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A Free Trade Area of the Americas: Status of Negotiations and Major Policy Issues

J. F. Hornbeck

Specialist in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Summary

In 1994, 34 Western Hemisphere nations met at the first Summit of the Americas, envisioning a plan to create a Free Trade Area of the Americas (FTAA) by January 2005. Nine years later, the third draft text of an agreement is being readied for the eighth trade ministerial scheduled for November 17-21, 2003 in Miami. However, serious differences between Brazil and the United States, similar to those that led to the collapse of the September 2003 WTO talks in Cancún, Mexico, invite a cautious assessment. The Miami ministerial may determine if the FTAA negotiations proceed on time and with the goal of achieving a comprehensive agreement, as first conceived. The 108th Congress will likely follow developments closely as it exercises its expanded consultative and oversight role per the Trade Promotion Authority (TPA) provisions of the Trade Act of 2002 (P.L. 107-210). This report will be updated periodically.

Background and Negotiation Process

For two decades, growing trade liberalization in Latin America has raised the prospect of a previously unrealized idea – a Free Trade Area of the Americas (FTAA) involving 34 nations of the region. Latin America's trade policies have been christened the "New Regionalism" to reflect their evolution from an "old" system of closed subregional agreements that dominated in the early post-war era, to one based on more open and deeper commitments both within and outside the region, and all part of broader policy reform efforts that emerged in the aftermath of the 1980s debt crisis. Examples include the North American Free Trade Agreement (NAFTA), the Southern Cone Common Market (Mercado Común del Sur), and the Central American Common Market (CACM) as revitalized in the 1990s. Combined with unilateral, bilateral, and multilateral efforts, these subregional agreements have fostered trade opening, with average tariff rates in Latin America having fallen from 40% in the mid-1980s to under 12% by 2000.¹

¹ Inter-American Development Bank. *Beyond Borders: The New Regionalism in Latin America. Economic and Social Progress Report*. Washington, D.C. 2002, pp. 25, 32-33, and 62.

Many see the FTAA as the next important step for Latin American trade opening and an essential element of an export-led development strategy. There are three important aspects to this strategy: 1) increased Latin American trade with the large U.S. market; 2) increased trade within the Latin American region; and 3) increased foreign investment. Intraregional trade has grown precipitously and is recognized as a key factor in output and productivity growth for the region. Latin America's trade has grown faster than the world average over the last decade, in part due to growth in traditional exports such as agriculture and other commodities. Increasingly, as in cases such as Mexico and Central America, diversification into light manufacturing has been a direct result of closer trade and investment ties with the large industrial U.S. market. Therefore, the FTAA raises expectations that it will lead to growth in traditional exports as well as promote trade diversification with the help of foreign investment.²

Despite the noted progress in Latin America's trade liberalization, the multitude of free trade agreements (FTAs) that the "New Regionalism" has spawned can also lead to inefficient and discriminatory trade. The impetus to correct this situation, combined with the conviction that trade liberalization is a cornerstone for reform and development, has generated widespread official support for the FTAA, although skeptical attitudes prevail as well. This includes the United States, which acknowledges its growing trade relationship with Latin America, and the potential for the FTAA to support broader U.S. goals in the region such as promoting democracy, regional security, and drug interdiction efforts. But, these goals must be reconciled with interests of import competing industries, as well as those of labor and environment groups. Still, an FTAA is expected to reduce barriers to trade region wide, allowing all countries to trade and invest more with each other under the same rules. Defining those "rules," however, is no small task.

Writing the FTAA agreement falls to nine negotiating groups responsible for: market access; agriculture; investment; services; government procurement; intellectual property rights; subsidies, antidumping, and countervailing duties; competition policy; and dispute settlement. The 34 countries made an important commitment to accept all parts of the agreement in the end, known as the single undertaking provision. Each group is chaired by a different country and the overall process is directed by the Trade Negotiations Committee (TNC). The TNC chair has rotated every 18 months or following a trade ministerial meeting, as have chairs of the various negotiating groups. In addition, there is a consultative group on smaller economies, a committee on civil society to provide input from non-government parties (labor, academia, environmental groups), a technical committee on institutional issues, and a joint government-private sector committee of experts on electronic commerce. Draft FTAA texts reflect the input of all countries, and in some cases groups of countries such as Mercosur, with "bracketed text" reflecting areas of disagreement. In an unprecedented nod to transparency in the trade negotiating process, the draft texts are being released upon completion in all four official languages.³

Since 1994, there have been three summits and seven trade ministerial meetings. Trade ministers approved the first draft of the FTAA at the April 5-7, 2001 ministerial in Buenos Aires and it was adopted by the countries at the Quebec City Summit three weeks

² Ibid., pp. 24-29 and Weintraub, Sidney. *Development and Democracy in the Southern Cone*. Center for Strategic and International Studies, Washington, D.C., February 2000. pp. 12-13.

³ See: [<http://www.ustr.gov/regions/whemisphere/ftaa.shtml>] and [<http://www.ftaa-alca.org>].

later.⁴ Additional goals were achieved at the Quito ministerial in November 2002: 1) the second draft of the FTAA agreement was approved and released; 2) Brazil and the United States became co-chairs of the TNC and now guide the negotiating process to its completion; 3) a new Hemispheric Cooperation Program (HCP) was established to develop resources to help small countries “strengthen their capacity to implement and participate fully in the FTAA;” and 4) a time line was established for the critical market access negotiations. The eighth FTAA ministerial meeting will convene on November 17-21 2003 in Miami, Florida to unveil a third draft text of the agreement.

The most important recent milestone was the initiation of detailed market access negotiations involving five separate negotiating groups: market access; agriculture; services; investment; and government procurement. They were given instructions to coordinate their efforts in developing guidelines and chapter revisions. Final revised offers for all market access issues were due by July 15, 2003, but not all countries reached this goal. The ministerial declaration also formally affirmed that discussions on agriculture, a critical and sensitive topic for most countries, will have to be done with an eye on parallel discussions being undertaken by the World Trade Organization (WTO). The WTO deadline for agriculture negotiations is also set for January 2005.

Major Negotiation Issues

The FTAA involves a commitment by 34 countries to consider a broad trade policy agenda, the difficulty of which has become increasingly clear of late. Essentially, the United States has many different priorities than some key Latin American countries, making a balanced and mutually acceptable agreement difficult to define, as seen in a short review of the negotiating issues.

Market Access and Trade Remedy Issues. The negotiating committee on market access faces one of the most difficult challenges, particularly given that the two largest regional economies, Brazil and the United States, have different priorities. The United States, along with Canada, has the lowest average tariff rate in the Western Hemisphere of 4%. But Brazil and other countries argue that many of their exports are subject to U.S. tariff rate quotas (TRQs) and their related high peak tariffs, as well as countervailing duty and antidumping actions. Brazil, by contrast, has much lower peak tariff rates, but has the second highest average regional tariff rate of 15% and relies on other trade barriers, as well.⁵ The United States has focused its negotiation position on reducing overall tariff rates as the primary goal in market access discussion, but its specific offer differs significantly from what Brazil proposes (see next section).

Latin American countries, by contrast, are pressing to address U.S. trade remedy laws, domestic support for farmers, and peak tariff rates, with Brazil specifically focused on opening the U.S. market further to its agricultural, steel, and textile exports. Specific

⁴ Summits of the Americas took place in Miami (1994), Santiago (1998), and Quebec City (2001). Trade ministerial meetings were hosted in Denver (1995), Cartagena (1996), Belo Horizonte (1997), San Jose (1998), Toronto (1999), Buenos Aires (2001), Quito (2002), and will be followed by Miami (November 17-21, 2003).

⁵ 2000 unweighted average Most Favored Nation (MFN) applied tariff rates reported in: Inter-American Development Bank, *The New Regionalism in Latin America*, p. 62.

instructions were also given in Quito to the agriculture negotiating group. Agriculture is the most protected sector in most economies and for many Latin American countries, agricultural exporting is critical for their economic well being. Historically, it has proven to be among the most difficult areas to liberalize, yet many Latin American countries consider tackling U.S. agricultural trade policies, particularly subsidies, central to any discussion on market access. Agricultural interest groups in the United States have made clear, however, that they are uninterested in negotiating an agricultural subsidies agreement that does not include Europe and Japan. Such an agreement seems unlikely to materialize in the near future given the collapse of the September 2003 WTO talks in Cancun, in part because of sensitivities over agricultural issues.⁶

Other Trade Barrier Issues. Services trade is another vital issue for the United States given its competitive strength in such areas as financial services, transportation, engineering, and technology consulting. Beyond market access, there are issues critical to the United States that will take center stage, if the recently completed U.S.-Chile FTA negotiation is any indication. Intellectual property rights (IPR), government procurement, and competition policy are among the most important. Intellectual property rights violations have hurt U.S. producers throughout the world and few countries have laws protecting intellectual property to the extent the United States does. Copyright issues and protection of digital products are among the more important issues to resolve. This proved difficult to resolve in the Chile bilateral agreement and may also require extensive discussion to change laws in over 30 other countries. Competition policy is another difficult area because of the need to standardize approaches regulating domestic economic activity, although it may prove more easily reconcilable than IPR disagreements.

Labor and Environment Provisions. Another contentious issue is language covering labor and environment provisions. Developing countries resist these provisions, arguing that they: 1) should be left to domestic governing authorities or the relevant international organization; 2) may be difficult for developing countries to meet; and, 3) can be used for protectionist purposes. Concern from the developed world, on the other hand, is that different standards among trading countries may provide competitive advantages or disadvantages (lower or higher costs to produce). Specifically, the concern goes to ensuring that lower environmental or labor standards in developing countries not become a basis for exploitive, lower-cost exporting, or serve to attract foreign capital investment, and that higher standards, as in the United States, not be challenged as disguised barriers to trade. Environmental advocates also point to the social impact of failure to enforce pollution abatement and resource management laws.

NAFTA set a precedent for including labor and environment provisions in trade side agreements. Since then, the debate has intensified and has turned on where the language should be placed in the agreement, the specificity of the provisions, and how dispute resolution will be handled. A key reference point is the U.S.-Jordan FTA, which incorporated labor and environment provisions into the text of the agreement and provided for a single dispute resolution mechanism for both commercial and social issues. The wording emphasizes that each country will be held accountable for enforcing its own laws, will reaffirm its commitments to basic United Nations International Labor

⁶ For details on agricultural trade issues, see: CRS Report RL30935, *Agricultural Trade in the Free Trade Area of the Americas*, by Remy Jurenas.

Organization (ILO) labor standards, and not diminish its standards as a way to pursue trade and investment opportunities. Trade sanctions, although not expressly called for, are also not excluded as a possible remedy for noncompliance.

Many in the United States and Latin America found these provisions too strict and resistance arose over the possible use of trade sanctions. The U.S.-Chile FTA calls for limited “monetary assessments” to address noncompliance, with a recourse to loss of trade benefits to collect unpaid fines, if needed. Labor advocates, however, argue that the U.S.-Chile FTA steps back from the U.S.-Jordan commitments because dispute resolution expressly applies only to upholding domestic labor laws, not reaffirmation of ILO standards nor “non-derogation” from domestic standards. This issue, however, hinges on one’s interpretation of congressional intent of negotiating objectives, as written in the TPA, which the USTR argues it has met in the Chile agreement. The monetary assessment is also questioned as a “meaningful deterrent” for various reasons, which is also disputed by the USTR.⁷ Given the continuing debate over labor and environment language, the issue appears to remain open with respect to the FTAA.

Outlook: The U.S.-Brazil Nexus

The FTAA negotiations are at a crossroads, with Brazil and the United States at odds over how to proceed. As the TNC co-chairs and the two largest regional economies with perhaps the most divergent perspectives on the FTAA, resolving their differences will be crucial for meeting the January 2005 deadline. Although both countries reiterated their commitment to meeting this deadline in a mini-ministerial conducted on June 13, 2003, and at a meeting between Presidents Bush and Lula a week later, there appears to be considerable difference in what they expect to accomplish. In fact, the two countries may be contemplating significantly different notions of an FTAA.

Brazil has criticized three U.S. trade policy initiatives. The first is the U.S. strategy of “competitive liberalization,” or the pursuit of subregional trade arrangements. In particular, Brazil sees NAFTA, the Andean Trade Promotion Act (ATPA), the Caribbean Basin Initiative (CBI), and bilateral agreements with Chile and Central America as having an isolating effect on the Mercosur countries, and especially Brazil, in the context of the FTAA negotiations. Second, Brazil considers the U.S. refusal to address agricultural subsidies and antidumping issues in the FTAA to be in conflict with the FTAA’s single undertaking provision.⁸

Third, Brazil objects to the U.S. market access offer. The United States has proposed a “differentiated access” approach to market access, which overall calls for 65% of imports from Latin America to be given duty free treatment immediately, but with

⁷ Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC). *The U.S.-Chile and U.S.-Singapore Free Trade Agreements*. February 28, 2003. pp. 5-9 and USTR Response to the Labor Advisory Committee (LAC) report on the proposed FTAs with Singapore and Chile. Undated. See: [<http://www.USTR.gov>].

⁸ The USTR, in its summary of the “most important” FTAA negotiating principles in its *Trade Policy Agenda and Annual Report*, has always emphasized two points: improving upon WTO rules and disciplines, and the outcome being a single undertaking. Interestingly, the single undertaking language was dropped in the 2003 report.

different tariff elimination timetables “to reflect different sizes and levels of development of the economies.” With respect to U.S. consumer and industrial imports, immediate duty-free treatment would apply to the following percentages of goods based on their subregion of origin: 1) Caricom–91%; 2) Central America–66%; 3) Andean–61%; and 4) Mercosur–58%. A similar schedule is offered for agricultural products. Brazil in this case would qualify for the least preferential schedule, although it would still represent improved market access.

Brazil considers the U.S. strategy discriminatory and responded with its own approach, referred to as the “Three Track Proposal.” The Brazilian offer would: 1) have the United States conduct market access discussions with the Mercosur countries, known at the “4+1” arrangement; 2) jettison investment, government procurement, and IPR issues along with agricultural subsidies and antidumping (per U.S. wishes) to the Doha WTO round; and 3) include the remaining rules-based issues in the FTAA discussions. This might include rules of origin, some disciplines on investment, competition policy, and other issues not dealt with elsewhere. Brazil considers its offer as mirroring a U.S. trade policy strategy that Brazil characterizes as selectively using the FTAA to negotiate its best deal. The United States has not agreed to such a proposal, arguing that it effectively amounts to an alternative negotiation to the FTAA process.

In addition, the failure to advance on agricultural issues at the WTO Cancún ministerial is a major complication because it was supposed to be, at least in part, the answer to the FTAA agricultural dilemma. Although a market access agreement is still possible, it is not the heart of the issue and the United States seems unlikely to budge on discussing even export subsidies. If Brazil and other countries are not willing to proceed under these circumstances, it raises a huge question over what the FTAA will ultimately achieve and when it may happen. Current speculation includes an “FTAA lite” or “narrow proposal” that deals mostly with market access. Also there is the possibility of no FTAA by 2005 or perhaps an FTAA without Brazil, depending on how the other countries define their interests and align their loyalties. Should negotiations breakdown at the November 2003 FTAA ministerial, the United States seems poised to move quickly toward more bilateral arrangements, perhaps diminishing any collective bargaining position of the Latin American countries and further undermining the FTAA process.

Motivations will be tested in this situation. For example, Brazil is far less trade dependent on the United States than many other Latin American countries and so may be much less willing to bend to U.S. pressure than say, the Central American countries. In fact, it has been estimated that a free trade agreement with the European Union would be a greater economic benefit to Brazil than the FTAA.⁹ Brazil also has received some support for its positions from the other Mercosur countries. Given Brazilian intransigence toward U.S. positions and its relatively significant bargaining leverage, there may be serious pressure on the U.S. to find a compromise on a number of issues, but it is unclear where such a compromise rests given the United States seems unlikely to change its position on many of the key issues as well. Therefore, it appears that if a consensus resolution to move ahead cannot be struck at the November 2003 ministerial, the FTAA may become a delayed or diminished agreement, or both.

⁹ Inter-American Development Bank, *The New Regionalism in Latin America*, p. 52.