Andean Community; or even enhancing South/Latin American unity.⁷⁸ Moreover, other regional negotiations with other countries, mainly the negotiations between MERCOSUR and the EU, seem to have strong importance in this environment.

On the other hand, while already part of NAFTA, the United States is further advancing trade negotiations on the FTAs with Chile and Central American countries ('CAFTA'), besides talks with other countries including Uruguay and Colombia.

⁷⁶ See *Financial Times*, 'US in Plan for Fines to Replace Trade Sanctions', 25 October 2002. Given its interest in linking trade to labor and environmental standards, the US could extend its US-Chile FTA proposal on sanctions to the FTAA. Under this proposal fines would be charged on the trade counterpart that does not comply with labor and environmental standards.

⁷⁷ Ministerial Declaration of Quito, Seventh Meeting of Ministers of Trade of the Hemisphere, Quito, Ecuador, 1 November 2002, paragraph 11.

⁷⁸ See, for this discussion, Christopher Bruner, 'Hemispheric Integration and the Politics of Regionalism: the Free Trade Area of the Americas (FTAA)', 33 *U Miami Inter-Am L Rev* 1, 2002

It is difficult to measure to what extent this FTA phenomenon of building sub-regional alliances is a strategy used by some countries of the Americas, solely aimed at achieving a stronger position in the FTAA negotiations. It could be argued that *the regionalism parallel to the FTAA negotiations* is also being influenced by the private sector, and its objective of reaching early market access before the creation of a larger free trade area. Moreover, this could also be seen as a world-wide trend, confirmed by FTAs emerging at a faster rate during the twenty-first century. Such FTAs include, among others, the United States and the Southern African Customs Union ('SACU'), the United States and Australia; Brazil and South-Africa; Brazil and India; and the EU and the Association of South East Asian Nations ('ASEAN').⁷⁹

Parallel bilateral sub-regional FTA negotiations create various possible outcomes and complex strategies which are difficult to underpin. Yet, it is possible to identify other desirable trade agreements that the main players of the FTAA negotiations may simultaneously pursue.

Regarding the United States, aside from WTO negotiations, an alternative trade avenue to the FTAA is a step-by-step extension of the US system of FTAs. This system would be enlarged by consecutive agreements with various Latin American countries that are negotiating with the US (e.g. Chile), engaged in trade talks (the Central American countries) or waiting for positive signals from the US (some of the Andean countries – Colombia and Peru – as well as certain members of Mercosur – Uruguay).

Meanwhile, for MERCOSUR, three negotiations seem to be of ultimate relevance: the FTAA, the Agreement EU–MERCOSUR, and the WTO multilateral negotiations.⁸⁰ All of these negotiations have very close deadlines and, hence, they show great interdependence not only in terms of trade-offs, but in terms of timing. The relationship among these negotiations is a two-way street. On the one hand, the WTO negotiations might influence the pace of both FTAA and EU negotiations, and on the other, the *regional negotiations*, in this part of the world and elsewhere, might also work as a parallel bargaining-chip facilitating some progress in the multilateral round.

Regarding which of the Regional Agreements would be preferred by MERCOSUR, it could be argued that successful outcomes should be pursued in all negotiations, since a failure in one of them, as for instance in the WTO negotiations where agricultural sector talks are of vital importance, might compromise the other negotiations.

⁷⁹ <http://www.ictsd.org/weekly/03-04-16/index.htm>, visited 21 April 2003.

⁸⁰ Gary C. Hufbauer, *The Future of Regional Trading Arrangements in the Western Hemisphere* (1998) <http://www.sice.oas.org/geograph/papers/iie/hufauer0998.asp>. MERCOSUR is also actively negotiating trade agreements with the Andean Community. See Appendix 3, Regional Trade Agreements (Customs Unions and Free Trade Areas) Preferential Agreements and Unilateral Preferential Arrangements of Countries of the Western Hemisphere.

B. Possible FTAs: three free trade scenarios

The controversial issues referred to in this article, together with the strategies used in regional negotiations parallel to the FTAA process show that the outcome of the FTAA negotiations could be one of many scenarios. An option is to rank the various possibilities from minimalist to maximized liberalization scenarios.⁸¹ A different, though not completely distinct, option is to understand that the degree of liberalization determines whether the FTAA is a meaningful arrangement.

Understanding the degree of liberalization of an FTA is a rather interesting way of classifying an FTAA and of clarifying misrepresentations and false perceptions in the sense that any trade agreement is truly freeing commerce from trade barriers.⁸²

A scenario of low liberalization would either result in FTAA stagnation or simply create a formal agreement in which the main issues are not substantially agreed upon (agricultural goods, trade remedies, IPR, environmental and labor standards).

The intermediate liberalization would allow for a certain degree of liberalization, for instance, moving beyond GATS commitments in trade in services, including regional modalities of trademark filing; agreeing upon a disciplined tariff-reduction schedule that includes waivers for those US trading partners that are current beneficiaries of US unilateral preference programs (i.e. CBERA and CBTPA), as well as for those members of sub-regional trade agreements; and making non-substantial commitments to address labor and environmental issues in accordance with domestic regulations.

Thus far, the low and intermediate liberalization scenarios are of little significance in terms of free trade. Meanwhile, the scenario of high liberalization would include some of the examples of the intermediate scenario (e.g. GATS plus commitments and regional modalities of trademark filing) but would also incorporate stronger free trade disciplines. For instance, the schedule for tariff reductions throughout the hemisphere would allow a minimal number of waivers and exceptions for unilateral trade preferences beneficiaries and for members of sub-regional trade agreements; in addition, the tendency would be towards unifying tariff levels over time. This scenario would also

⁸¹ Gary C. Hufbauer, above, n 80. In the minimalist scenario, the FTAA negotiations become the engine for other trade negotiations (mainly WTO negotiations) rather than for its own. In the 'middle of the road' scenario, issues such as transparency and civil society are successfully handled. Finally, in the maximized scenario, elimination of trade and investment barriers would be reached. It would include sensitive products such as agricultural products, textiles and autos.

⁸² Gary C. Hufbauer, above, n 80. For instance, the regional trade agreements that were born in the 1950s in the midst of the United Nations Commission for Latin America ('ECLA') were predicated on the need to go beyond the domestic import-substitution strategies, which had been embraced by most Latin American countries. Such integration agreements were really 'anti-trade agreements' because their focus was to regulate investment and production and the restriction of imports from the rest of the world. Therefore, though they were trade agreements, their free trade character was simply lacking.

lift trade barriers in the agricultural sector and enter trade remedies negotiations with the objective of achieving greater efficiency as opposed to the mere purpose of maintaining production privileges for local non-competitive industries. With regard to environmental and labor standards, a market that better informs consumers about the making of goods would clearly be aligned with the objective of perfect information for consumers and producers. Hence, it would be free trade consistent to create a broad-based labeling system⁸³ by which products made following labor and environmental standards are advertised accordingly.

When analyzing the three scenarios described above, one conclusion appears to be clear: the higher the degree of liberalization of the FTAA, the more difficult the negotiations and the greater the need for trade-offs between North and South, and developed and developing countries in the Americas.

Whether the FTAA project will be successful or not is still uncertain. However it seems clear that the FTAA might be generating part of the regionalism that is occurring in the Western Hemisphere, i.e. several FTAs are being negotiated and created in spite of the results of the broader project. This situation brings us to the debate of regionalism versus multilateralism, in which one particular argument could be highlighted: the creation of FTAs in the Americas will, in many aspects, supersede unstable preferential systems (e.g. GSP), bringing more stability and certainty to the trade flows, business and investments in the region, not to mention further political, social, environmental and security implications for the region.

BOOKS

- Barry, Donald, and Keith, Ronald C. (eds), *Regionalism, Multilateralism, and the Politics of Global Trade* (Vancouver: UBC Press, 1999).
- Patrick, J. Michael, *Expanding Western Hemispheric Trade and Integration: The Case of Chile* (Amsterdam, New York: Pergamon, 2000).
- Rodriguez Mendoza, Miguel, Low, Patrick, and Kotschwar, Barbara (eds), *Trade Rules in the Making: Challenges in Regional and Multilateral Negotiations* (Washington DC: Organization of American States, Brookings Institution Press, 1999).
- Salazar-Xirinachs, Jose Manuel, and Robert, Maryse, 'Toward Free Trade in the Americas', http://www.brook.edu/dybdocroot/press/books/free_trade_americas.htm
- Tussie, Diana (ed), *Trade Negotiations in Latin America: Problems and Prospects* (New York: Palgrave MacMillan, 2003).

ARTICLES

- Abbott, Kenneth W., and Bowman, Gregory W. 'Economic Integration in the Americas: "a work in progress"', 14 *Nw J Int'l L & Bus* 493 (Spring 1994).
- Ayllon, Sergio Lopez, 'The Impact of International Trade Agreements in the Legal Systems of the American Continent. (International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration)', 19 *Hous J Int'l L* 761 (Spring 1997).

⁸³ See Gary C. Hufbauer, above, n 80.

- Baker, Mark B., 'Integration of the Americas: a Latin renaissance or a prescription for disaster?', 11 *Temp Int'l & Comp LJ* 309.
- Bernal, Richard L., 'Regional Trade Arrangements and the Establishment of a Free Trade Area of the Americas', 27 *Law & Pol'y Int'l Bus* 945.
- Blum, Jonathan S., 'The FTAA and the Fast Track to Forgetting the Environment: a comparison of the NAFTA and the MERCOSUR environmental models as examples for the hemisphere', 35 *Tex Int'l LJ* 435 (Summer 2000).
- Bruner, Christopher, 'Hemispheric Integration and the Politics of Regionalism: the Free Trade Area of the Americas (FTAA)', 33 *U Miami Inter-Am L Rev* 1 (2002).
- Casella, Paulo Borba, 'Integration in the Americas – an Overview', 16 *YEL*, 405–422 (1996).
- Cerna, Christina M., 'International Law and the Protection of Human Rights in the Inter-American System. (International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration)', 19 *Hous J Int'l L* 731 (Spring 1997).
- Coe, J. J., Jr, 'Domestic Court Control of Investment Awards: Necessary Evil or Achilles Heel within NAFTA and the Proposed FTAA?', *Journal of International Arbitration*; J58.5 19: 185–207 (2002).
- Collingsworth, Terry, 'An Essential Element of Fair Trade and Sustainable Development in the FTAA Is an Enforceable Social Clause', 2 *Rich J Global L & Bus* 197.
- de la Madrid H., Miguel, 'Foreword: National Sovereignty and Globalization (International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration)', 19 *Hous J Int'l L* 553 (Spring 1997).
- Devlin, Robert, and Jorge Garay, Luis, 'From Miami to Cartagena: Nine Lessons and Nine Challenges of the FTAA', Inter-American Development Bank and Inter-American Development Bank, Working Paper Series, 1997, <http://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm>.
- Echandi, Roberto, 'Bringing Investment to the Aegis of the Multi-lateral Trading System: steps taken in the context of the FTAA negotiation group on investment', in M. Bronckers and R. Quick (eds) *New Directions in International Economic Law: Essays in Honour of John H. Jackson* (The Hague: Kluwer, 2000). [Jackson collection, 391–413]
- Echandi, Roberto, 'Regional Trade Integration in the Americas during the 1990s: Reflections of Some Trends and Their Implication for the Multilateral Trade System', 4 *JIEL* 367 (2001).
- Edme-R., Dominguez, 'Continental Transnational Activism and Women Workers' Networks within NAFTA', 4(2) *International Feminist Journal of Politics* 216–39 (Aug. 2002).
- Garcia, Frank J., 'The Integration of Smaller Economies into the FTAA', 5 *NAFTA: L & Bus Rev Am* 221
- Garcia, Frank J., 'NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession', 35 *Va J Int'l L* 539.
- Gibbs, Paula S., 'Prospects for Sustainable Liberalization of Foreign Investment Laws as a Concomitant of Hemispheric Integration in the Americas', 28 *U Miami Inter-Am L Rev* 95 (Fall 1996).
- Gruben, William C., 'South American Monetary and Exchange Rate Policies: their implications for the FTAA', 6 *NAFTA: L & Bus Rev Am* 457 (March 2000).
- Grundy, John, and Howell, Alison, 'Negotiating the Culture of Resistance: A Critical Assessment of Protest Politics', 66 *Studies in Political Economy* 121–32 (Autumn 2001).
- Hinojosa-Ojeda, Raul, 'North American Integration and Concepts of Human Rights: Reflections on 150 years of Treaty Making', 5 *Sw JL & Trade Am* 177 (Spring 1998).
- Hodges, Ann C., 'The Changing Labor Markets of the Western Hemisphere: Labor Issues Relating to the FTAA', 2 *Rich. J. Global L. & Bus.* 125.

- Holz, Eva, 'The importance of banking system reform for integration processes. 5 NAFTA: L. & Bus. Rev. Am. 272, Spring 1999.
- Hufbauer, Gary, and Schott, Jeffrey, 'Western Hemisphere Economic Integration', Institute for International Economics, Washington, DC, 1994
- Hufbauer, Gary C. 'The Future of Regional Trading Arrangements in the Western Hemisphere' (1998) <http://www.sice.oas.org/geograph/papers/iie/hufauer0998.asp>
- Jackson, Karla Shantel, 'Is Anything Ever Free?: NAFTA's Effect on Union Organizing Drives and Minorities and the Potential of FTAA Having a Similar Effect', 4 Scholar 307.
- James, Patrick, and Lusztig, Michael, 'Predicting the Future of the FTAA', 6 NAFTA: L & Bus Rev 405–20 (Summer 2000).
- Lopez, David, 'Dispute Resolution under a Free Trade Area of the Americas: The Shape of Things to Come', 28(4) University of Miami Inter-American Law Review (1997).
- Lutz, Ellen L., 'Strengthening Core Values in the Americas: Regional Commitment to Democracy and the Protection of Human Rights (International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration)', 19 Hous J Int'l L 643 (Spring 1997).
- Macdonald, Laura, and Schwartz, Mildred A., 'Political Parties and NGOs in the Creation of New Trading Blocs in the Americas', 23(2) International Political Science-Review 135–58 (April 2002).
- Makuc, Adrian, 'Perspectives on Argentina Today.(Argentina's Efforts at Financial Recovery and Impacts of the Crisis on MERCOSUR and FTAA Talks)', 15 Fla J Int'l L 70–77 (Fall 2002) at 70.
- McClintock, Michael C., 'Sunrise Mexico; Sunset NAFTA-centric FTAA – What Next and Why?', 7 Sw JL & Trade Am 1 (Spring 2000).
- McCormack, Richard, 'Western Hemispheric Integration: The Global and Political Context', 5 NAFTA: L & Bus Rev Am 212 (1999).
- Melamed, A. Douglas, 'International cooperation in competition law and policy: what can be achieved at the bilateral, regional, and multilateral levels', 2(3) JIEL 423–33 (1999).
- OAS Papers on FTAA, http://www.sice.oas.org/geograph/intdocs_e.asp#FTAA
- Otero-Lathrop, Miguel, 'Mercosur and NAFTA: The Need for Convergence', 4 NAFTA: L & Bus Rev Am 116 (Summer 1998).
- Pawlak, David A., 'International Trade in the Americas: The Inter-American Lawyer's Guide to Origin Determinations', 5 Tul J Int'l & Comp L 317 (Spring 1997).
- Perez-Toro, Jose Alberto, 'Political and Commercial Strategy to Face FTAA – The Colombian Case', Universidad Javeriana – Facultad de Ciencias Economicas y Administrativas, Working Paper Series, 200, <http://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm>.
- Rojas-Suarez, Liliana, 'Toward a Sustainable FTAA: Does Latin America Meet the Necessary Financial Preconditions?', Deutsche Bank, Working Paper Series, 2002, <http://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm>.
- Schaefer, Matthew, 'Searching for Pareto gains in the Relationship between Free Trade and Federalism: Revisiting the NAFTA, Eyeing the FTAA', 23 Can-US LJ 441.
- Schiff, Maurice, 'Regional Integration and Development in Small States', World Bank – Development Economics Research Group (DECRG), Working Paper Series, 2001, <http://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm>.
- Sikkink, Kathryn, 'Reconceptualizing Sovereignty in the Americas: Historical Precursors and Current Practices (International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration)', 19 Hous J Int'l L 705 (Spring 1997).
- Silveira, Mariana C., 'Rules of Origin in International Trade Treaties: Towards the FTAA', 14 Ariz J Int'l & Comp L. 411.

- Smith, James F., 'Treaty Making in the next Millennium: International Agreements in the Post-modern era.', 5 Sw JL & Trade Am 183 (Spring 1998).
- Stephenson, Sherry M., 'The Current State of the FTAA negotiations at the Turn of the Millennium', 6 NAFTA: L. & Bus. Rev. Am. 317
- Stephenson, Sherry M., 'Standards, the Environment and Trade Facilitation in the Western Hemisphere', 31(6) JWT 137-69 (1997).
- Stump, Carol, 'Free Trade Area of the Americas', 4 J Int'l L & Prac 153 (Spring 1995).
- Symposium, 'Free Trade Areas: The Challenge and Promise of Fair vs. Free trade', Symposium pp 853-1184. 1996 WL 902837 (ILP), 27 Law & Pol'y Int'l, 853-1184 (Summer 1996).
- Taylor, C. O'Neal, 'The Future of International Economic Dispute Resolution in the Western Hemisphere', 42 S Tex L Rev 1265.
- Taylor, J. Michael, 'Dispute Settlement under the FTAA: An Apparent Melding of WTO, NAFTA and MERCOSUR Approaches', 19 J Int'l Arb 393 (2002).
- Tiefer, Charles, "'Alongside' the fast track: environmental and labor issues in FTAA", 7 Minn. J. Global Trade 329
- Tramhel, Jeannette, M. E., 'Free Trade in the Americas: A Perspective from the Organization of American States (International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration)', 19 Hous J Int'l L 595 (Spring 1997).
- Warner, Mark A., 'International Aspects of Competition Policy: Possible Directions for the FTAA', 22 World Competition 1.
- Weintraub, Sidney, 'The Meaning of NAFTA and Its Implications for the FTAA', 6 NAFTA: L & Bus Rev Am 303 (March 2000).
- Wight, Jonathan B., 'Does Free Trade Cause Hunger? Hidden Implications of the FTAA (Free Trade Area of the Americas)', 2 Rich J Global L & Bus 167 (Fall 2001).
- Zamora, Stephen, 'Allocating Legislative Competence in the Americas: The Early Experience under NAFTA and the Challenge of Hemispheric Integration (International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration)', 19 Hous J Int'l L 615 (Spring 1997).
- Zopolsky, Joe, 'Implementing the FTAA: a Survey of Hemispheric Unification Efforts within the Americas over the Past Ten Years', 9 WTR Currents: Int'l Trade L J 91 (Winter 2000).

WEB SITES

International official sources

- Andean Community, <http://www.comunidadandina.org/exterior/alca.htm>
- Brazilian Ministry of Foreign Relations, Mercosul – ALCA, <http://www.mercosul.gov.br/textos/default.asp?Key=202>
- FTAA Official Website, <http://www.ftaa-alca.org/>
- General Information on FTAA Countries, http://www.ftaa-alca.org/busfac/clist_e.asp
- International Trade Information System of the Trade Unit of the Organization of American States, http://www.sice.oas.org/ftaa_e.asp
- OAS Papers on FTAA, http://www.sice.oas.org/geograph/intdocs_e.asp#FTAA

National sites on FTAA

- Brazilian Ministry of Development, Industry and Foreign Trade, data on FTAA, <http://www.mdic.gov.br/comext/Deint/alca.html>
- Brazilian Ministry of Foreign Relations, <http://www.mre.gov.br/cdbrazil/itamaraty/web/espanhol/relext/mre/orgreg/alca/>

- Brazilian Ministry of Science and Technology, http://www.mct.gov.br/prog/coop_int/alca.htm
- Canadian Department of Foreign Affairs and International Trade, <http://www.dfait-maeci.gc.ca/tna-nac/ftaa1-en.asp>
- Chilean Ministry of Foreign Relations – DIRECON, <http://www.direcon.cl/>
- Colombian Ministry of Industry, Commerce and Tourism, <http://www.mincomex.gov.co/mincomexvbecontent/section.asp>
- Cuban Ministry of Foreign Relations, http://www.cubaminrex.cu/Enfoques/alca_cuba%20sobre%20el%20alca-intro.htm
- Ecuadorian Ministry of Foreign Relations, <http://www.mmrree.gov.ec/espanol/Ecuador%20y%20el%20ALCA/PRINCIPAL.htm>
- Ecuadorian Ministry of Agriculture, http://www.sica.gov.ec/comext/docs/14acuerdos_comerciales/146alca/indice%20alca.htm
- Mexican Secretary of Economy, <http://www.economia-snci.gob.mx/nuevasnci/Foros/..%2Fforos%2FALCA%2FAlca.htm>
- Mexican Secretary of Foreign Relations, http://www.sre.gob.mx/ape/ec7/acc_alca.htm
- Mexican Sub-Secretary of International Trade Negotiations, <http://www.economia-snci.gob.mx/Foros/ALCA/alca.htm>
- Nicaraguan Ministry of Development, Industry and Trade, <http://www.mific.gob.ni/docushare/dscgi/ds.py/View/Collection-148>
- Paraguayan Ministry of Industry and Trade, <http://www.mic.gov.py/negociaciones/alca.html>
- Paraguayan Ministry of Foreign Relations, <http://www.mre.gov.py/>

APPENDIX I: FTAA PROCESS: CHRONOLOGICAL TABLE OF MAJOR EVENTS¹

June 1990	The Enterprise for the Americas Initiative is launched by President George H. Bush. ² It envisages supporting economic reform in the countries of the Western Hemisphere and contributing to sustained growth in the region. The three pillars of this initiative were to be actions in trade, investment and debt.
December 1994	The Summit of the Americas (Miami, USA) is launched by 34 democracies of the Western Hemisphere with a view to creating the Free Trade Area of the Americas by negotiating the agreement thereof and by adopting its text by 2005.
June 1995	The First Americas Business Forum (Denver, USA): The business community of the Americas discusses the issues being considered in the FTAA process by submitting proposals, recommendations and papers to their respective Trade Ministers for their consideration.
June 1995	The First Ministerial Meeting of the FTAA (Denver, USA): An initial framework is established to examine the trade-related measures in various important areas. There is a commitment to address the differences regarding the sizes of the economies in the region and the development gaps between countries in the Americas.
March 1996	The Second Americas Business Forum (Cartagena, Colombia)
March 1996	The Second Ministerial Meeting (Cartagena, Colombia): Participants strengthen their commitment to conclude negotiations no later than 2005. The participants receive conclusions by the business sector.
May 1997	The Third Americas Business Forum (Belo Horizonte, Brazil)
May 1997	Third Ministerial Meeting (Belo Horizonte, Brazil): There is a review of the progress of the Working Groups, and a discussion on the timing and scope for the negotiations. As part of the mandate of conducting a transparent process, a number of official FTAA documents are made public. The FTAA official website is launched.
March 1998	The Fourth Americas Business forum (San Jose, Costa Rica)
March 1998	Fourth Ministerial Meeting (San Jose, Costa Rica): Ministers recommend to their Heads of State and Governments to officially launch the FTAA negotiations. They set out an initial structure of the negotiations. The principles and objectives that will guide the FTAA negotiations are set out. They agree that Ministerial meetings will be held once every 18 months, and they create a Trade Negotiations Committee ('TNC') comprised of Vice Ministers that will meet when necessary, or at least twice a year. The TNC is given the task of guiding the work of 9 negotiating groups: (i) market access; (ii) investment; (iii) services; (iv) government procurement; (v) dispute settlement; (vi) agriculture; (vii) intellectual property rights; (viii) subsidies, antidumping and countervailing duties; (ix) and competition policy. Other committees, i.e. on 'Participation of Civil Society', 'Smaller Economies', 'Electronic Commerce', and 'Institutional Issues', are also created.

- April 1998 The Second Summit of the Americas (Santiago, Chile): FTAA negotiations are launched.
- November 1999 The Fifth Americas Business Forum (Toronto, Canada)
- November 1999 Fifth Ministerial Meeting (Toronto, Canada): The Ministers instruct the Negotiating Groups to prepare a first draft of their respective chapters. Ministers reaffirm their commitment to the WTO and offer joint language urging the elimination of export subsidies on agricultural products, compliance of all commitments under the Uruguay Round Agreement on Agriculture, and to work towards having disciplines on other trade-distorting practices and measures in the next WTO Multilateral Negotiations on Agriculture. In the area of technical assistance, Ministers mandated the Tripartite Committee to explore opportunities in this field.
- April 2001 The Sixth Americas Business Forum (Buenos Aires, Argentina)
- April 2001 Sixth Ministerial Meeting (Buenos Aires, Argentina): The first draft of the FTAA agreement is reached and an understanding is reached regarding the *democracy clause*, by which any unconstitutional alteration or interruption of the democratic order in a state of the hemisphere would constitute an insurmountable obstacle to the participation of that state's government in the Summit of the Americas process. A Technical Committee on Institutional Issues is set up to look at the overall architecture of the Agreement.
- April 2001 Third Summit of the Americas (Quebec City, Canada): Heads of State and Government directed their trade ministers to ensure that the negotiations of the FTAA Agreement conclude no later than January 2005 and to seek its entry into force as soon as possible thereafter, but in any case, no later than December, 2005. According to this summit, the first draft of the FTAA Agreement was to be made public.
- July 2001 The First FTAA Draft Agreement is made available to the public.
- October 2002 The Document on Methods and modalities is provided by the TNC with the purpose of organizing the ways and forms used to develop the works for negotiations, including a schedule for the negotiations.
- November 2002 The Seventh Americas Business Forum (Quito, Ecuador)
- November 2002 Seventh Ministerial Meeting (Quito, Ecuador): Several principles are confirmed. The Document on Methods and Modalities is recognized and reiterated. The Hemispheric Cooperation Program is approved to strengthen the capacities of those countries seeking assistance to participate in the negotiations, implement their trade commitments, and address the challenges and maximize the benefits of hemispheric integration, including productive capacity and competitiveness in the region.
- November 2002 The Second FTAA Draft Agreement is made available to the public.

¹ See OAS official website, http://www.sice.oas.org/ftaa_e.asp and <http://www.ftaa-alca.org>, visited in May 2003, (site visited on 5 May 2003).

² Message to the Congress Transmitting the Enterprise for the Americas Initiative Act of 1990, by George H. Bush, (site visited on 31 May 2003), <http://bush.library.tamu.edu/papers/1990/90091401.html>.

APPENDIX 2: 2001 DATA ON FTAA NEGOTIATING COUNTRIES³

Description/Country	Antig & Barb.	Argentina	Bahamas	Barbados	Belize	Bolivia	Brazil	Canada
Agriculture, value added (% of GDP)	3.96498	4.809533	....	5.50742	22.66989	15.6759	9.346183	....
Exports of goods and services (% of GDP)	68.8654	11.42019	....	47.5487	55.1118	18.3437	13.36126	43.81382
Exports of goods and services (BoP, current US\$)	4.4E+08	3.092E+10	3E+09	..	3.82E+08	1.5E+09	6.755E+10	3.04491E+11
Foreign direct investment, net inflows (% of GDP)	....	1.196553	....	0.63466	4.248447	8.31068	4.504539	3.950883
GDP per capita, PPP (current international \$)	10170	11320	....	15560	5690	2300	7360	27130
GDP, PPP (current international \$)	7E+08	4.244E+11	....	4.2E+09	1.41E+09	2E+10	1.269E+12	8.43167E+11
Imports of goods and services (% of GDP)	79.3431	10.16295	....	52.4893	74.1118	24.4913	14.39555	38.64134
Imports of goods and services (BoP, current US\$)	4.8E+08	2.756E+10	3E+09	..	5.16E+08	2E+09	7.265E+10	2.6849E+11
Population, total	68490	37488000	309840	268190	247110	8515220	172386000	31081900
Trade (% of GDP)	148.209	21.58314	....	100.038	129.2236	42.835	27.75681	82.45517

³ WDI Online, <http://devdata.worldbank.org/dataonline> (visited on 31 May 2003).

Description/Country	Chile	Colombia	Costa R.	Dominica	Dom. R.	Ecuad.	Salvador	Grenada
Agriculture, value added (% of GDP)	8.8142	13.00299	9.1246	17.2045	11.4291	10.811	9.483292	8.193421
Exports of goods and services (% of GDP)	34.6765	19.39548	42.708	51.1768	23.91103	31.1666	28.94482	58.75338
Exports of goods and services (BoP, current US\$)	2.2E+10	1.493E+10	7E+09	1.2E+08	8.33E+09	5.8E+09	3.977E+09	208867400
Foreign direct investment, net inflows (% of GDP)	6.73589	2.825359	2.8159	4.5228	5.649909	7.39499	1.94921	8.614323
GDP per capita, PPP (current international \$)	9190	7040	9460	5520	7020	3280	5260	6740
GDP, PPP (current international \$)	1.4E+11	3.028E+11	4E+10	4E+08	5.97E+10	4.2E+10	3.366E+10	676654200
Imports of goods and services (% of GDP)	32.6565	19.04327	44.931	63.8204	32.0635	34.1854	42.88262	70.09683
Imports of goods and services (BoP, current US\$)	2.1E+10	1.584E+10	7E+09	1.7E+08	1.01E+10	6.8E+09	5.892E+09	275847000
Population, total	1.5E+07	43035170	4E+06	71870	8505200	1.3E+07	6400000	100410
Trade (% of GDP)	67.333	38.43875	87.639	114.997	55.97452	65.352	71.82744	128.8502

Description/Country	Guatemala	Guyana	Haiti	Honduras	Jamaica	México	Paraguay	Peru
Agriculture, value added (% of GDP)	22.62	31.27298	....	13.7035	6.392735	4.35868	7	8.571724
Exports of goods and services (% of GDP)	18.5836	94.90962	12.545	38.3256	41.46992	27.6114	33.36062	15.81524
Exports of goods and services (BOP, current US\$)	3.9E+09	659562700	5E+08	2.4E+09	3.36E+09	1.7E+11	7.701E+09	8597000000
Foreign direct investment, net inflows (% of GDP)	2.22236	8.030988	0.0776	3.05365	7.88662	4.00295	5.039918	1.968653
GDP per capita, PPP (current international \$)	4400	4690	1860	2830	3720	8430	5750	4570
GDP, PPP (current international \$)	5.1E+10	3.594E+09	2E+10	1.9E+10	9.64E+09	8.4E+11	1.665E+10	1.2036E+11
Imports of goods and services (% of GDP)	27.9742	111.2533	33.358	54.9892	55.81035	29.9691	34.8655	17.28359
Imports of goods and services (BoP, current US\$)	6E+09	787326300	1E+09	3.5E+09	4.59E+09	1.9E+11	7.854E+09	9489000000
Population, total	1.2E+07	766260	8E+06	6584730	2590000	9.9E+07	2897000	26347000
Trade (% of GDP)	46.5578	206.1629	45.903	93.3148	97.28027	57.5805	68.22612	33.09882

Description/Country	St. Kitts and Nevis	St Lucia	St Vinc. & Gren.	Suriname	Trinidad and Tobago	United States	Uruguay	Venezuela
Agriculture, value added (% of GDP)	2.85491	6.573622	10.278	11.283	1.637963	...	6.38094	5.002547
Exports of goods and services (% of GDP)	44.1026	48.02169	46.047	68.4987	54.7531	...	18.63253	22.66245
Exports of goods and services (BoP, current US\$)	1.5E+08	320858000	2E+08	5E+08	4.83E+09	1E+12	3.276E+09	28006000000
Foreign direct investment, net inflows (% of GDP)	24.1829	7.69347	10.11	...	9.442373	1.29952	1.704669	2.759538
GDP per capita, PPP (current international \$)	11300	5260	5330	...	9100	34320	8400	5670
GDP, PPP (current international \$)	5.1E+08	824846900	6E+08	...	1.19E+10	9.8E+12	2.822E+10	1.39541E+11
Imports of goods and services (% of GDP)	72.9388	61.21033	62.305	85.1663	42.96399	..	19.88838	17.56121
Imports of goods and services (BoP, current US\$)	2.5E+08	379918700	2E+08	4.7E+08	3.79E+09	1.4E+12	3.718E+09	22005000000
Population, total	45050	156700	115880	419660	1309610	2.9E+08	3361000	24632000
Trade (% of GDP)	117.041	109.232	108.35	153.665	97.71708	...	38.5209	40.22366

APPENDIX 3: REGIONAL TRADE AGREEMENTS (CUSTOMS UNIONS AND FREE TRADE AREAS), PREFERENTIAL AGREEMENTS AND UNILATERAL PREFERENTIAL ARRANGEMENTS OF COUNTRIES OF THE WESTERN HEMISPHERE⁴

I. Regional trade agreements

1. Customs Unions	Signature	Entry into force
CACM (Central American Common Market)	13 December 1960	4 June 1961 (Guatemala, El Salvador and Nicaragua), 27 April 1962 (Honduras), 23 September 1963 (Costa Rica)
CARICOM (Caribbean Community and Common Market)	4 July 1973	1 August 1973
MERCOSUR	17 December 1994	15 December 1995
Andean Community	25 June 1997	25 June 1997
2. Free Trade Agreements	Signature	Entry into force
Bolivia–Mexico	10 September 1994	1 January 1995
Canada–Chile	5 December 1996	5 July 1997
Canada–Costa Rica	23 April 2001	1 November 2002
Canada–Israel	31 July 1996	1 September 1997
CARICOM–Domin. Republic	22 August 1998	
Central America–Chile	18 October 1999	15 February 2002 (Costa Rica–Chile) 3 June 2002 (El Salvador–Chile)
Central America–Dominican Republic	16 April 1998	7 March 2002 (Costa Rica–Dominican Republic). 4 October 2001 (El Salvador–Dominican Republic) 3 October 2001 (Guatemala–Dominican Republic). 19 December 2001 (Honduras–Dominican Republic).
Central America–Panama	6 February 2002	
Chile–European Union	18 November 2002	
Chile–Mexico	1 October 1998	1 August 1999

⁴ See the Foreign Trade Information System of the Trade Unit of the OAS <http://www.sice.oas.org/tradeec.asp#bolmexFTA>, (29 May 2003).

Colombia–Mexico–Venezuela (Group of Three)	September 1990	1 January 1995
Costa Rica–Mexico	5 April 1994	1 January 1995
Mexico–EFTA	27 November 2000	1 July 2001 (Mexico, Norway, and Switzerland) 1 October 2001 (Iceland)
Mexico–European Community	February 1995	1 July 2000
Mexico–Israel	10 April 2000	1 July 2000
Mexico–Nicaragua	August, 1992	1 July 1998
Mexico–El Salvador, Guatemala, Honduras	29 June 2000	15 March 2001 (El Salvador and Guatemala) 1 June (Honduras) 14 March 2001 (Mexico)
NAFTA	17 December 1992	1 January 1994
United States–Jordan	24 October 2000.	17 December 2001
United States–Singapore		6 May 2003
United States–Vietnam		13 July 2000.

II. Preferential agreements

	Signature	Entry into force
Colombia–CARICOM	24 July 1994	1 January 1995
Venezuela–CARICOM	13 October 1992	

III. Unilateral preferential agreements

	US Domestic legislation
Caribbean Basin Initiative	H.R. 434 – Trade and Development Act of 2000. Title II – United States–Caribbean Basin Trade Partnership Act
CBTPA	Trade Act of 2002 Division C – Andean Trade Preference Act (1991)