

# **“LESSONS FROM THE FTAA FOR APEC ECONOMIES”**

## **For the Feasibility Study by the PECC of the Free Trade Area of the Asia-Pacific (FTAAP)**

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### *I. Introduction: the Free Trade Area of the Americas*

The proposed Free Trade Area of the Americas (FTAA) has larger economic dimensions than any of the numerous sub-regional agreements in the Western Hemisphere or the individual bilateral free trade agreements, grouping 34 of the 35 countries in the region that together comprise about 870 million people and constitute over one-fourth of the world's GDP (around \$14 trillion) and one-fifth of the world's trade. However, it also has important political dimensions. The FTAA has been viewed as the means to unite the Hemisphere economically, and to solidify political ties between the English-speaking and the Spanish and Portuguese-speaking nations of the region. For this reason, the FTAA process was launched in 1994 within a broad social and political agenda (The Summit of the Americas) that is absent in the case of other sub-regional trade arrangements. However, even this political endorsement from the outset at the highest level has not proved enough to allow the FTAA negotiations to be brought to a successful conclusion as they were envisaged.

This paper will review the launching of the FTAA, its challenges and innovative features and the mechanics of the negotiating process, along with the reasons why the FTAA negotiations faltered and the lessons that might be learned from the FTAA experience by the members of APEC.

Placing the FTAA in a historical context, it should be recalled that the idea of a region-wide free trade agreement was not new in the Americas in the early 1990s, having been first proposed by Simon Bolivar - the liberator of the countries of the Andean region - more than 200 years earlier. The idea was sidetracked in the 19<sup>th</sup> century by the independence movement of the former Spanish and Portuguese colonies and by territorial disputes. Towards the end of the 20<sup>th</sup> century, U.S. President George H.W. Bush re-launched the concept of hemispheric free trade, under the

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label 'Enterprise for the Americas Initiative'. In turn, this initiative was sidetracked during the debate over ratification of NAFTA, which came into force in January 1994. However it was again revived by President Bill Clinton in December 1994 in the form of the 'Free Trade Area of the Americas' initiative, when 34 democratically-elected governments in the Western Hemisphere met in Miami to launch the 'Summit of the Americas' process.

Thus the FTAA negotiating process in the Western Hemisphere began as an integral component of the Summit of the Americas political process, endorsed by heads of state and government in the Americas. The free trade or FTAA component of the "Partnership for the Development and Prosperity: Democracy, Free Trade and Sustainable Development in the Americas" of the Summit of the Americas is nestled in a commitment to four major objectives and 23 very wide-ranging economic, political and social initiatives, of which free trade is only one. The four major objectives of the broad Summit of the Americas process are to:

- preserve and strengthen democracy
- promote prosperity through economic integration
- eradicate poverty and discrimination, and
- guarantee sustainable development.

Although these Summit initiatives range from the promotion of democracy and human rights to sustainable development, improved infrastructure and labor conditions, educational opportunities, control of narco-trafficking, among others, the FTAA was at the time viewed as the centerpiece of the Summit process, through its potential contribution to increased economic prosperity in the region, essential for the realization of the other Summit objectives.<sup>1</sup> Under the title of "Promoting Prosperity through Economic Integration and Free Trade", the Miami Declaration and Plan of Action contains six initiatives to complement the FTAA in the economic area:

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<sup>1</sup> See "Plan of Action" accompanying the "Declaration of Principles of the Miami Summit of the Americas" in date of December 9-11, 1994, which can be found on the OAS website at [www.oas.org](http://www.oas.org), which sets out the 23 hemispheric initiatives, including the Free Trade Area of the Americas, all as an integral part of the Summit Process.

- capital markets development and liberalization
- infrastructure
- energy cooperation
- telecommunications and information infrastructure
- cooperation in science and technology, and
- tourism

The key difference between trade and the other initiatives, however, is that the FTAA was to be the one component of the Summit process that was to result in a legally binding contract, while the other initiatives consisted of cooperation efforts and voluntary pledges for financial resources.

The FTAA negotiating process was designed to be a lengthy one, as it was felt that many of the participants needed time to prepare adequately for negotiations. The end date for the FTAA negotiations was therefore fixed at the outset as January 2005, making the FTAA a decade-long project. For nine of these ten years the negotiating process was very intensive, as will be described below, and tremendous progress was made. The result of efforts over nearly six years of formal negotiations (to end 2003) can be viewed in the draft text of the FTAA Agreement, found on the official FTAA website, and which contains 24 chapters and is no less than 484 pages in length..<sup>2</sup> However, in the very final stretch, the FTAA process ran out of steam as its participants found themselves in a changed macroeconomic context and with differing political priorities. The negotiations have been in a stalemate since early 2004, with little chance of revival. Indeed, since early 2004 the countries of the Western Hemisphere have become increasingly polarized in the conduct of their trade relations.

The ten-year negotiating period envisaged by the drafters of the FTAA turned out to be a very long time, even compared to the pace of multilateral trade negotiations (by way of comparison, the Uruguay Round took seven years to complete). The reason for this long timeframe was the considerable preparatory work that was included, partly in order to allow for the training of negotiators from countries in Latin America and the Caribbean of widely diverging levels of capacity and negotiating readiness. Ironically, this strategy

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<sup>2</sup> See draft text of the FTAA Agreement, available on the official FTAA website at [www.ftaa-alca.org](http://www.ftaa-alca.org).

This is the third version of the draft agreement, in date of 21 November 2003 (document FTAA.TNC/W/133/Rev.3), which Ministers of Trade agreed to release for public distribution at the time of the Miami Trade Ministerial meeting in November 2003.

proved highly successful and negotiators from Latin America and the Caribbean have gone on to negotiate numerous free trade agreements on their own, as well as to participate more fully in the WTO Doha Round negotiations. Becoming increasingly confident of their abilities, however, it has made it more challenging to finalize a hemispheric-wide text.

At the time of the launching of the FTAA the political climate in the Western Hemisphere was very much one in favor of free trade and market opening. The “Washington consensus” on orthodox trade reforms, fiscal and monetary discipline and trade liberalization as the basis for growth was in full sway, and the success stories from Chile and Mexico were on everyone’s speaking agenda. The downturn that came with the lull in economic growth and the financial and exchange rate crisis in the southern cone countries would not be felt yet for some years. Governments in the region saw trade objectives through the same lens. The NAFTA had just been brought into effect, and the ramifications of this major innovation in trade relations in the Western Hemisphere – a trade agreement reaching out to include a developing country, Latin American member for the first time – were still reverberating. The successful negotiation and implementation of NAFTA injected a great deal of energy and enthusiasm into the landscape for trade agreements in the Americas at the time.

Moreover, in the 1990s the FTAA was the only major trade initiative in sight in the Hemisphere. The WTO had just come into existence in January 1995, and no one knew at that point how successful the organization would be in implementing the Uruguay Round commitments and in promoting further trade liberalization. The WTO Singapore Trade Ministerial Meeting in 1996 had been a tepid affair, characterized by controversy over incorporating the “new issues” of investment, competition policy and government procurement into the multilateral trade agenda.<sup>3</sup> The WTO Seattle Trade Ministerial Meeting turned out to be a dismal failure at end 1999, and the Doha Development Agenda (DDA) would not be launched until November 2001, over six and a half years after the FTAA negotiating process had been in full swing. And after its launching, it

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<sup>3</sup> These questions had been settled at the time of the launching of the FTAA process and were not controversial in the Americas. Investment, competition policy and government procurement all formed a part of the FTAA negotiating agenda, to which no one had objected. The issues of labor rights and the environment, however, did not form a part of the formal negotiating agenda at the time of the launching of the FTAA in 1998, and continuous controversy surrounded these issues throughout the life of the negotiations.

would take a several months, if not a couple of years, to get the DDA properly organized and on track.

Thus all of the negotiating energies in the Americas – after NAFTA and for a while following the launching of the Doha Round – were directed without distraction towards the FTAA in its early years. This, combined with the consensus attitude among political leaders that negotiating a hemispheric-wide free trade agreement was the right thing to do to promote economic growth and development, allowed for tremendous progress to be made in the FTAA negotiations during this period (1995 – 2002). As will be seen below, the gradual diversion of negotiating attention from the FTAA towards the Doha Round, combined with major changes in the political governance and economic circumstances of countries in the Hemisphere in 2002, changed the focus of key participants and altered the basis of consensus on which the FTAA negotiations had been conducted. Eventually these changes proved to be so large that the FTAA negotiating process foundered before it could be brought to a successful conclusion. It has been stalled since early 2004 and unable to recover.

Current developments (mid-2006) indicate that the polarization of trade relations in the Western Hemisphere is widening rather than diminishing. Lessons from the FTAA experience for the APEC economies who are thinking of launching a Free Trade Area of the Asia Pacific (FTAAP) should be useful ones to consider so that the same fate will not meet a similarly ambitious undertaking to develop an FTAAP in the Asia-Pacific region, should that be decided.

## II. *Innovative Features of the FTAA Negotiating Process*

The FTAA negotiating process had several innovative features that deserve comment.

1. Size of the potential free trade area. The countries that negotiated the FTAA stretch from the Alaskan Yucatan in North American to Tierra del Fuego in South America. The FTAA would have been larger than any other regional trading agreement in the world except for the European Union (which is a customs union and not a free trade area), although the FTAAP would be an even larger regional grouping. As stated earlier, the 34 countries involved in the FTAA process represent a combined population of around 870 million people, a GDP of \$14

trillion and trade flows of nearly \$4 trillion, or approximately one-fourth of the world's output and one-fifth of the world's trade. The FTAAP would be an even larger, more powerful economic grouping, encompassing three of the world's largest economies – the United States, Japan and the P.R. of China.

2. Economic diversity of the participants. The participants in the FTAA negotiating process range from the largest single economy in the world – the United States – to some of the smallest (namely the Caribbean island states). The range in the level of economic development of the participants is also extremely vast, stretching from the two advanced economies of Canada and the United States, to the middle economies of Mexico, Chile, Argentina, Brazil and several of the small Caribbean islands, to the poorer countries of Central and South America. One of the countries in the Hemisphere is counted among the World Bank definition of “least developed”, namely Haiti, while Guyana, Honduras and Nicaragua fall in a very low income category. Such a broad diversity among levels of economic development or participants would also be the case for the FTAAP.
3. Ambition of the negotiating mandate. The scope of the FTAA negotiations as agreed upon in 1998 was extremely broad, encompassing subjects that were never put on the negotiating table at the WTO but that have been a part of the FTAA since its beginning. The nine negotiating areas included not only the traditional market access areas of tariffs and non-tariff barriers for goods (including a separate negotiating group for agriculture), but also services, investment, government procurement, intellectual property rights, anti-dumping, subsidies and countervailing duties, competition policy, and dispute settlement. In all of these areas draft rules have been developed for the Western Hemisphere. Some 900 trade officials from around the hemisphere met regularly on a bi-monthly cycle for more than six years to negotiate these issues. One non-negotiating group on institutional issues was also created to consider the appropriate institutional and support structure for an eventual FTAA agreement.
4. Attention to the needs of the smaller economies. A non-negotiating Consultative Group on Smaller Economies was established from the outset of the FTAA process to deal with the unique situation of smaller economies, a category to

which 25 of the 34 participating countries felt themselves to belong.<sup>4</sup> This group was important in airing the concerns of smaller and relatively less developed economies. While the FTAA negotiations were unique in having established such a group for the first time, this example was subsequently reproduced at the WTO level in the Doha Development Round talks.<sup>5</sup>

5. Incorporating capacity-building as an integral part of the FTAA negotiations. Although capacity-building work was carried out from the inception of the FTAA process by the three institutions of the Tripartite Committee (the OAS, the IDB and ECLAC), Trade Ministers in the Western Hemisphere agreed to formally establish a Hemispheric Cooperation Program in November 2002 to attend to the technical assistance needs of smaller countries as an integral part of the negotiations. The efforts of this Committee were to continue after the negotiations had been concluded as well, in the form of capacity-building assistance to FTAA members in their efforts to adjust to free trade.
6. Transparency of the FTAA negotiating process and outreach to civil society Lastly, the FTAA was unique in creating a Committee on Civil Society from the outset of the negotiating process. Public submissions were welcomed on an ongoing basis and open meetings were held periodically on the various negotiating issues. Very significantly, the draft text of the FTAA Agreement was made public on three different occasions. This represented a unique step in the history of trade negotiations and the first time that governments involved in a negotiating process agreed to publish a negotiating text.
7. Rotating the chairmanship and the site of the negotiations and of the FTAA Secretariat. The governments launching the FTAA decided to introduce a rotating style for the selection of the countries hosting the meetings of the preparatory and the negotiating process. The chairmanship of the negotiating groups as well as the chairmanship of the FTAA process itself (the country

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<sup>4</sup> This was done on the basis of “self selection”, as the FTAA negotiators never managed to agree formally on what group of countries should be defined as “small economies”. For this reason, the term adopted in the FTAA was “small and relatively less developed economies”. This allowed the group to encompass countries such as those in Central America, Bolivia, Ecuador and Paraguay.

<sup>5</sup> Section 3.7 discusses the issues that are being negotiated in the nine FTAA negotiating groups, while Section 3.8 discusses the issues covered within the three non-negotiating groups/committees.

chairing the Trade Negotiations Committee) was changed on a two-to-three year basis. Equally, the site of the FTAA Secretariat where the negotiations were held was also rotated. Three sites hosted the negotiations in turn: Miami, USA; Panama City, Panama; and Puebla, Mexico. The site for the permanent FTAA Secretariat had not been decided at the time the negotiations stalled, but no fewer than ten cities in eight countries (three in the United States) had announced their candidacy to host the Secretariat.

The seven characteristics above that distinguished the FTAA process – large size of the undertaking, economic diversity, ambition of the negotiating mandate, attention to the smaller economies, incorporation of capacity-building, transparency and outreach to civil society, and the rotating structure of the mechanics of the negotiations - set the FTAA apart from other regional negotiating efforts. Some of these characteristics constituted major challenges to the completion of the agreement, while others were considered as positive innovations and taken over at the WTO level. This will be commented on further in the paper.

### III. *The Preparatory Years*

Because it was felt that the participants were not equally prepared to enter into serious trade negotiations, governments launching the FTAA decided to first engage in a three-year preparatory process. This was to allow the countries time to train their negotiators and to study the issues under discussion. The preparatory period lasted for three years, from 1995 to 1998.

During the preparatory years, background documents were prepared and initial discussions were undertaken in twelve working groups that met on a regular, three-month basis in various parts of the Hemisphere. The Tripartite Committee institutions (OAS, IDB and ECLAC) played a key role in providing technical and logistical support during this time, particularly in assisting the smaller economies. The Tripartite Committee carried out a variety of tasks, including: preparation of inventories of laws and regulations in all of the negotiating areas; compilation of statistical data bases; elaboration of studies and background papers in many areas of the negotiations; coordination of the translation, timing, and distribution of documents for meetings with

the Administrative Secretariat; support to the chairs of the different working; and maintenance of the Official FTAA web site. In addition, the Tripartite Committee institutions, in particular, the IDB, have financed a large proportion of the operating costs of the Administrative Secretariat in its various locations. Each of the Tripartite Committee institutions also engaged (and continues to engage) in the organization and support of a significant number of educational, training and technical assistance activities throughout the Hemisphere. The technical expertise and support provided to the FTAA participating governments by the Tripartite Committee has proved very important in allowing the negotiating process to move forward smoothly.

During the preparatory phase four Trade Ministerial meetings took place: in Denver, US (1995); in Cartagena, Colombia (1996); in Belo Horizonte, Brazil (1997); and in San Jose, Costa Rica (1998), where Trade Ministers agreed to begin FTAA negotiations. These were then formally launched at a political meeting of the Heads of State and Government in the Second Summit of the Americas in Santiago de Chile in April 1998, underlining once again the political as well as economic character of the FTAA process.

In the San Jose Ministerial Declaration (1998), the structure of the negotiations was set out and general principles and objectives to guide the negotiations were agreed upon.<sup>6</sup> The Declaration affirmed that the FTAA Agreement would be balanced, comprehensive, WTO-consistent, and would constitute a single undertaking. Ministers also agreed as part of the principles that the negotiating process would be transparent and would take into account the differences in the levels of development and size of economies in order to facilitate full participation by all countries. The consensus principle for agreeing on decisions by all participants in the negotiating process was set out as the basic means of moving forward, similar to the WTO.

An interesting principle set out in the San Jose Declaration that was particularly important in light of the increasing number of regional trading arrangements in the Western Hemisphere at the time, was the statement that the final FTAA agreement would not displace any pre-existing sub-regional integration arrangement in the Americas. All previously-negotiated sub-regional agreements would continue to exist,

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<sup>6</sup> The General Principles and Objectives agreed by Ministers of Trade of the Western Hemisphere to guide the FTAA negotiations are listed in Annex I of the San Jose Ministerial Declaration of March 1998, which can be found on the official FTAA web site at [www.ftaa-alca.org](http://www.ftaa-alca.org).

but their provisions would prevail only 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*” (paragraph f of Annex I of the San Jose Ministerial Declaration).

#### IV. *The Mechanics of the Negotiations (April 1998 – February 2004)*

The structure and organization of the FTAA carried with them some interesting features that might prove instructive to those economies interested in an FTAAP. This section reviews the mechanics of the FTAA negotiating process.

##### *--Participants*

The participants in the FTAA negotiating process are the 34 democratically-elected governments in the Western Hemisphere that participated in the 1994 Miami Summit of the Americas meeting.<sup>7</sup> These include all of the independent states in North America, Central America and South America, as well as the members of CARICOM in the Caribbean.<sup>8</sup> All countries in the FTAA process have an equal status in the negotiations and all decisions are taken by consensus.

##### *--Structure*

The FTAA negotiations are carried out under a structure that was agreed in the San Jose Ministerial Declaration of 1998 and that ensures broad geographical participation in the leadership of the FTAA process itself and of the various FTAA entities. The Chairmanship of the process, the site of the negotiations, and the Chairs and Vice Chairs of the various negotiating groups, were designed to rotate among participating countries during the four phases of the negotiations, as shown in the chart below. Chairs of the FTAA process have included Canada, Argentina and Ecuador.

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<sup>7</sup> The 34 participants in the Free Trade Area of the Americas (FTAA) process are: Canada, the United States, Mexico, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Bolivia, the Dominican Republic, Colombia, Ecuador, Peru, Venezuela, Argentina, Brazil, Chile, Paraguay, Uruguay, and the 15 CARICOM member states, namely: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

<sup>8</sup> Cuba has not been invited to participate in the FTAA process, even though it is an independent state in the Western Hemisphere, because it does not currently have a democratically elected government and was suspended from participating in the Inter-American System of the OAS since 1962.

Chairmanship of the fourth and final phase of the FTAA process is being jointly shared by Brazil and the United States under a rather unique arrangement that many have considered less than satisfactory, as it has been viewed as one of the stumbling blocks to progress in the negotiations.

The venue or site of the FTAA negotiations was also established on a rotating basis. Three countries were designated as hosts of the negotiations: the United States (Miami) from May 1998 to February 2001; Panama (Panama City) from March 2001 to February 2003; and Mexico (Puebla) from March 2003 to the conclusion of the negotiations.

<i>--Chairmanship of FTAA Negotiations</i>	Chair	Vice-Chair
May 1, 1998 - October 31, 1999	Canada	Argentina
November 1, 1999 - April 30, 2001	Argentina	Ecuador
May 1, 2001 - October 31, 2002	Ecuador	Chile
Co-Chairs		
November 1, 2002 - conclusion of the negotiations	Brazil and United States of America	

Ministers Responsible for Trade in the Western Hemisphere were given the responsibility of overseeing the negotiations and met generally every eighteen months. Eight Trade Ministerial meetings took place during the life of the FTAA process : Denver, USA (1995), Cartagena, Colombia (1996), Belo Horizonte, Brazil (1997), San Jose, Costa Rica (1998), Toronto, Canada (1999), Buenos Aires, Argentina (2001), Quito, Ecuador (2002) and Miami, USA (2003). A Ministerial Declaration resulted from each of these meetings, which can be found on the FTAA official website ([www.ftaa-alca.org](http://www.ftaa-alca.org)). A final meeting of Trade Ministers was mandated to take place in Brazil in 2004, but this did not occur.

The Vice Ministers Responsible for Trade were constituted into the Trade Negotiations Committee (TNC) and were tasked with reviewing progress in the FTAA process and giving instructions to guide the work of the negotiating groups and other entities. Additionally, Vice Ministers had the responsibility for ensuring transparency in the negotiations as well as the full participation of all of the countries in the FTAA process,

overseeing the FTAA Administrative Secretariat and deciding on the overall architecture of the agreement and other institutional issues. The TNC normally met three to four times a year, at rotating sites throughout the Hemisphere. No fewer than twenty (20) meetings of Vice Ministers of Trade took place between June 1998 and February 2004.

Two web sites were set up for the FTAA process: an official web site on which only official FTAA documents were posted in all four official languages of the negotiations (English, Spanish, Portuguese and French); and an FTAA “Secure site” to be used only by authorized government negotiators who had received a restricted password for access. On the “Secure site” are posted all of the negotiating proposals submitted to the various FTAA negotiating groups and the TNC during the life of the negotiations.

*--Technical and analytical support to the FTAA negotiations*

Important technical and analytical support to the participants in the FTAA negotiations, to the Chairs of the negotiating groups and to the Chairs of the FTAA process, by the three institutions of the Tripartite Committee: the Inter-American Development Bank (IDB), the Organization of American States (OAS) and the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). The three Tripartite institutions also received a mandate from the outset of the process to provide technical assistance related to FTAA issues, particularly for the smaller economies of the Hemisphere, and to carry out capacity-building activities. They have been actively involved in elaborating and supporting the implementation of the Hemispheric Cooperation Program officially endorsed by Ministers as part of the process in 2002.

*--Administrative and financial support to the FTAA negotiations*

Administrative and logistical support was provided to the FTAA process by the FTAA Administrative Secretariat, which also served as the host site for the meetings of the negotiating groups (but not necessarily the meetings of the TNC or the Trade Ministerial meetings). The Secretariat was tasked with keeping the official archives of the negotiations, and providing conference services as well as translation and interpretation, as all meetings are conducted in the two working languages of English and Spanish.<sup>9</sup>

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<sup>9</sup> FTAA meetings at the Ministerial and the Vice Ministerial level are conducted in the four official languages of the Summit Process, namely English, Spanish, Portuguese and French. However, the

Key financial support for the FTAA negotiating process was provided by the three institutions of the Tripartite Committee, particularly the Inter-American Development Bank. Financial contribution from the IDB has covered the salaries of the staff of the FTAA Administrative Secretariat, while the country hosting the Administrative Secretariat has covered the cost of the infrastructure, maintenance, guards and other operating expenses. The Government of Mexico has been financing these costs since February 2004, even as the negotiating groups have not met.

#### *V. Negotiating groups created for nine issue areas*

Nine negotiating groups were created for the FTAA talks to address issues in the following areas:

1. market access (tariffs and non-tariff barriers, rules of origin, safeguards);
2. agriculture;
3. services;
4. investment;
5. government procurement;
6. subsidies, antidumping and countervailing duties;
7. intellectual property rights;
8. competition policy;
9. dispute settlement.

The first five negotiating groups were given a mandate to negotiate market access as well as trade rules; the latter four negotiating groups were given a mandate only to negotiate trade disciplines. The nine negotiating groups met regularly between May 1998 and November 2003 (the date of the Miami Trade Ministerial) at an intensive pace, on average five to six times a year.

The FTAA negotiations moved forward in these nine groups through negotiating proposals that were submitted by the participants, very similar to the process at the WTO level. Many of these proposals mirrored the text and disciplines of existing sub-regional agreements in the hemisphere (NAFTA, MERCOSUR, the Andean Community

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meetings of the negotiating groups, as well as the circulation of documents, are carried out in the two working languages of English and Spanish.

Agreement, and/or CARICOM), while others incorporated elements of newer sub-agreements such as the ones between Chile and Central America (2002), Panama and Central America (2003), Chile and the United States (2004). As previously stated, the text of the third draft version of the entire FTAA agreement can be found on the official FTAA website, and various negotiating proposals can therefore be publicly verified by any interested person or group.

It was agreed in the San Jose Ministerial Declaration that the benchmark for the FTAA negotiations would be the WTO disciplines; however, all parties recognized that would be necessary to go further in order to reach a “WTO-plus” agreement.<sup>10</sup> The Declaration stated that the FTAA “...should improve upon WTO rules and disciplines wherever possible and appropriate...” However, considerable latitude existed at the time (and continues to exist) in interpreting what can qualify as “WTO-plus” for a regional agreement.

Three non-negotiating Committees and Groups also met as part of the FTAA process to address horizontal issues related to the negotiations, namely: the Consultative Group on Smaller Economies; the Committee of Government Representatives on the Participation of Civil Society, and the Technical Committee on Institutional Issues (TCI).

Preparations for an FTAA agreement were well advanced within the Technical Committee on Institutional Issues at the time the negotiations stalled. This Committee was created to consider the overall architecture of an FTAA Agreement and was given a mandate to draft text on the institutions required to implement the FTAA agreement, the funding mechanisms and administrative rules, among others.<sup>11</sup> The text submitted by the TCI forms part of the draft FTAA Agreement of November 2003 and contains chapters on: General Articles of the FTAA Agreement; Transparency; Treatment of the Differences in the Levels of Development and Size of Economies; Costs of Implementing the Agreement; Institutional Framework; Annexes; and Temporary and Final Provisions.

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<sup>10</sup> The WTO disciplines are those contained in the various Uruguay Round Agreements that were concluded as part of these negotiations in December 1993 and that are to be applied by all WTO Members. They include disciplines in the areas of tariffs, non-tariff barriers, agriculture, technical barriers to trade, sanitary and phytosanitary (SPS) measures, anti-dumping and countervailing duties, subsidies, textiles and clothing, services and intellectual property rights, among others.

<sup>11</sup> See the Terms of Reference for the Technical Committee on Institutional Issues in document FTAA.tncmin/2001/02 in date of February 4, 2002, found on the official FTAA Website.

These draft chapters all precede the substantive draft chapters of the various negotiating areas.<sup>12</sup>

*--Participation of the Private Sector and Civil Society*

The crafters of the FTAA negotiations realized from the outset that it would be important to incorporate the views and encourage the participation of both the business sector and of civil society at large into the process. Thus the San Jose Ministerial Declaration contains the following invitation by Trade Ministers:

*“We recognize and welcome the interests and concerns that different sectors of society have expressed in relation to the FTAA. Business and other sectors of production, labor, environmental and academic groups have been particularly active in this matter. We encourage these and other sectors of civil societies to present their views.....”*

A Business Forum was established in order to allow for the business community to meet prior to each Trade Ministerial meeting and to discuss and provide recommendations on all of the issues under negotiation. The Business Forum recommended, and Ministers adopted a series of Business Facilitation Measures (found in Annex II to the Toronto Ministerial Declaration of 2001).<sup>13</sup> Several meetings of experts were held in order to assure the implementation of the Customs-Related Business Facilitation Measures Business Facilitation measures. A Hemispheric Guide on Customs Procedures was prepared for the business community in the Americas.

A Civil Society Committee was also established to serve an important outreach function in allowing public interest groups and NGOs in the Hemisphere to express their views on the issues under negotiation. FTAA participating governments established an open invitation to civil society to present written contributions on the various FTAA topics, which were then forwarded to the relevant FTAA negotiating group or committee. These contributions were summarized and forwarded to the Ministers of Trade through the report of the Committee presented at each FTAA Ministerial meeting. A Civil Society

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<sup>12</sup> See the Third Draft Agreement of the FTAA contained in document FTAA.TNC/w/133/Rev.3 of November 21, 2003, found on the official FTAA Website, [www.ftaa-alca.org](http://www.ftaa-alca.org).

<sup>13</sup> The specific business facilitation measures agreed by the FTAA participating governments, based on the recommendations presented by the private sector representatives at the various Business Forum meetings can be found on the official FTAA website at [www.ftaa-alca.org](http://www.ftaa-alca.org) under “Business Facilitation”.

Forum was organized as well prior to each Trade Ministerial Meeting, and representatives of civil society groups were allowed to present conclusions from their deliberations directly to Ministers. In order to make its deliberations more pertinent and to reach out to more participants, the Civil Society Committee organized issue meetings on specific negotiating topics during what would turn out to be the last year of the FTAA process. These were joint sessions of civil society representatives and government negotiators. Three of these issue meetings took place, on the topics of agriculture (June 2003), services (September 2003) and intellectual property (January 2004).<sup>14</sup> This model of interaction with civil society would serve to inspire the outreach efforts of the WTO Secretariat at the multilateral level, in the early stages of the Doha Development Round of negotiations.

#### *VII. Challenges faced by the FTAA Undertaking*

Each set of trade negotiations, whether bilateral, regional or multilateral, faces its own particular set of circumstances and challenges. However, the FTAA undertaking, by its very uniqueness and its large number of participants, faced a considerable number of challenges that were much larger than those that a more reduced group of countries would have been able to face and possibly overcome. This section considers what the author feels, in hindsight, to have been the most formidable of those challenges.

##### *--Extended time frame for the negotiations*

The time frame set for the FTAA negotiations turned out in the end to have been too long to reach a successful agreement. Allowing for a decade between start and projected conclusion meant that at least two governments and often three governments would be elected and as many new trade ministers and negotiators would be appointed in the participating countries. While some governments (such as those of the United States, Chile and others) were willing and able to maintain the continuity of policy and vision necessary for such an ambitious undertaking during this extended time period, other governments (such as those of Brazil, Argentina, Venezuela) changed their focus

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<sup>14</sup> A summary of the position papers presented at these issue meetings, together with a list of participants by country and institution, can be found on the official FTAA website at [www.ftaa-alca.org](http://www.ftaa-alca.org) under "Civil Society".

following a change in leadership. In the end, the FTAA turned out to have made its most substantive contribution in terms of its preparatory process and the training ground it provided for negotiators to master their subjects and practice their negotiating techniques. The lengthy preparatory period built into the process (three and a half years formally, four years effectively) meant that the negotiations did not really begin in earnest until January of 1999. This allowed too much time to lapse, while other factors appeared to divert interest and attention.

*--Very ambitious negotiating agenda*

The ambitious negotiating agenda agreed in the FTAA process also presented a major challenge to the negotiations. While the future FTAA agreement was viewed as one that would be “state of the art”, the very extensive coverage of behind-the-border, trade-related issues would prove to be one of the factors that created a division among participants. The ambition of the negotiating agenda was used by some governments to justify moving very slowly in the negotiations, and during the penultimate year, to request a scaling down of initial objectives.

*-- Large diversity of participants*

The large number of participants in the FTAA negotiating process included countries in the Americas of extreme differences in size and economic diversity. The latter was measured not only by levels of development and GDP per capita, but also by the sophistication of national institutions and the legitimacy of government itself. This meant that the negotiators faced a huge challenge in reaching an agreement that could be accepted and effectively implemented by all. Although the Tripartite institutions were active in carrying out capacity-building, national government officials and negotiators often changed or were rotated, or left public service, so that training proved to be an ongoing challenge.

*--Lack of clarity on what constitutes “WTO plus”*

One of the challenges facing any group of very diverse countries setting out to negotiate a free trade agreement is the very wide-ranging judgment of what can constitute an acceptable level of “WTO-plus” disciplines. Making this determination is complicated by the fact that the WTO itself (or rather its members) has been unable to set out clear

benchmarks for evaluating the compliance of regional trading agreements with WTO requirements – Article XXIV of the General Agreement on Trade and Tariffs (GATT) in the case of goods and Article V of the General Agreement on Trade in Services (GATS) in the case of services.<sup>15</sup> Partly, but not only, for this reason existing regional agreements vary widely in their coverage and disciplines, as well as in their degree of market opening for goods and services.

In the FTAA process, this lack of clarity meant that participants, while agreeing on the general “WTO-plus” principle, had considerable latitude to argue which disciplines and market access conditions would qualify for this status.<sup>16</sup> It is fair to say that as no single template exists for a regional trade agreement, this will pose a challenge to APEC members setting out to negotiate an FTAA, as the level of ambition of what participating governments would like to see as a final outcome is likely to vary widely in terms their conception of an acceptable “WTO-plus” agreement.

#### V. *The most controversial issues in the FTAA process*

Four issues in particular proved to be very controversial during the life of the FTAA negotiations, and the lack of ability among the major participants to reach a compromise on how to even approach the negotiations in these four areas was one of the causes that eventually led to the breakdown of the FTAA process. These issues were: agriculture; services / investment; intellectual property rights; and trade-related aspects of labor and environmental issues. Each issue is discussed in turn.

#### *--Agriculture*

The FTAA, like the Doha Round, was given an ambitious agenda in the area of agriculture. Latin American governments agreed to launch the FTAA partly so that these

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<sup>15</sup> A recent agreement was reached at the WTO in the context of the Doha Development Round on a “Transparency Mechanism for Regional Trade Agreements” in an effort to improve the notification of such agreements to the WTO Committee on Regional Trade Arrangements. The mechanism does not, however, cover the critical and much more difficult issue of how to evaluate RTAs for WTO compatibility once they have been notified.

<sup>16</sup> See article by Sherry Stephenson discussing GATS Article V, “GATS and Regional Integration: in *GATS2000: New Directions in Services Trade Liberalization*, edited by Pierre Sauve and Robert Stern (2000), Brookings Institution Press, pages 509-530.

regional negotiations could be used as a forum to make progress on agriculture that would translate over to the WTO.<sup>17</sup> However, this did not happen. The San Jose Ministerial Declaration set out several objectives for agriculture, including the elimination of tariffs and non-tariff barriers on agricultural products, the elimination of agricultural export subsidies, and the identification of other trade-distorting practices for agricultural products (i.e. domestic support), in order to bring them under greater discipline.

This ambitious agenda proved to be the Achilles heel of the FTAA. The inability to agree on agriculture effectively slowed progress in other negotiating areas. The attempt to use a regional forum to try and resolve one of the most sensitive and difficult of the multilateral issues raised unrealistic expectations on what the FTAA could achieve. From the start, the United States and Canada insisted that while the FTAA could discuss domestic support for agriculture, disciplines in this area could only be negotiated at the multilateral level, in the WTO Doha Round. Neither country wished to curtail its subsidy programs unless the European Union accepted similar disciplines. Led by MERCOSUR members, Latin Americans argued strongly that U.S. and Canadian domestic subsidy policies severely distorted the market and that export subsidies limited their commercial opportunities. For their part, the Caribbean countries wished to continue to enjoy the historical preferences they had with the European Union, as ACP (Africa, Caribbean and Pacific) former colonies and Overseas Countries and Territories (OCTs).

Priorities in the agricultural area thus remained far apart and controversial during the life of the FTAA negotiations. Increasingly following the launch of the Doha Development Round at end 2001, MERCOSUR members began to link progress in the other areas of the FTAA negotiations (especially services and investment) to progress in the Doha Round on agriculture. As a result the process began to lose momentum.

### *--Services / Investment*

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<sup>17</sup>The question of disciplining domestic support has not been raised in any of the other bilateral free trade agreements negotiated within the Western Hemisphere, nor does it form a part of their disciplines. Only the FTAA was given such a broad and ambitious negotiating mandate. In NAFTA the agricultural area was treated differently than that of other goods, and there is no mention of export subsidies or domestic subsidies. Agricultural market access is governed by bilateral agreements between the three parties rather than by a common agreement. As between Mexico and the United States, the NAFTA promises “free” agricultural trade, defined as the absence of no tariffs or quotas, after long delays and phase-ins for “sensitive” products like sugar, corn, beans, and several minor crops.

The services / investment area proved to be politically very sensitive in the FTAA negotiations. Many Latin American nations feared that they would have to give up their right to regulate in a discriminatory fashion by entering into comprehensive services and investment disciplines. They thus preferred to move more slowly and gradually towards liberalization. Because of this reluctance, the services/ investment area in the FTAA was beset with a major difference in vision as to how a trade agreement should be constructed. A large sub-set of countries (the “like-minded” NAFTA countries that had either negotiated with the United States or were in the process of doing so) wished to proceed along the lines of a “negative list approach” or a comprehensive coverage of all services sectors within the disciplines of the agreement (subject to the negotiation of an agreed number of exceptions or “non-conforming measures”) and binding of all of these non-conforming measures at the level of current regulatory practice.<sup>18</sup>

However, MERCOSUR members wished to follow a more modest, less comprehensive modality for liberalization of services and investment, similar to what has been done under the WTO General Agreement on Trade in Services (namely the “positive list” approach), with sectors included at choice, and weak disciplines on the level of binding commitments.

An additional problem involving the services/ investment areas in the FTAA context was the question of where to deal with investment to supply services – to treat it solely within the services chapter as one mode of service supply, or to deal with it as part of a comprehensive investment chapter covering both goods and services. The answer to this question would also determine how the FTAA agreement would be structured. However, it remained unresolved. Also relating to the investment area was the delicate question whether investor-state disputes would be a part of the FTAA and consequently subject to arbitration, akin to the controversial NAFTA Chapter 11 provisions that were carried (with slight modifications) into the U.S.-Chile and U.S.-CAFTA-DR free trade agreements.

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<sup>18</sup>However, even within North America there are still important sectors that continue to be reserved by each NAFTA party. For example, the United States exempted maritime transport, Canada protected its cultural industries, and Mexico maintained its nationalized energy sector, including electricity and drilling services. All three sectors were placed outside of the disciplines of the agreement. And all three NAFTA parties continue to limit foreign ownership of TV and radio. Indeed, most of the liberalization in the services area that has taken place in North America has occurred independently of the NAFTA, through voluntary liberalization rather than through negotiated market opening (the telecom sector is an excellent example of this). The main exception to this rule is the financial services sector in Mexico.

Lastly, the issue of the inclusion of the temporary movement of skilled and semi-skilled labor was a controversial one in the services / investment area that remained unresolved in the FTAA discussions. This area was of the greatest interest to the countries of the Caribbean, as well as to several of those in Latin America, who wanted FTAA visas from Canada and the United States, akin to H-1B visas, not only for skilled workers and corporate employees, as well but also for an additional category of technical workers.<sup>19</sup> The U.S. negotiators were unable, however, to discuss any type of commitment to temporary movement of persons in the FTAA negotiations, given Congressional objections to including this area within trade agreements (a firm decision since 2003), combined with heightened security worries.

#### *--Intellectual Property Rights*

The area of intellectual property protection was a negotiating issue pushed primarily by the United States who wished the FTAA to pioneer the next advance in intellectual property rights (IPR) disciplines and hoped that countries in the Americas would agree to stronger steps for IPR protection. The ways in which the United States (and at times other countries) wished for the FTAA to innovate were through: 1) extending protection in those areas already included in the WTO TRIPS Agreement (i.e. the areas of patents, trademarks, copyrights) by signing additional intellectual property right treaties; 2) carrying out enhanced enforcement; 3) taking into account the technological advances of the Internet for copyright protection and related rights; and 4) accepting very strict requirements for the use of compulsory licensing of patented pharmaceuticals provided in the Doha Declaration on TRIPS and Public Health (so that compulsory licensing would only be permitted in the narrowest circumstances).

Latin America and Caribbean governments were not convinced of the benefits for developing countries from adhering to even tougher intellectual property disciplines than those currently in force at the WTO level, with serious questions being raised by the

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<sup>19</sup> An H-1B visa is the visa category offered by the United States to skilled professionals from abroad and it is capped at an annual quota of 65,000 new entrants. The majority of H-1B visas are granted to engineers, computer programmers and software developers. The U.S. did not expand the number of H-1B visas it offered to grant at all in its services offer to the WTO Doha Development Round.

latter as to the desirability of extending IP protection any further by Brazil and Argentina.<sup>20</sup> Other Latin American countries would have liked an IPR chapter to include “rebalancing” disciplines, such as stricter rules on transfer of technology, the protection of folklore and indigenous plant species and varieties along with natural medicines, and long phase-in periods for new enforcement commitments. However, all of these questions were outstanding and remained highly controversial at the time the FTAA negotiations stalled.

### *--Labor and the Environment*

No formal negotiating group was established within the FTAA negotiating process to discuss the politically sensitive issues of labor and environment. As these areas were not among those of common agreement for a negotiating agenda at the time of the San Jose Trade Ministerial meeting, a compromise was reached whereby the negotiations agreed:

- a. *To strive to make our trade liberalization and environmental policies mutually supportive, taking into account work undertaken by the WTO and other international organizations.*
- b. *To further secure, in accordance with our respective laws and regulations, the observance and promotion of worker rights, renewing our commitment to the observance of internationally recognized core labor standards and acknowledging that the International Labor organization is the competent body to set and deal with those core labor standards.*

Despite (or perhaps because of) the objectives set out above, some FTAA participants argued that neither FTAA Ministers nor Heads of State and Government had been given a mandate to negotiate on these subjects. Nonetheless, the United States, with the support of Canada and Chile, continued to bring the two areas of labor and the environment up for discussion at the level of Vice Ministers. A great deal of time and acrimony was spent in debating whether these two areas could form part of the negotiations and of a final agreement. In the end it was decided that any governments had a right to submit proposals for consideration in any of the areas related to the negotiations, and that these proposals would be in brackets, as would all other negotiating proposals until agreed by consensus.

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<sup>20</sup> The MERCOSUR members (Argentina, Brazil, Paraguay and Uruguay) have still not complied with the terms of the WTO TRIPS Agreement to the satisfaction of the United States.

After the creation of the Technical Committee on Institutional Issues in 2001, the U.S. submitted text for draft chapters on labor and the environment to the Committee (chapters VI and VII, respectively, of the Draft FTAA Agreement). The draft chapters are very similar to what was agreed in the U.S.-Chile and U.S.-Singapore Free Trade Agreements. They contain provisions on the application and enforcement of national environmental/ labor laws, provisions for environmental/labor cooperation, consultation mechanisms, and disciplines for procedural matters. They allow the right to bring cases before FTAA panels, along with the possibility of trade sanctions if a party does not comply with an adverse panel decision on the enforcement of national laws.

While countries in the Western Hemisphere that had negotiated or were in the process of negotiating free trade agreements with the United States understood the political necessity of including labor and environmental provisions in any agreement that the U.S. would enter into, including the FTAA, other countries never accepted this. Thus the controversy surrounding these two issues continued to the time of the breakdown of the negotiations.<sup>21</sup>

Ultimately, though there were other areas of controversy as well in the negotiations, it was the above four issues that proved to be the most contentious and which were never resolved during the life of the FTAA negotiations. Because of the continued polarization between the MERCOSUR members and the NAFTA members (particularly Canada and the United States) on these issues, it is difficult to imagine what type of compromise solution might ultimately have been found in these controversial areas.

#### *VIII. The breakdown of the FTAA negotiations and the emergence of alternatives*

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<sup>21</sup> It will certainly be problematic, if not impossible, to have a future FTAA Agreement approved by the U.S. Congress without provisions on labor and the environment. The United States has gone beyond the formula developed in NAFTA in its more recent Free Trade Agreements with Jordan, Chile, Singapore and Australia. In those FTAs, provisions on labor and the environment form an integral part of the basic treaty and are subject to its dispute settlement proceedings. Each country commits to enforce its own laws, with the possibility of monetary fines or trade sanctions in the event a country engages in a persistent pattern of non-enforcement. These two areas will be greatly scrutinized by the U.S. Congress as a part of any trade agreement that comes up for approval. On the other hand, it is difficult to imagine that such an important political initiative as the FTAA would be denied on the grounds of too lax labor and environment provisions.

The objective of completing the FTAA was complicated not only by the failure to reach agreement on several key negotiating and other issues, including in particular the five described above, but also by the financial crises and political changes that beset many Latin American countries during the last four years of the negotiations, as well as fall-out from the new security imperatives of the post-9/11 world. Additionally and very significantly, the initiation of the Doha Development Round took much valuable attention away from the FTAA process after end 2002. And given the difficulties that the FTAA was confronting, the pursuit of bilateral free trade agreements increasingly came to be viewed as a plausible and easier alternative to a hemispheric-wide effort.

*--Financial crisis in Argentina and Southern Cone*

The severe financial and exchange rate crisis experienced by Argentina in the summer of 2002 strongly affected not only Argentina itself, but all of the other three members of MERCOSUR. The default by Argentina on its external debt, the move away from dollarization, together with the return to the use of a tremendously devalued peso and the loss of savings, very high rates of unemployment and the large surge in poverty levels that this engendered, were all perceived as having been the result of an erroneous pursuit of policies promoted under the “Washington consensus”. Other countries suffered as well, particularly Paraguay and Uruguay, through the downturn in Argentinian demand, bankruptcies and social disruption. Throughout the Southern Cone region, this financial crisis and its subsequent impact lasted more than two years and created a strong anti-northern, anti-capitalist backlash. Any initiative associated with orthodox economic policies, including free trade, was rejected by the populace. The FTAA was perceived as the banner or the most obvious symbol of these orthodox policies, pushed by the United States, and the MERCOSUR members expressed doubts about its potential benefits. Questions were raised by previous and newly-elected governments in Latin America as to whether they could fulfill their lofty Summit of the Americas promises—or whether they still wished to do so.

*--Changed political landscape in the Americas and the struggle for influence*

The political landscape in the Western Hemisphere changed dramatically as of 2002. Increasingly during the last two years of the FTAA it was apparent that a battle of influence was underway between the countries gravitating around the NAFTA pole and

those gravitating around the MERCOSUR pole. It became clear that the two largest countries in the Hemisphere - Brazil and the United States – no longer viewed trade and hemispheric integration after 2002 in the same manner they did when the FTAA process began eight years earlier in late 1994.

The differences in points of view of these two competing visions derived from a divergence in political objectives and priorities. Trade policy was drawn into the fray, becoming an integral part of foreign policy and thus making it more susceptible to political influences and decisions. While priorities with respect to trade had coincided among all participants at the time of the Summit of the Americas in Miami in December 1994 during the period of the “Washington consensus”, and had remained convergent for seven years as the FTAA negotiations moved forward, they clearly began to diverge after 2002. Two events occurred in at that time that in hindsight represent a watershed with respect to the definition of the national interests of Brazil/ MERCOSUR and the U.S. in trade.

In Brazil, President Lula da Silva of the Workers’ Party was elected in the fall of 2002, the first President from a working class background, running on a more populist platform than any previously seen. Although President Lula’s government has followed an orthodox line with respect to monetary policy, it has preferred to adopt a more strident rhetoric on trade, associating the FTAA process with a perceived dominance by the United States and the imposition of a negotiating agenda that it considers inappropriate and overly ambitious.

Brazil’s new government concluded early on that it had little interest in proceeding with the FTAA in the then existing framework of negotiations and attempted to reshape the negotiating framework and objectives. Brazil’s redefinition of its national interest coincided with its political ambitions to exercise leadership in South America. Priority of the Lula government in the trade arena was given to the Doha Development Round under the WTO, where Brazil felt that the prospects for liberalization in agricultural trade were more promising and where it could exercise a greater leadership role. In parallel, Brazil pushed for a regional deal with the European Union over one in the Western Hemisphere where it felt that the presence of the United States would dominate the trade agenda.

Inspired by President Lula and by President Kirchner in Argentina, a few other countries in Latin America have turned away from the FTAA to embrace rival paths to economic integration. During 2006 alone no fewer than ten Presidential elections were held in Latin America. Most of these new governments were socialist or populist in name and representation. This change in the political landscape has allowed for new directions in trade relations to be proposed by this new brand of leaders. The Boliverian Alternative for the Americas or ALBA, an initiative put forward by President Hugo Chavez of Venezuela in 2004 as an alternative to the FTAA, was adopted in April 2006 by Bolivia and Cuba in the form of a People's Trade Agreement. Under the ALBA vision, trade constitutes only one component of an economic relationship, of which the most important elements are economic cooperation and product complementarity.<sup>22</sup> This alternative vision opposes neo-liberal theories of free trade and comparative advantage and eschews a market-driven approach in favor of a state-driven one. Under the agreements that have been concluded through ALBA, energy is a critical component.

In the United States the summer of 2002 was marked by Congressional passage of Trade Promotion Authority (TPA) – the first time that the President had been able to obtain this required legislative stamp of approval to engage in trade negotiations since it had expired at the conclusion of the Uruguay Round at end 1993, nearly ten years earlier. This gave U.S. negotiators a new lease on life, but a very short leash within which to maneuver, as the content of any new trade agreement was already broadly defined by the terms of the TPA Act. With this in hand, the USTR turned to the pursuit of a very ambitious trade agenda in bilateral free trade agreements (FTAs) – the post-NAFTA template - that required not only market opening but also the adoption of far-reaching rules in behind-the-border areas. Institutional transformation and strengthening in partner FTA countries became one of the stated goals of U.S. trade policy, which followed an openly stated strategy of “competitive liberalization”.<sup>23</sup>

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<sup>22</sup> See explanation of the ALBA on the official website [www.alternativebolivariana.org](http://www.alternativebolivariana.org)

<sup>23</sup> The recent study by Simon J. Evenett and Michael Meier on “An Interim Assessment of the U.S. Trade Policy of Competitive Liberalization”, draft of 24 July 2006, is quite instructive in tracing the history and philosophy behind the pursuit of this strategy on the part of the U.S. Government.

However, U.S. negotiators were given little room to compromise under the TPA requirements in terms of the desired negotiated outcome of trade agreements, and particularly with respect to sensitive issues such as market access liberalization for certain agricultural products, services and investment liberalization, intellectual property right protection, trade remedy procedures and mobility of labor. Furthermore, the TPA requires that all trade agreements negotiated by the U.S. contain disciplines on labor and the environment (as previously discussed), with certain very specific criteria on application and enforcement of national laws.<sup>24</sup> This ambitious negotiating agenda was accepted by other Latin American countries after the FTAA negotiations foundered (including in the either completed or ongoing bilateral negotiations with Central America, the Dominican Republic, Peru, Colombia, Panama and Ecuador), but was no longer accepted by Brazil and its close trading partners.

### ***IX. Lessons to be drawn from the FTAA Experience for APEC***

A few key lessons may be drawn from the FTAA experience that should be of relevance to the APEC economies as they consider the possibility of engaging in negotiations for an Free Trade Area of the Asia Pacific. These are summarized below.

#### ***1. A unity of vision is necessary among the major economies (US, Japan, China)***

For negotiations on an FTAAP to be successful, there must be a unity of vision on the objective and finality of a regional agreement among the three major economies in the Asia Pacific region, namely the United States, Japan and the People's Republic of China. This unity of vision must be present at the beginning of the process and must be maintained until the end of the process. If these three economic giants (constituting three of the four largest economies in the world) do not see the objective and the finality of an FTAAP with a positive eye, or do not maintain a common purpose, then the negotiations will either not begin at all, or they will not succeed. It was after the unity of vision between the United

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<sup>24</sup> All the free trade agreements concluded by the United States since 2002 without exception have followed a similar template, given by the requirements of the TPA.

States and Brazil disappeared, that the FTAA negotiations stalled. And in spite of the fact that 30 of the 34 countries in the Hemisphere continue to actively support this objective, it has not proved possible to put the negotiations back on track. Such a unity of vision may be easier to achieve at the current time after the suspension of the Doha Development Round, when the FTAAP would be the most credible alternative to the unchecked proliferation of bilateral RTAs in the Asia Pacific.

## ***2. The time frame of the process must not be too long***

One of the major problems of the FTAA turned out to be its time framework. The decade given for the negotiations proved to be too long. While lesser developed APEC members can always sign on later to an FTAAP, agreement among the major countries must be seized in a time frame that does not admit too many changes of government. While ten years proved to be excessively drawn out for this process, two years would clearly be too short, so a period not longer than four to five years should probably be a reasonable one for such negotiations. A fixed deadline would be necessary, however, in order to focus efforts from the outset.

## ***3. An achievable outcome must be targeted***

If the FTAAP is viewed as an agreement of the entire APEC community, then its objectives must be realistic ones. The FTAAP negotiating agenda should not be overly ambitious, or this may derail the process. After the FTAA experience, it is highly doubtful whether a resolution of the issue of the reform of domestic agricultural support policies could be resolved at the regional level, so it would be wise to leave this issue off the agenda. And in the area of intellectual property demands, given the experience of the FTAA, these ambitions may need to be set at a more modest but achievable level. Likewise in the area of services and investment, given the even larger diversity of economies in the Asia Pacific region than in the Americas, the more advanced APEC members may need to consider a more nuanced approach in terms of services / investment

commitments. Given the size and dynamic nature of the region and the number of important economies it encompasses, it is possible that the U.S. Congress would accept an FTAAP agreement that would be somewhat different than the template of the bilateral free trade agreements that have been recently concluded by the USTR.

Reaching a region-wide agreement among so many widely-divergent economies will certainly prove challenging. If the U.S. and other more advanced economies were to insist on an ambitious agreement, then the alternative to an APEC-wide FTAAP in the first instance might be a staggered approach, whereby those economies that consider themselves ready to take on the disciplines of a “state of the art agreement” could do so at the time of completion of the FTAAP, while the other APEC members could do so when they would consider themselves ready. An integral component of the FTAAP would then consist of a strong trade capacity-building program, much like the Hemispheric Cooperation Program of the FTAA. This program would be designed to assist those less advanced economies in reaching the necessary levels of institutional sophistication that would allow them to assume the FTAAP disciplines. No specific time frame would be attached to this accession process, which would be limited to the APEC members.

#### ***4. There should be minimal interference from other RTA negotiations***

For the FTAAP negotiations to succeed, there should be minimal distraction from outside or other negotiating efforts. The FTAA negotiations proceeded at a rapid clip until the Doha Development Round was launched and attention was diverted as between negotiating arenas. This became even more apparent after the U.S. obtained TPA authority in 2002 and began to seriously engage in bilateral RTAs. This effort sapped the negotiating attention (and the ability to act in an independent manner) of both the Central American countries and the Andean

countries and weakened those in favor of pushing the FTAA forward. And although it is not impossible for negotiators to participate in various negotiating fora, it was clear in the Western Hemisphere that the amount of human resources required for multiple negotiations is much greater and the attention is subsequently less than would otherwise be the case.

For this reason, a standstill agreement at the outset to cease negotiating other RTAs during the period of the FTAAP discussions would be strongly desirable; otherwise too much distraction will be generated by parallel efforts. Additionally, the negotiating leverage of large trading partners with smaller ones in bilateral RTAs could take away their ability to be full participants in an FTAAP negotiating process.

Likewise, a clause similar to what was agreed in FTAA should be included at the outset in the negotiating principles of an FTAAP in order to clarify the status of existing or previously-negotiated RTAs and their relationship to a future region-wide agreement. This clause could make it clear that the FTAAP, once finalized and put in place, would prevail over all previous agreements, unless the disciplines of these pre-existing RTAs were deeper and went beyond the FTAAP.

***5. Chairmanship of the process should not be given to any of the major players***

The FTAA experience showed clearly that placing any of the major players in a position of leadership does not lead to a satisfactory outcome. Just as in the Doha Round negotiations where WTO members prefer not to assign the chairmanship of key negotiating groups to representatives of either the U.S., the EU or Japan, likewise in a regional negotiating process the chairmanship of the Trade Negotiations Committee should be given to a small but committed participant, who is not likely to try and influence the process for its own national objectives.

**6. *Prior understanding on how to treat labor and the environment is necessary***

Given the sensitivity of the two issues of labor and the environment and the difficulties that these issues caused during the entire life of the FTAA negotiations, it would be desirable to come to an agreement prior to the launch of the FTAAP on how these two issues would be treated. Would they be a part of the negotiating framework? And if so, in what form? As the U.S. TPA is very clear on its instruction to U.S. negotiators, the issues should be tackled from the outset and agreement reached between the major actors so that the FTAAP negotiations would not be poisoned by allegations over misunderstanding of meaning and objective in this area.

**7. *There must be a willingness and an identified capacity to finance and support the negotiating process***

Financing for the FTAA negotiations was provided both by the governments hosting the FTAA Secretariat (one-third), as well as by the Tripartite Committee (two-thirds of the cost of the negotiating process). The cost of providing the technical support to the negotiating groups and chairs, as well as carrying out capacity-building activities, was absorbed by the budgets of the Tripartite Committee institutions (OAS, IDB and ECLAC). The equivalent of this grouping of institutions does not exist in the Asia Pacific, other than the Asian Development Bank (ADB). Therefore, the question of who would finance this technical and analytical support (professional expertise) and who would provide the administrative support (presumably the APEC Secretariat) would have to be considered in advance. The ADB would need a mandate from its members to contribute to the financing of an FTAAP process, just as the IDB had to obtain one annually from its members. Capacity-building efforts to train and support trade negotiators would be particularly important for the FTAAP negotiations to succeed, given the diversity of economies in the Asia Pacific region.

## APPENDIX

### Chronology of developments in the FTAA from 1998 to 2004

- At the Fourth Trade Ministerial Meeting held in San Jose, Costa Rica in 1998, Ministers adopted the Declaration that set out their agreement to enter into formal FTAA negotiations. The Declaration contains general principles and objectives for the negotiations, elaborates on the structure of the negotiations and the establishment of the negotiating groups, and set out mandates for each of negotiating issue areas.
- Heads of State and Government in the Western Hemisphere met at the Second Summit of the Americas in Santiago de Chile in April 1998 and endorsed the recommendation contained in the Ministerial Declaration of San Jose, officially launching the FTAA negotiations.
- At the Fifth Trade Ministerial Meeting held in Toronto in 1999, Ministers instructed the negotiating groups to prepare a draft text of their respective chapters, and approved several business facilitation measures, designed to facilitate trade among countries in the Hemisphere.<sup>25</sup>
- At the Sixth Ministerial Meeting, held in Buenos Aires in April 2001, Ministers took a number of key decisions on the FTAA negotiations. The various negotiating groups submitted draft chapters of their areas, which Ministers agreed to make publicly available. Additionally, in order to move the process forward, the Technical Committee on Institutional Issues was created in order to begin deliberating the overall architecture of an FTAA Agreement and other institutional matters. In order to promote the dialogue with civil society, Ministers directed the Committee on the Participation of Civil Society to forward the submissions received on the various FTAA negotiating issues to the respective negotiating groups, as well as those related to the FTAA process in general. The importance of technical assistance for smaller economies was reiterated.<sup>26</sup>
- The Third Summit of the Americas was held in Quebec City on April 20-22, 2001. At this meeting, the decision to make the first draft of the FTAA Agreement available to the public was endorsed by Heads of State and Government. The Summit Declaration also fixed deadlines for the conclusion and implementation of the FTAA Agreement in the following terms:

*We direct our Ministers 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. This will be a key element for generating the economic growth and prosperity in the Hemisphere that will contribute to the achievement of the broad Summit objectives.*

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<sup>25</sup> These business facilitation measures can be found in the Annexes to the Toronto Ministerial Declaration of November 1999. They are concentrated in the areas of customs procedures and enhanced transparency. The working group on business facilitation ceased to meet after this Ministerial meeting.

<sup>26</sup> See the Buenos Aires Ministerial Declaration of April 7, 2001.

- A new phase of the negotiations began in May, 2002, with the initiation of market access negotiations for the five market access issues, namely tariffs and non-tariff barriers, agriculture, services, investment and government procurement. Principles and guidelines for these market access negotiations were agreed by Vice Ministers in 2002 and are set out in a public document entitled “Methods and Modalities for Negotiations”.<sup>27</sup>
- At the Seventh Trade Ministerial Meeting held in Quito, Ecuador in November 2002, Ministers agreed on a schedule for the exchange of initial market access offers (to take place between 15 December 2002 and 15 February 2003, with improvement to such offers by 15 June 2003 and negotiations on improvement of offers from 15 July 2003 onwards to the end of the negotiations). They also agreed to make public the second draft of the FTAA Agreement as well as the document on “Guidelines or Directives for the Treatment of the Differences in the Levels of Development and Size of Economies”.<sup>28</sup> Ministers approved the Hemispheric Cooperation Program (HCP) and made it a permanent feature of the FTAA process.
- The fourth and final phase of the FTAA negotiating process began in December 2002 and was to last until the conclusion of the negotiations in January 2005. It was agreed that two Ministerial meetings would take place during this phase, one in November 2003 in Miami, USA, and one in 2004 in Brazil. The Ministerial meeting in Brazil has not taken place to date.
- At their Eighth Ministerial Meeting in Miami on November 20, 2003, Ministers reiterated their commitment to the FTAA by the agreed deadline with the ultimate goal of “...achieving an area of free trade and regional integration”, and set out a revised vision of the FTAA as follows:

*We are mindful that negotiations must aim at a balanced agreement that addresses the issue of differences in the levels of development and size of economies of the hemisphere, through various provisions and mechanisms. Taking into account and acknowledging existing mandates, Ministers recognize that countries may assume different levels of commitments. We will seek to develop a common and balanced set of rights and obligations applicable to all countries. In addition, negotiations should allow for countries that so choose, within the FTAA, to agree to additional obligations and benefits. One possible course of action would be for these countries to conduct plurilateral negotiations within the FTAA to define the obligations in the respective individual areas.*

What resulted from the Miami meeting is no longer a one-track, unified agreement but a two-track, double FTAA vision with differing levels of ambition for the two tracks. Gone - at least in the short-to-medium term - is the notion of a single agreement with uniform

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<sup>27</sup> The document on “Methods and Modalities for the Negotiations” can be found on the official FTAA website [www.ftaa-alca.org](http://www.ftaa-alca.org) as FTAA.TNC/20/Rev.1 in date of October 18, 2002.

<sup>28</sup> The document on “Guidelines or Directives for the Treatment of the Differences in the Levels of Development and Size of Economies” can be found on the official FTAA website [www.ftaa-alca.org](http://www.ftaa-alca.org) as FTAA.TNC/18 in date of November 1, 2002.

disciplines for all the 34 negotiating governments. The decision by Trade Ministers to bifurcate the FTAA process into two negotiating tracks is found in paragraphs 5 through 10 of the Miami Ministerial Declaration entitled “The Vision of the FTAA”. The major innovation in these paragraphs is the introduction of the term “flexibility” in order to accompany the renewed commitment to a “comprehensive and balanced FTAA”.

The main text of these paragraphs reads as follows:

*We are mindful that negotiations must aim at a balanced agreement that addresses the issue of differences in the levels of development and size of economies of the hemisphere, through various provisions and mechanisms.*

*Taking into account and acknowledging existing mandates, Ministers recognize that countries may assume different levels of commitments. We will seek to develop a common and balanced set of rights and obligations applicable to all countries. In addition, negotiations should allow for countries that so choose, within the FTAA, to agree to additional obligations and benefits. One possible course of action would be for these countries to conduct plurilateral negotiations within the FTAA to define the obligations in the respective individual areas.*

*We fully expect that this endeavor will result in an appropriate balance of rights and obligations where countries reap the benefits of their respective commitments.*

- The Miami Ministerial Declaration recognizes – for the first time in the nine-year process -- that plurilateral negotiations may be conducted among those countries wishing to take on higher levels of commitments, or those willing to “agree to additional obligations and benefits” (para. 7). The Declaration insists that the FTAA will still be comprehensive in that it will “include measures in each negotiating discipline, and horizontal measures, as appropriate” (para 9). The Vice Ministers are to develop a “common and balanced set of rights and obligations applicable to all countries”, while interested parties may choose “to develop additional liberalization and disciplines on a plurilateral basis” (para 10). Countries may choose to be a part of the higher-level negotiations at any time they wish by notifying this intention; if they do not wish to take part in the negotiations, they may still attend as observers and become participants at any time thereafter. Importantly, the “results of the negotiations [presumably both of them but this is not specified] must be WTO compliant” (para 10). According to several interpretations of the Miami Declaration, the agreements resulting from both tracks will be considered as forming the FTAA Agreement and will be concluded simultaneously. However, others have never been clear as to how this would work in practice.
- At the Miami Trade Ministerial meeting, Ministers agreed to make the third draft of the FTAA Agreement available to the public on the official FTAA website. This

draft is still the most current text of the FTAA Agreement, as neither Trade Ministers nor negotiating groups have met since that time (November 2003).

- At the Fourth Summit of the Americas in Mar del Plata, Argentina (November 2005), the question of trade and in particular the FTAA proved to be extremely controversial. In the end it was impossible to set out a common vision on trade in the Declaration of Mar del Plata, so two opposing visions were included. The paragraph 19 of the Declaration sets out these two opposing texts on the FTAA. No consultations on trade have taken place in the Hemisphere since the Summit.

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