



THE FTAA APRÈS QUEBEC: State of Play, Next Steps, and Remaining Challenges

Maryse Robert¹

(mrobert@oas.org)

1. INTRODUCTION

In the past fifteen years, the nations of the Western Hemisphere have experienced nothing less than a revolution in the way they trade with their neighbors. In the mid-1980s and early 1990s, several countries in Latin America and the Caribbean began to liberalize their trade and investment regimes and to implement market-oriented reforms aimed at promoting a more open and dynamic pattern of integration into the world economy. Along with North America, Latin America and the Caribbean have negotiated modern trade agreements that go beyond the elimination of tariffs and non-tariff barriers in goods to include provisions on services, investment, intellectual property, government procurement, and dispute settlement. They also have entered into deeper and wider forms of integration at the sub-regional level. A natural but also unprecedented step along the path toward greater economic interdependence in the Hemisphere came about when the leaders of the thirty-four democratically elected governments of the region agreed to start working toward the establishment of the Free Trade Area of the Americas (FTAA) at their First Summit held in Miami in December 1994 and to launch the FTAA negotiations at the Second Summit of the Americas, which took place in Santiago, Chile in April 1998. When the Heads of State and Government of the Americas met again at their Third Summit in Quebec City in April 2001, they renewed their commitment to the FTAA negotiations by directing the Ministers Responsible for Trade “to ensure that negotiations of the FTAA Agreement are concluded 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.”²

The Western Hemisphere encompasses a market of 800 million people with a combined gross domestic product (GDP) of \$11 trillion, and more than \$3 trillion in trade (or one quarter of total world trade). Countries in the region have become a

¹ The author is senior trade specialist with the Trade Unit of the Organization of American States (OAS), where she is responsible for assisting the Free Trade Area of the Americas (FTAA) negotiating process in the area of investment. The views expressed in this paper are personal and should not be attributed to the OAS or its member states. Comments on the paper should be sent to mrobert@oas.org. The author is grateful to Sherry Stephenson, Theresa Wetter, César Parga, and Karsten Steinfatt for comments and helpful discussions.

² Third Summit of the Americas, Declaration of Quebec City, April 22, 2001; available at (www.sice.oas.org/ftaa/quebec/declara_e.asp). Venezuela reserves its position on this particular point.



major export destination for each other's products. In fact, almost 60 percent of the region's total exports are destined for countries of the Americas. This represents twice the level of intra-regional trade among East Asian economies. Of the twenty-seven countries for which data was available in 1999, twenty have their primary export market in the Western Hemisphere. For the seven remaining countries, the Americas come in second place after the European Union. The United States is the largest trading partner of seventeen countries in the region, whereas Brazil is Argentina and Uruguay's main market, and Canada buys 25 percent of all the goods and services the United States sells to the world.³

When it comes into effect, the FTAA will result in the world's largest free trade area and provide a stable framework for expanding trade and investment in the region.

2. EARLY EFFORTS TO NEGOTIATE FREE TRADE IN THE AMERICAS

The idea of a hemispheric free trade agreement is nothing new. In 1889, U.S. Secretary of State James Blaine convened the first Pan American Congress and called for the expansion of commercial cooperation between Latin American countries and the United States.⁴ By the end of the nineteenth century, an increasing number of countries in Latin America had embraced the view that free trade was a necessary step to promote economic growth and development. But efforts to negotiate a trade agreement failed. Several Latin American states were reluctant to open up their market to the United States only, for fear of losing access to the European markets. The United States also lacked enthusiasm for free trade, as illustrated by the McKinley Tariff Act of 1890,

³ See Steinfatt and Contreras (2001). The twenty countries for which the Western Hemisphere is the primary export market are: Argentina, Barbados, Bolivia, Canada, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, Trinidad and Tobago, the United States, Uruguay, and Venezuela. The seven states for which the Americas are the second export market are: The Bahamas, Brazil, Chile, Dominican Republic, Guyana, Panama, and Suriname. Data was unavailable for Antigua and Barbuda, Belize, Dominica, Grenada, St. Kitts and Nevis, Saint Lucia, and St. Vincent and the Grenadines.

⁴ The first hemispheric meeting was held in 1826. Simón Bolívar, the leader of the Latin American Wars of Independence, had organized a Congress in Panama with a view to establishing a union among Spanish-speaking Latin American states. Mexico, Central America, Peru, and Colombia signed a treaty of alliance and encouraged others to join them. The United States had been invited by these countries to attend the meeting but the US delegate arrived too late. Between 1826 and 1889, several meetings were held to discuss defense and juridical matters.

It is worth noting that the Pan American Congress of 1889-90 lasted six months and resulted in the creation of the International Union of American Republics, a hemispheric institution with headquarters in Washington, D.C., which became the Pan American Union in 1910. From 1910 to 1947, numerous meetings were held on issues related to commerce, external aggression, and cooperation. In 1948, at the Ninth International American Conference, participants signed the Charter creating the Organization of American States (OAS) and the American Declaration of the Rights and Duties of Man, the first international expression of human rights principles. The original OAS member states are Brazil, Haiti, the United States, and the Spanish-speaking countries of the Western Hemisphere. All other sovereign countries of the region subsequently joined the Organization, Belize and Guyana being the most recent members (1991). For an excellent historical overview of political and economic hemispheric cooperation, see Feinberg (1997). See also Bulmer-Thomas (1994) and Mecham (1962).



under which Congress raised duties on numerous imports to substantially higher levels.⁵

The collapse of the commodity and capital markets in the early 1930s marked another turning point. Latin America abandoned economic liberalism altogether and sought to reduce its dependence on exports of primary products and imports of manufactures. A new model based on import substitution, and formalized in the 1950s by Raúl Prebisch of the United Nations Economic Commission for Latin America and the Caribbean, slowly emerged. Tariffs and non-tariff barriers sheltered domestic products from foreign competition and were accompanied, in some cases, by the nationalization of multinational companies, exchange rate and capital controls, and a populist fiscal policy.

In the United States, the Great Depression of the 1930s led to a very different outcome. In 1934, Congress enacted Secretary of State Cordell Hull's Reciprocal Trade Agreements Program, aimed at expanding U.S. exports abroad and at strengthening the foundations of world peace by improving trade relations with key countries. The United States espoused the "free trade idea" and ensured that it would be a pillar of the postwar institutions.⁶ Multilateralism and most-favored-nation (MFN) treatment became the core elements of the American approach to trade policy.⁷

In Latin America and the Caribbean, the 1960s and 1970s were marked by the negotiation of preferential trade arrangements aimed at fostering domestic industrialization. Members of these trade schemes pledged to create customs unions, coordinate their policies in areas such as transport and communications, and establish a common market as their ultimate goal (Central American Common Market or CACM,⁸ Andean Pact,⁹ and CARICOM¹⁰). The MFN principle was rejected as an

⁵ In the next forty years, as the United States became more protectionist, Congress undertook a number of major revisions to the U.S. tariff structure with the Wilson-Gorman Tariff Act of 1894, the Dingley Tariff Act of 1897, the Payne-Aldrich Tariff Act of 1909, the Underwood Tariff Act of 1913, the Fordney-McCumber Tariff Act of 1922, and the Smoot-Hawley Tariff Act of 1930. See Eckes (1995).

⁶ The International Trade Organization (ITO), the International Monetary Fund, and the International Bank for Reconstruction and Development were the three pillars of the postwar institutions. Although the ITO failed to win ratification by the United States Congress in 1950 and never came into being, the General Agreement on Tariffs and Trade (GATT), which was the ITO's chapter on commercial policy, succeeded in liberalizing trade. On January 1, 1995, the World Trade Organization (WTO) superseded the GATT. On the ITO, see Wilcox (1949). On the GATT and the WTO, see WTO Secretariat (2000) and Jackson (2000).

⁷ A notable exception was the decision of the United States and Canada to negotiate, in 1965, a "free trade" agreement in the automotive sector. See Robert (2000, 170-6).

⁸ The General Treaty was signed on December 13, 1960, by El Salvador, Guatemala, Honduras, and Nicaragua. Costa Rica acceded on July 23, 1962. For more on the CACM, see SIECA (2000).

⁹ Bolivia, Chile, Colombia, Ecuador, and Peru signed the Cartagena Agreement in 1969, creating the Andean Pact. Venezuela joined in 1973, whereas Chile withdrew in 1976. The Andean Pact became the Andean Group in December 1987 when member states signed the Quito Protocol. Since June 1997 and the approval of the Sucre Protocol, the Group has been known as the Andean Community of Nations. See Rodríguez (1998).

¹⁰ The Caribbean Community and Common Market (CARICOM) was established in 1973. Members now include Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat (an overseas territory of the United Kingdom), St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The Bahamas is a member of the Community but not the Common Market. Haiti has satisfied all the terms and conditions required by the Conference of Heads of



inadequate instrument to level the playing field between developed and developing countries. With the exception of the CACM which was largely successful in its early years, the integration movement failed to cover more than a few sectors. In fact, the industrialization and liberalization programs experienced a number of setbacks. Low levels of intra-regional trade, tension between governments and private-sector coalitions opposed to any form of trade liberalization, and disputes on the distribution of the costs and benefits of the preferential trade schemes led to very poor results.¹¹

In the mid-1980s and early 1990s, following the severe effects of the debt crisis, Latin American and Caribbean countries embarked on a series of ambitious economic reforms and abandoned the import-substitution model. They began to dismantle protectionist measures in their own markets and embraced market-focused and outward-oriented policies. To gain credibility and to benefit from the signaling effects that modern trade agreement generate, these countries also revitalized their “old” trade arrangements, eliminating tariffs among themselves and adding, among others, provisions on services, intellectual property, and investment. Their trade policy is now based on a four-pronged approach where unilateral, bilateral, regional, and multilateral liberalization mechanisms reinforce one another. It is therefore not surprising that Latin American countries demanded that free trade be the core agenda item of the First Summit of the Americas.

3. THE FTAA PROCESS: STATE OF PLAY AND NEXT STEPS

The effort to unite the economies of the Western Hemisphere into a single free trade agreement was initiated, as mentioned earlier, at the First Summit of the Americas, which was held in Miami in December of 1994. From the very beginning, the FTAA process was part of the broader agenda of the Summit of the Americas. In Miami, the leaders agreed on preserving and strengthening the community of democracies in the Americas, promoting prosperity through economic integration and free trade, eradicating poverty and discrimination from the Hemisphere, and guaranteeing sustainable development and preserving the environment for future generations. The Heads of State and Government of the thirty-four democratic countries in the region declared that “for the first time in history, the Americas are a community of democratic societies. Although faced with differing development challenges, the Americas are united in pursuing prosperity through open markets, hemispheric integration, and sustainable development.” The leaders also emphasized that

a key to prosperity is trade without barriers, without subsidies,
without unfair practices, and with an increasing stream of

Government for membership of the Caribbean Community, except the deposit with the Secretary-General of an appropriate instrument of accession. Anguilla, the British Virgin Islands, and Turks and Caicos Islands are associate members, whereas Aruba, Bermuda, the Cayman Islands, Colombia, the Dominican Republic, Mexico, Netherlands Antilles, Puerto Rico, and Venezuela are observers. For more on CARICOM, see Gill (1997).

¹¹ See Salazar-Xirinachs, Wetter, Steinfatt, and Ivascanu (2001), and Bouzas and Ros (1994).

productive investments. 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.

They agreed “to begin immediately to construct the Free Trade Area of the Americas”, in which barriers to trade and investment will be progressively eliminated, and to conclude negotiations no later than 2005. They also made a commitment to achieve concrete progress toward building the FTAA by year 2000.¹²

3.1 Preparing the Negotiations

From September 1995 to March 1998, a total of twelve working groups met on a regular basis to prepare the launching of the negotiations. They produced, in their respective discipline, an inventory of all the trade agreements that exist in the Americas, identified areas of commonality and divergence, and made specific recommendations on the overall structure, scope, and objectives of the negotiations to Ministers Responsible for Trade, who gathered on four occasions (Denver in June 1995, Cartagena in March 1996, Belo Horizonte in May 1998, and San José, Costa Rica in March 1998) to review the preparatory work done by these Working Groups. At their Fourth Meeting held in San José, the Ministers recommended to the Heads of State and Government that they initiate the FTAA negotiations at their Second Summit in April of 1998. Ministers also defined the general objectives and principles of the negotiations, the objectives by issue area, and the structure and organization of the negotiations.¹³

3.2 Guiding Principles of the FTAA Negotiations

In San José, Ministers agreed on a set of principles for the negotiations:

- a) Decisions in the FTAA negotiating process are made by consensus.
- b) Negotiations are conducted in a transparent manner to ensure mutual advantage and increased benefits to all participants of the FTAA.
- c) The FTAA Agreement will be consistent with the rules and disciplines of the World Trade Organization (WTO).

¹² Miami Summit of the Americas, Declaration of Principles, December 1994; available at www.sice.oas.org/ftaa/miami/sadope.asp). See also the Miami Plan of Action <http://www.sice.oas.org/ftaa/miami/sapoae.asp>.

¹³ At the First Trade Ministerial Meeting held in Denver on June 30, 1995, seven Working Groups were set up by Ministers: market access; customs procedures and rules of origin; investment; standards and technical barriers to trade; sanitary and phytosanitary measures; subsidies, antidumping, and countervailing duties; and smaller economies. Four additional Working Groups were established at the Cartagena Ministerial Meeting on March 21, 1996: intellectual property rights, government procurement, competition policy, and services. The Working Group on Dispute Settlement was created at the Belo Horizonte Ministerial Meeting on May 16, 1997.



- d) The FTAA should improve upon WTO rules and disciplines wherever possible and appropriate, taking into account the full implications of the rights and obligations of countries as members of the WTO.
- e) The negotiations will begin simultaneously in all issue areas. The initiation, conduct and outcome of the negotiations of the FTAA shall be treated as parts of a single undertaking which will embody the rights and obligations as mutually agreed upon.
- f) The FTAA can co-exist with bilateral and sub-regional agreements, to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the FTAA.
- g) Countries may negotiate and accept the obligations of the FTAA individually or as members of a sub-regional integration group negotiating as a unit.
- h) Special attention should be given to the needs, economic conditions (including transition costs and possible internal dislocations) and opportunities of smaller economies, to ensure their full participation in the FTAA process.
- i) The rights and obligations of the FTAA will be shared by all countries. In the negotiation of the various thematic areas, measures such as technical assistance in specific areas and longer periods for implementing the obligations could be included on a case-by-case basis, in order to facilitate the adjustment of smaller economies and the full participation of all countries in the FTAA.
- j) The measures agreed upon to facilitate the integration of smaller economies in the FTAA process shall be transparent, simple and easily applicable, recognizing the degree of heterogeneity among them.
- k) All countries shall ensure that their laws, regulations and administrative procedures conform to their obligations under the FTAA agreement.
- l) In order to ensure the full participation of all countries in the FTAA, the differences in their level of development should be taken into account.¹⁴

3.3 Structure and Organization of the FTAA Negotiations

The Ministers Responsible for Trade exercise the ultimate oversight and management of the negotiations (see Figure 1). They meet every eighteen months in the country which chairs the FTAA process. Ministers held their fifth meeting in Toronto on November 4, 1999, and their sixth meeting in Buenos Aires on April 7, 2001. The chairmanship of the FTAA rotates among a number of countries. Canada (May 1998-October 1999), Argentina (November 1999-April 2001), Ecuador (May 2001-October 2002), and Brazil and the United States jointly (November 2002-December 2004) were designated to serve as chair of the process.

The Trade Negotiations Committee (TNC) is composed of the Vice Ministers Responsible for Trade. It plays a central role in managing the negotiations. It has the responsibility of guiding the work of the Negotiating Groups and other Committees and Groups. The TNC also decides on the overall architecture of the agreement and

¹⁴ Ministerial Declaration of San José, March 19, 1998; available at (www.ftaa-alca.org/ministerials/costa_e.asp).



institutional issues; ensure transparency in the negotiations; oversee the Administrative Secretariat and the implementation of approved business facilitation measures; address issues unresolved after due diligence at the level of the Negotiating Groups; and ensure that progress is made in all of the Negotiating Groups and areas of negotiation in carrying out their objectives and mandates. It must also assess, in consultation with the Negotiating Groups, and on an ongoing basis, the need to create new Negotiating Groups, based on the progress achieved by existing Groups, and to establish other Negotiating Groups or Sub-Groups, where appropriate. The TNC meets no less than twice a year at rotating sites throughout the Americas. It selects the chair and vice chair of all the FTAA entities, who rotate every eighteen months.

There are nine Negotiating Groups in the FTAA. They cover market access; investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies, antidumping and countervailing duties; and competition policy (see Table 1).

Four Committees and Groups address horizontal issues related to the negotiations. The Technical Committee on Institutional Issues has been mandated to make recommendations to the TNC on the overall architecture of the FTAA Agreement. The Consultative Group on Smaller Economies follows the FTAA process, keeping under review the concerns and interests of the smaller economies; brings to the attention of the TNC the issues of concern to the smaller economies; and makes recommendations to address these issues. The Joint Government-Private Sector Committee of Experts on Electronic Commerce makes recommendations on how to broaden the benefits of electronic commerce in the Hemisphere. The Committee of Government Representatives on the Participation of Civil Society receives the inputs of business, labor, environmental and academic groups, and encourages them and other sectors of civil societies to present their views in a constructive manner. This is a unique feature of the FTAA, which established such a group at the outset of the negotiations.

An ad hoc group of experts was established to report to the TNC on the implementation of the customs-related business facilitation measures agreed upon at the Toronto Ministerial Meeting held in November 1999 (see section 3.5). These measures, which do not require legislative approval but can be implemented administratively, are designed to facilitate commercial exchange within the Americas.

Figure 1

Organizational Structure of the FTAA Process

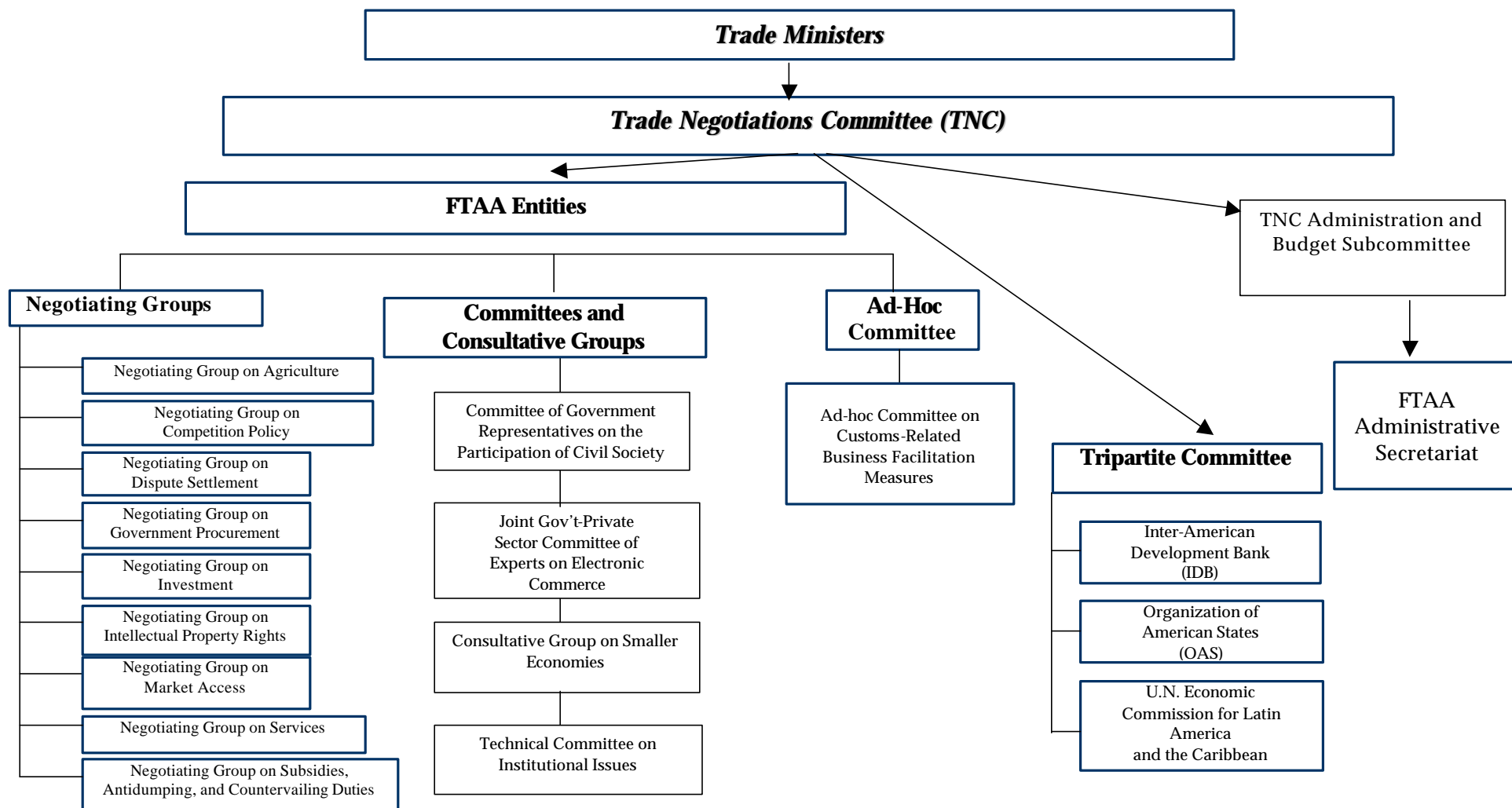


Table 1: Chairs and Vice-Chairs for FTAA Negotiating Groups and Other FTAA Entities

FTAA NEGOTIATING GROUPS	CHAIR	VICE CHAIR
Negotiating Group on Market Access	Argentina	Colombia
Negotiating Group on Agriculture	Guatemala	Uruguay
Negotiating Group on Government Procurement	Costa Rica	Colombia
Negotiating Group on Investment	Mexico	Bolivia
Negotiating Group on Competition Policy	Colombia	Peru
Negotiating Group on Intellectual Property Rights	United States	Dominican Republic
Negotiating Group on Services	CARICOM	Venezuela
Negotiating Group on Dispute Settlement	Paraguay	Chile
Negotiating Group on Subsidies, Antidumping and Countervailing Duties	Peru	CARICOM

OTHER FTAA ENTITIES	CHAIR	VICE CHAIR
Consultative Group on Smaller Economies	Bolivia	Nicaragua
Joint Government – Private Sector Committee of Experts on Electronic Commerce	Canada	Peru
Committee of Government Representatives on the Participation of Civil Society	Dominican Republic	Panama
Technical Committee on Institutional Issues	Brazil	Ecuador

May 2001-October 2002

The Tripartite Committee, which consists of the Organization of American States, the Inter-American Development Bank, and the U.N. Commission for Latin America and the Caribbean, provides technical, analytical, and financial support to the FTAA process, whereas the FTAA Administrative Secretariat attends to the administrative and logistical aspects of the negotiations. As agreed to by Ministers, these negotiations were held in Miami from May 1998 to February 2001. Panama City is hosting the negotiations from March 2001 to February 2003, and Mexico will be the home of the FTAA from March 2003 to December 2004.

3.4 The Players

Close to 1,000 negotiators participate in the FTAA process. The negotiations are conducted in English and Spanish. Official documents from Ministerial Meetings are also available in French and Portuguese. Although thirty-four countries are involved in these negotiations, several countries have elected to speak with “one voice” at the negotiating table. This is the case of the Andean Community, CARICOM through the Caribbean Regional Negotiating Machinery, and MERCOSUR,¹⁵ three integration

¹⁵ Argentina, Brazil, Paraguay, and Uruguay signed the Treaty of Asunción on March 26, 1991. The treaty called for the free circulation of goods, services, and factors of production among member countries by January 1, 1995. On MERCOSUR, see Barbosa (2001) and Roett (1999).



schemes, which are in the process of becoming a customs union. Having one spokesperson entails intense consultations among members of these Groups before presenting proposals that reflect a common position. The FTAA process has derived positive externalities from this phenomenon since the number of delegations at the negotiating table is now of fourteen instead of thirty-four.¹⁶

3.5 The FTAA Negotiations: Progress Report

To date, FTAA participating countries have completed two negotiating phases, and are therefore at midpoint in their negotiations. Two results are of particular importance: the preparation of the first draft of the agreement, and the adoption of eighteen business facilitation measures. Also worth highlighting is the increase in capacity-building and technical assistance-related activities generated by the FTAA process through conferences, seminars, and workshops, and organized by governments, international organizations, the private sector and other non-governmental organizations.

3.5.1 The Preliminary Draft Agreement

The single most important achievement of this first half of the negotiations is the preparation of a draft agreement, covering the issues addressed by the nine Negotiating Groups. During the first phase of the negotiations (May 1998-October 1999), each Group prepared an annotated outline of its respective subject area. Based on the progress made by the Negotiating Groups, Ministers, when they met in Toronto in November 1999, gave them instructions for the second phase of the negotiations (November 1999-April 2001): “to prepare a draft text of their respective chapters, taking into account the progress made in the preparation of the annotated outlines for each area, recognizing that they should be viewed as frames of reference to facilitate the work of the Negotiating Groups and not as definitive or exclusive outlines of an agreement.” Ministers also instructed the Groups to prepare “a text that is comprehensive in scope and that contains the texts on which consensus was reached and places the texts on which consensus could not be reached between brackets.”

3.5.2 Business Facilitation: Customs-Related and Transparency Measures

As part of their commitment to achieve concrete progress by year 2000, Ministers Responsible for Trade agreed on a number of specific business facilitation measures. Eight of these are customs-related measures and address issues of temporary importation or admission of certain goods related to business travelers; express shipments; simplified procedures for low-value shipments; compatible electronic data interchange systems and common data elements; harmonized commodity description

¹⁶ Canada, the United States, Mexico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, CARICOM, the Dominican Republic, the Andean Community, Chile, and MERCOSUR.



and coding systems; the elaboration of a hemispheric information guide on customs procedures; codes of conduct for customs officials; and methodology for risk analysis and targeting. As Salazar-Xirinachs observes, the business environment in the Western Hemisphere is characterized by costly and protracted procedures in the area of customs. Small and medium-sized enterprises, which are particularly at a disadvantage in such a context, have a lot to gain from the implementation of the FTAA customs-related measures. To support their implementation, particularly in smaller economies, the Inter-American Development Bank/Multilateral Investment Fund approved a \$5 million technical cooperation project in August 2000.¹⁷

In Toronto, Ministers also agreed on ten transparency-related measures, which amounted to the publication, dissemination, and periodical updating of a number of inventories and databases in areas being negotiated in the FTAA. Ministers also directed that information on government regulations, procedures, and competent authorities be made more accessible, including via the use of Internet links to the FTAA Home Page.

3.6 The Quebec-Buenos Aires Nexus

The Third Summit of the Americas held in Quebec City on April 20-22, 2001 and the Sixth FTAA Ministerial Meeting that took place two weeks earlier on April 7, 2001 in Buenos Aires gave a new impetus and provided fresh momentum to the FTAA negotiations. In Quebec, democracy and trade were at the forefront of the discussions. The leaders adopted a democratic clause, set a firm deadline for the conclusion and implementation of the FTAA Agreement, underscored the release of the draft FTAA Agreement as a clear demonstration of their collective commitment to transparency and to increasing and sustained communication with civil society, and renewed their pledge to take into consideration the differences in the levels of development and size of the economies of the Hemisphere, in order to create opportunities for the full participation of the smaller economies and to increase their level of development. The leaders also agreed to supervise and support, with technical assistance, the full implementation of adopted business facilitation measures, and to instruct their representatives in the institutions of the Tripartite Committee to continue securing the allocation of the resources necessary to contribute to the support of the work of the FTAA Administrative Secretariat.

In Buenos Aires, Ministers endeavored to build public support for the FTAA by releasing the draft FTAA Agreement, after the Third Summit of the Americas. They highlighted the need to foster dialogue with civil society and to provide technical assistance to smaller economies to facilitate their participation in the FTAA. They instructed the TNC to prepare, during the third negotiating phase (May 2001-October 2002), a second version of the draft FTAA Agreement. Ministers also agreed on a deadline to decide on methods and modalities for market access negotiations and to initiate these negotiations no later than May 15, 2002. They established the Technical

¹⁷ Salazar-Xirinachs (2001).



Committee on Institutional Issues (TCI) with the mandate of making recommendations on the overall architecture of the FTAA Agreement. Finally, Ministers eliminated one of the major irritants of the negotiations by stating very firmly that any delegation has the right to present proposals on any issue it deems relevant. This general principle means that proposals on labor and environment, which some delegations had previously rejected as not being part of the mandate of the FTAA negotiations, will be included in the draft text, in brackets if one or several delegations do not agree with their content or wording.

3.6.1 Adoption of a Democratic Clause

The leaders in Quebec took a bold decision in adopting a “democratic clause.” The commitment to democratic government is a condition to participate in the Summit of the Americas process. But in addition, the leaders called for the drafting of a “democratic charter.”¹⁸ As the FTAA is clearly part of the Summit process, it seems likely that this landmark decision—a unique feature of the Americas—would also apply to the FTAA. However, this does not necessarily mean that such provision would be mirrored in the Agreement.¹⁹

3.6.2 Deadline for the Conclusion and Implementation of the FTAA

Leaders in Quebec renewed their commitment to hemispheric integration. As mentioned earlier, following a recommendation made by Ministers in Buenos Aires, they agreed that the FTAA negotiations should be concluded no later than January 2005, and that Ministers should seek the entry into force of the Agreement as soon as possible thereafter, but in any case, no later than December 2005. They reiterated that the FTAA will generate the economic growth and prosperity in the Hemisphere that will contribute to the achievement of the broad Summit objectives. They also restated that the Agreement should be balanced, comprehensive and consistent with WTO rules and disciplines, and that it should constitute a single undertaking, which is broadly understood as meaning that the FTAA is a “single package” (no “cherry picking” allowed) and that “nothing is agreed until everything is agreed.” They also stressed the importance of designing an agreement that takes into account the differences in the size and levels of development of participating economies.

3.6.3 Release of the Preliminary Draft FTAA Agreement

The Heads of State and Government also highlighted that the decision of the Ministers Responsible for Trade in Buenos Aires to make public the preliminary draft of the FTAA Agreement is a clear demonstration of their collective commitment to transparency and to increasing and sustained communication with civil society. In the

¹⁸ The Foreign Ministers of the Organization of American States meeting in Lima, Peru adopted the Inter-American Democratic Charter on September 11, 2001.

¹⁹ See Cooper (2001). It is also worth noting that MERCOSUR has a “democratic clause.”



context of trade negotiations, there is no doubt that the Buenos Aires Ministerial Meeting set a precedent by agreeing to publish the draft FTAA Agreement in English, French, Portuguese, and Spanish, after the Third Summit of the Americas.²⁰ Ministers stated that they believe that the dissemination of this text will alleviate considerably public concerns about the FTAA and will establish new standards of transparency in trade negotiations. They also agreed on disseminating, after each Summit of the Americas, the results achieved in the negotiating process. Canadian Trade Minister Pierre Pettigrew, who championed the release of the preliminary draft FTAA Agreement, explained a few weeks after the Buenos Aires and Quebec meetings why the Ministers took, what seemed to many, a surprising decision:

We are living in a very different world than the one that existed before the Seattle WTO meeting. We are living in the world of the Internet -- where so much information is available instantaneously, at the click of a button. We are living in a world where people are more skeptical; if they cannot hold something in their own hands, not only does it have no value, it is actually suspect. By making the negotiating texts public, we will be demystifying them. By allowing the public to consult the texts, we eliminate one of the loudest claims of the anti-globalization movement: the accusation that trade deals are shrouded in secrecy, concluded behind closed doors with only the interests of transnational corporations taken into account.²¹

3.6.4 Fostering Dialogue with Civil Society

In both Quebec and Buenos Aires, there was a clear message on the need to foster, through respective national dialogue mechanisms and appropriate FTAA mechanisms, a process of increasing and sustained communication with civil society to ensure that it has a clear perception of the development of the FTAA negotiating process. There was an invitation to civil society to continue contributing to the FTAA process. In Buenos Aires, Ministers instructed the Committee of Government Representatives on the Participation of Civil Society to develop a list of options on how to foster this dialogue with civil society, for the consideration and decision of the Trade Negotiations Committee (TNC) at its next meeting. Ministers further instructed the TNC to forward to the Negotiating Groups the contributions submitted by civil society which refer to their respective issue areas, and those related to the FTAA process in general.

²⁰ The FTAA Draft Agreement is available at www.ftaa-alca.org.

²¹ Canada (2001). For an excellent discussion on the rise of NGOs and the anti-globalization movement, see Ostry (2001).



3.6.5 Smaller Economies and Technical Assistance

The participation of the smaller economies is perhaps the most critical of all issues as the FTAA encompasses countries of disparate sizes and levels of development. The FTAA will liberalize trade and investment, and integrate economies that vary not only in terms of size and levels of development but also in terms of population and resource endowments. As the U.S. General Accounting Office (GAO) underlined in a recent report, the FTAA involves “a diverse set of countries, from some of the wealthiest (the United States and Canada) to some of the poorest (Haiti) and from some of the largest (Brazil) to some of the smallest in the world (St. Kitts and Nevis).”²² In Quebec, the leaders highlighted the importance of taking into consideration the differences in the levels of development and size of the economies of the Hemisphere. They requested the Tripartite Committee “to favorably consider requests for technical assistance related to FTAA issues from member countries, in particular from the smaller economies, in order to facilitate their integration into the FTAA process.”

In Buenos Aires, Ministers recalled that considerations related to differences in the levels of development and size of the economies of the Hemisphere must be taken into account within the context of each Negotiating Group. They instructed the TNC to continue its consideration of the treatment of the differences in the levels of development and size of the economies of the Hemisphere, including the smaller economies, and to provide, in this respect, ongoing guidance to the Negotiating Groups in their consideration of specific proposals submitted by countries or groups of countries in each of the substantive negotiating areas. Ministers also directed the TNC to examine ways to strengthen the flow of information between the Negotiating Groups and the Consultative Group on Smaller Economies (CGSE) on issues relevant to the interests and concerns of smaller economies, so that the CGSE can adequately fulfill its mandate. Ministers instructed the TNC, with the support of the CGSE and the Tripartite Committee, to formulate, no later than November 1, 2001, some guidelines or directives for applying treatment for addressing the differences in the levels of development and size of economies.

The case can be made that the smaller economies of the Western Hemisphere stand to gain from participating in the FTAA. Not to do so may isolate them from the markets, which now constitute the majority of their trade. The FTAA will allow these economies to gain from the trade and particularly from investment liberalization dynamics that the agreement will generate.

3.6.6 Preparation of a Second Version of the Draft FTAA Agreement

In Buenos Aires, Ministers instructed the TNC to prepare a second version of the FTAA Agreement, including the chapters from each Negotiating Group and chapters covering general and institutional aspects, for their consideration at the next Ministerial Meeting, to be held in Ecuador in October 2002. In the light of the progress

²² General Accounting Office (GAO) (2001, 3). Brazil has a population of over 170 million inhabitants, whereas St. Kitts and Nevis is home to 45,000 people.



made by the Negotiating Groups during the second phase of the negotiations, Ministers instructed these Groups to intensify their efforts in the third phase of the negotiations to resolve existing divergences and to reach consensus, with a view to eliminating the brackets from draft texts, to the maximum extent possible, and to submit to the TNC a new version of chapters on their respective areas no later than eight weeks before the next FTAA Ministerial Meeting.

3.6.7 Initiation of the Market Access Negotiations

Ministers in Buenos Aires took a crucial step in setting an ambitious pace for the second half of the negotiations when they instructed the Negotiating Groups with a market access component to submit to the TNC their recommendations on methods and modalities by April 1, 2002, and to initiate these negotiations no later than May 15, 2002.

Ministers also directed Negotiating Groups, where appropriate, to prepare inventories of tariffs and non-tariff measures, and to submit recommendations on the scope and methodology for eliminating export subsidies affecting agricultural products, for the treatment of all the other practices that distort trade in agricultural products, and for deepening disciplines on subsidies. Also worth highlighting are the instructions to the Negotiating Group on Subsidies, Antidumping, and Countervailing Duties to reach a common understanding with a view to improving, where possible, the rules and procedures for the operation and enforcement of trade remedy laws, so as not to create unjustified obstacles to free trade within the Hemisphere. As underscored by the GAO study, this ministerial action repeats the objective set forth in the San José Ministerial Declaration and “reminds all participants that they have previously agreed to seek improvements in trade remedy regimes, while providing a deadline for action toward that end.”²³

3.6.8 Establishment of the Technical Committee on Institutional Issues

The Technical Committee on Institution Issues has the mandate of making recommendations on the overall architecture of the FTAA Agreement. The TCI, as it is known, will address issues such as the purposes and objectives of the Agreement, the main principles and exceptions of the Agreement, the scope and coverage of the obligations, including their application at the sub-federal level, and the relationship between the FTAA and other trade agreements such as the WTO and the sub-regional agreements.

²³ GAO (2001, 8).



3.6.9 Right to Present Proposals on Any Issue

Another important decision taken by Ministers in Buenos Aires is the right of any delegation to present proposals on any issue it deems relevant. Ministers took this decision to solve the divergence of views that existed among delegations. The GAO mentioned in its recent report on the FTAA that “the United States had sought to include proposals in the investment negotiating group obligating parties to strive to ensure that their environmental and labor laws would not be relaxed to attract investment. Other FTAA countries objected to this proposal, stating that labor and the environment were outside the mandate of the negotiating group and did not belong in an FTAA.”²⁴ In the Buenos Aires Declaration, Ministers clearly state that “that any delegation has the right to present the text proposals it deems relevant for the effective progress of the process, which may eventually be placed in brackets,” but they also declare that “Most Ministers recognize that the issues on environment and labor should not be utilized as conditionalities nor subject to disciplines, the non compliance of which can be subject to trade restrictions or sanctions.” The Buenos Aires Declaration, however, remains silent on the issue of financial sanctions.

4. THE FTAA NEGOTIATIONS: REMAINING CHALLENGES

The FTAA countries have now entered the third and penultimate phase of the negotiations. In order to conclude the negotiations no later than January 2005, as agreed by the leaders in Quebec, challenges need to be addressed on two fronts: the negotiating front, and the political front.

4.1 Challenges on the Negotiating Front

Each Negotiating Group must strive to negotiate a balanced agreement that will serve the interests of all participants. As explained above, negotiators have the mandate to prepare a revised version of the draft text in their own issue area and eliminate, to the maximum extent possible, the brackets that are now included in the draft Agreement. They must also submit recommendations on methods and modalities for the initiation of the market access negotiations by no later than May 15, 2002. Negotiators must also make progress on the overall architecture of the Agreement and the institutional framework to implement the Agreement. FTAA countries also need to take into account, in designing the FTAA, the differences in levels of development and size of the economies in the Hemisphere to create opportunities for the full participation of the smaller economies and to increase their level of development. The specific challenges facing each Negotiating Group are discussed below.²⁵

²⁴ GAO (2001, 7).

²⁵ On smaller economies in the FTAA, see Bernal (1998).



4.1.1 Negotiating Group on Market Access (NGMA)

The main questions that need to be ironed out by the Negotiating Group on Market Access relate to the formula FTAA countries should choose to determine concessions, i.e. the formula approach or the request-offer approach or a combination of approaches; the choice of the base tariff and base year for the application of trade preferences; the calendar for the liberalization program and the maximum period to reach the objective of zero tariff; and the need for a safeguard clause.²⁶

Also important are rules of origin. Should FTAA countries elect a single rule for all goods. Should they opt for the tariff shift approach or the value added approach or a combination of approaches? The “tariff shift” model requires a determination that a party has modified a good or product enough to change its classification in the Harmonized Commodity Description and Coding System (often referred to as Harmonized System, or HS), thus making it eligible for preferential tariff treatment. This method is not without problems. It does not always ensure that there will be a substantial transformation in the production of a good. In fact, the Harmonized System was not designed for determining product origin, but for statistical and classification purposes. The value added approach generally defines a maximum percentage of third country processing or components that can be included for a good to qualify for preferential tariff treatment. This approach suffers from severe limitations because it is highly dependent on fluctuations in a wide range of factors that determine the price and cost of a good. It is also administratively very burdensome for customs administrations that must audit the cost of these materials because accounting methods vary widely throughout the Americas. Moreover, low-wage countries are at a disadvantage when using this method because they must use a higher percentage of originating components to qualify for the preferences.²⁷

Other issues also covered by the NGMA are customs procedures, import licensing, and standards and technical barriers to trade. In the case of standards and technical barriers to trade, the main challenge of the FTAA negotiators is to establish how a hemispheric agreement can go beyond the rules of the WTO TBT (Technical Barriers to Trade) Agreement.²⁸

4.1.2 Negotiating Group on Agriculture (NGAG)

The main objectives of the Negotiating Group on Agriculture are to eliminate agricultural export subsidies; to identify other trade-distorting practices for agricultural products, including those that have an effect equivalent to agriculture export subsidies, and bring them under greater discipline; to incorporate progress made in the multilateral negotiations on agriculture to be held according to Article 20

²⁶ See the Hemispheric Trade and Tariff Data Base for Market Access, available at http://alca-ftaa.iadb.org/eng/ngmadb_e.htm.

²⁷ On rules of origin in the Americas, see Garay and Cornejo (1999).

²⁸ Kotschwar (2001).



of the WTO Agreement on Agriculture, as well as the results of the review of the Sanitary and Phytosanitary (SPS) Agreement; and to ensure that SPS measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries or a disguised restriction to international trade, in order to prevent protectionist trade practices and facilitate trade in the Hemisphere. Since the objectives of the Negotiating Group on Market Access apply to trade in agricultural products, and that rules of origin, customs procedures, and technical barriers to trade are addressed by the NGMA, the negotiators of both groups (market access and agriculture) must coordinate their efforts.

The Negotiating Group on Agriculture is confronted with some of the most challenging issues of the whole FTAA negotiations, to make progress at the hemispheric level on agricultural export subsidies and domestic support. Can these issues be addressed in a hemispheric context only or do they need to be resolved at the multilateral level? With respect to SPS issues, as in the case of standards and technical barriers to trade, can the FTAA Agreement go beyond the WTO? If so, how can this be achieved?²⁹

4.1.3 Negotiating Groups on Investment and Services (NGIN and NGSV)

In addition to the issues referring to the protection components of an investment agreement, the Negotiating Group on Investment, which covers investment in goods and services, must decide on the scope and coverage of the chapter, including the definitions of the terms “investment” and “investor,” which constitute the main parameters identifying *who* will benefit from the provisions of the agreement. The NGIN will also discuss the investor-state dispute settlement mechanism, and must also come to a decision on whether the investment chapter of a future FTAA will include a market access commitment that goes beyond the status quo and a built-in agenda for the progressive liberalization of “protected” sectors. Negotiators will have to ensure that the negotiating modality to liberalize trade in services and investment in services is compatible. They will also have to agree on a timeframe for liberalization. Among other issues, the services negotiators will need to decide whether sectoral disciplines should be added to the FTAA Agreement, and whether sub-groups should be established to negotiate such disciplines.³⁰

4.1.4 Negotiating Group on Government Procurement (NGGP)

The main objective of the Negotiating Group on Government Procurement is to expand access to the government procurement markets of the FTAA countries. As the NGIN and NGSV, the Group needs to decide on a choice of modalities and procedures for conducting market access negotiations. A solid agreement among FTAA countries on the issue of government procurement would be built on two fundamental pillars, each of which would support a myriad of policies and administrative procedures. The first

²⁹ On agriculture, see Josling (1998).

³⁰ See Robert (2001) and Stephenson (2000).



pillar is that of transparency, broadly understood to mean that policies, government requirements, technical standards, and all administrative procedures and decision-making are subject to public scrutiny. The second pillar can be viewed as either administrative or judicial in nature; it essentially provides a place and a process for the lodging and adjudication of complaints. Competitors must have the opportunity to challenge procedures and outcomes in a fair and impartial forum that provides the essential counterbalance to ensure that public resources are efficiently used.³¹

4.1.5 Negotiating Group on Intellectual Property Rights (NGIP)

The NGIP has the mandate of reducing distortions in trade in the Hemisphere and promoting and ensuring adequate and effective protection to intellectual property rights. The Group must also consider changes in technology. The main challenge in the NGIP is to negotiate a package that is responsive to the new developments in intellectual property in a way that accounts for the interests of all participants. There are elements that would seem to allow for such an outcome. Intellectual property issues that arise in the context of domain names, biotechnology, traditional knowledge and folklore, copyright and related rights in digital networks, protection of databases, and access to genetic resources are all areas omitted from the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that might find a place in a balanced package.³²

4.1.6 Negotiating Groups on Subsidies, Antidumping, and Countervailing Duties; and Competition Policy (NGADCV and NGCP)

The Negotiating Group on Subsidies, Antidumping, and Countervailing Duties faces two main challenges. The negotiators must determine to what extent it is possible to deepen existing multilateral disciplines on subsidies and countervailing measures, and on antidumping. Also of importance is the relationship between competition policy and antidumping. This issue is also relevant for the Negotiating Group on Competition Policy, whose main objective is to guarantee that the benefits of the FTAA liberalization process not be undermined by anti-competitive business practices. The Group has also the mandate to advance towards the establishment of juridical and institutional coverage at the national, sub-regional or regional level, that proscribes the carrying out of anti-competitive business practices; and develop mechanisms that facilitate and promote the development of competition policy and guarantee the enforcement of regulations on free competition among and within countries of the Hemisphere.³³

³¹ For a good overview of the issues related to government procurement in the Americas, see Claro de la Maza and Camblor (1999).

³² Parga (2001).

³³ On antidumping, see Tavares, Macario, and Steinfatt (2001), and on competition policy, see Tavares and Tineo (1999).



4.1.7 Negotiating Group on Dispute Settlement (NGDS)

The Negotiating Group on Dispute Settlement has received the mandate to establish a fair, transparent and effective mechanism among FTAA countries. Some of the key issues before the Group are the interrelationship between the FTAA Agreement and the regional agreements and the decisions on choice of forum and applicable law; the binding nature of the final dispute determination; and the relationship of the dispute settlement mechanism to the institutional framework of the FTAA.³⁴

4.2 Challenges on the Political Front

There is no doubt that the challenges on the negotiating front will require hard bargaining and flexibility on the part of all participants. But the single most important challenge of the FTAA negotiations is not technical. It is political. And leaders in Quebec provided political momentum to the negotiations when they renewed their commitment to the FTAA and agreed to conclude the negotiations no later than January 2005. Some of the main political challenges are highlighted below.

4.2.1 Trade Promotion Authority and U.S. Commitment to the Americas

A key development on the political front was the pledge in Quebec of the President of the United States, George W. Bush, to seek and secure from Congress Trade Promotion Authority by the end of 2001. Since Congress is vested with authority over foreign commerce under the U.S. constitution, a mechanism, the Fast Track Authority, was engineered in the Trade Act of 1974 to allow the executive branch to fashion trade deals without having Congress pick them apart piece by piece, thus necessitating re-negotiation with foreign partners. Now known as Trade Promotion Authority, it gives the executive branch the flexibility to negotiate a trade agreement, which is then accepted or rejected as a whole and without changes by Congress. As mentioned by U.S. Trade Representative Robert Zoellick in his testimony before the Subcommittee on Trade of the Committee on Ways and Means of the U.S. House of Representatives on May 8, 2001, "in the absence of Trade Promotion Authority, which expired in 1994, other countries have been reluctant to close out complex and politically sensitive trade agreements with the United States." The Administration has made the FTAA one of its top priorities. Ambassador Zoellick noted in his testimony before the Ways and Means Committee that "the Free Trade of the Americas provides a framework for the Administration's hemispheric strategy."³⁵ In fact, when running for president last Summer, then-candidate Bush made a commitment to the Americas: "Should I become president, I will look South, not as an afterthought, but as a fundamental commitment of my presidency." He added: "We seek, not just good neighbors, but strong partners. We seek, not just progress, but shared prosperity. With persistence and courage, we

³⁴ Plank-Brumback (2001).

³⁵ Zoellick (2001).



shaped the last century into an American century. With leadership and commitment, this can be the century of the Americas.”³⁶

4.2.2 *Brazil and the FTAA*

Brazil is a main player in the FTAA negotiations and has been an active participant, as a member of the MERCOSUR delegation, since the very beginning. Brazil will, jointly with the United States, chair the fourth and last phase of the negotiations. Regarding the FTAA, Ambassador Celso Lafer, Brazil’s Minister of Foreign Affairs, commented during a visit to Washington in March 2001 that “the Brazilian business community and the public in general are – quite like the American people – not unanimous in their assessments and expectations.”³⁷ But Brazil has made clear on several occasions that Trade Promotion Authority in the United States is “essential,” not in the preparatory stage of the negotiations but, as Brazil’s Ambassador to the United States Rubens Barbosa recently pointed out, when countries “begin to negotiate specific issues, such as lists of products, tariff-reduction timetables, and final drafts of rules and trade disciplines. Otherwise, all other countries would be negotiating an agreement pending further changes and second thoughts by the U.S. Congress, which is not a viable scenario.”³⁸ In Quebec, President Fernando Enrique Cardoso shared his views on what the FTAA should entail: “A Free Trade Area of the Americas is welcome if its creation is a step toward providing access to more dynamic markets; if it indeed leads to common antidumping rules; if it reduces non-tariff barriers; if it prevents the protectionist distortion of sound sanitary norms; and if, while protecting intellectual property, it also furthers the technological capabilities of our people; and also if it goes beyond the Uruguay Round to redress the inequalities resulting from those negotiations, particularly with regard to agriculture.”³⁹

4.2.3 *Business Sector and Civil Society*

Generating support for the FTAA negotiations is certainly the most important challenge that countries of the Americas face today.⁴⁰ In the case of the United States, the GAO recently underlined that “generating interest in and support of the FTAA within the U.S. Congress, the U.S. business community, and the U.S. public remains a challenge.” The GAO study also emphasized that “many participants believe this support will be crucial if the United States is to provide the leadership they believe is necessary for concluding a deal.” As Ambassador Zoellick recently highlighted, “trade liberalization offers tangible economic benefits and equally important political assistance. It provides incentives and rewards for governments pursuing economic reforms. It also sends a valuable signal – a signal of confidence – to potential investors

³⁶ Bush (2000).

³⁷ Lafer (2001).

³⁸ Barbosa (2001).

³⁹ Cardoso (2001).

⁴⁰ For an overview of the potential benefits and costs that might be anticipated from an FTAA, see Devlin, Estevadeordal, and Garay (1999).



that ... nations have agreed to abide by common rules governing trade, to create a truly hemispheric market place.”⁴¹

⁴¹ Zoellick (2001).



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