

Progress in the FTAA Negotiations

By Robert Spitzer

Introduction:

With more than 800 million people throughout the Western Hemisphere, the FTAA will be the largest free-trade area in the world. It is an ambitious undertaking in many ways. It will be a single trade agreement for 34 different countries each with its own interests and pattern of external relationships. They include some of the richest countries in the world and some of the poorest; some of the most efficient agricultural producers and some of the most heavily protected. But many of the region's leaders have identified trade as a means to address the need for economic growth, and despite the challenges, there seems to be the political will to press ahead. In my presentation I'm going to give you a little bit of history of the negotiations, discuss their structure, principles and objectives, and then get into more detail on the issues in the negotiations that affect agriculture.

Origin of the FTAA Negotiations

In Miami at the December, 1994 Summit of the Americas, the Heads of State and Government of the 34 democracies in the hemisphere agreed to construct a Free Trade Area of the Americas, or FTAA, in which barriers to trade and investment will be progressively eliminated, and to complete negotiations for the agreement by 2005. The process of developing the FTAA began with preliminary discussions among the participating countries, conducted through a number of working groups. Then, in March of 1998 the Trade Ministers of the FTAA countries, meeting in San Jose, Costa Rica, recommended the initiation of formal negotiations and set out the structure and general principles and objectives to guide the negotiations. On the basis of the San Jose Declaration, the FTAA negotiations were launched formally in April 1998, at the Second Summit of the Americas in Santiago, Chile.

Structure of the Negotiations

The structure established for the negotiations in the San Jose Declaration involved the creation of nine negotiating groups and three non-negotiating committees and groups, all overseen by the Trade Negotiations Committee which is made up of Vice Ministers responsible for Trade. The nine negotiating groups are:

- Market Access
- Agriculture
- Services
- Investment
- Government Procurement
- Intellectual Property Rights
- Competition Policy
- Subsidies, Antidumping and Countervailing Duties
- Dispute Settlement

The three non-negotiating committees and groups are:

- Consultative Group on Smaller Economies (CGSE)
- Committee of Government Representatives on the Participation of Civil Society (SOC)
- Joint Government-Private Sector Committee of Experts on Electronic Commerce.

The Trade Negotiations Committee (TNC) is responsible for guiding the work of all the groups and committees and for managing the negotiating process.

Principles and Objectives of the FTAA negotiations:

At the Summit of the Americas in Santiago, the leaders of the FTAA countries decided that the work of these groups and committees should be guided by the following principles as agreed by the ministers in San Jose:

- Decisions will be taken by consensus;
- Negotiations will be conducted in a transparent manner;
- The FTAA will be consistent with WTO rules and disciplines, and should improve upon these rules and disciplines wherever possible and appropriate;
- The FTAA will be a single undertaking ("nothing is agreed until all is agreed");
- The FTAA can coexist with bilateral and sub-regional agreements and countries may negotiate and accept the obligations of the FTAA individually or as members of a sub-regional integration group;
- Special attention will be given to the needs of the smaller economies.

For the negotiations on agriculture four major negotiating objectives were established:

- To progressively eliminate tariffs, and non-tariff barriers which restrict trade between participating countries, consistent with the WTO rules on the establishment of free trade areas.
- To eliminate agricultural export subsidies affecting trade in the Hemisphere.
- To identify other trade-distorting practices for agricultural products and bring them under greater discipline.
- To develop measures to ensure that sanitary and phytosanitary measures are not applied in a manner which would constitute a disguised restriction to trade.

The market access objective is shared with the Negotiating Group on Market Access, and topics such as Rules of Origin, customs procedures and Technical Barriers to Trade will be dealt with exclusively by that negotiating group. USDA participates actively in developing U.S. government approaches for agriculture-related issues in these areas.

Rhythm of the Negotiations:

The rhythm of the FTAA negotiations is set by the schedule of Ministerial meetings. Trade Ministers have been meeting every 18 months to take stock of the progress made by the negotiating groups and to give them guidance for their ongoing work. An individual country has acted as the chairman of the negotiations for each of these 18

month periods and has been responsible for hosting the Ministerial meetings at the end of its term. The chairmanship was first held by Canada, then by Argentina, then Ecuador and now, for the rest of the negotiations it is a co-chairmanship between the United States and Brazil.

The negotiations are managed by the Trade Negotiations Committee, which brings together Vice Ministers responsible for trade every three or four months. The TNC monitors the work of the negotiating groups and deals with issues which require political level decision. The TNC also establishes and maintains the budget for the negotiations as well as the calendar of meetings for all the FTAA entities.

Work on the text of the FTAA chapters and the negotiations on market access are done in the negotiating groups which meet about every six weeks. There is also now a Technical Committee on Institutions which is working on general issues such as the institutions that will be created by the agreement, guidelines for the structure of the text, and recommendations for dealing with issues which cut across several negotiating groups.

As the FTAA negotiations have progressed, the focus of the work has intensified. The period from September 1998 to November 1999 was dedicated to drafting an annotated outline for the agreement and for developing several business facilitation measures, particularly in the area of Customs procedures, as an early harvest for the negotiations. The period from December 1999 to April 2001 was used to develop a first draft of the text, which was then made public, the first time ever that a draft trade agreement has been made public in the middle of negotiations. The period from May 2001 through November 2002 was devoted to refining the draft text and to establishing the rules and procedures for the negotiation of detailed market access commitments. The revised draft texts and the guidelines for the market access negotiations were also made public following the November, 2002 Quito Ministerial meeting. The schedule established for completing the negotiations is as follows:

- February 15, 2003 - Tabling of initial market access offers for tariffs, services, investment and government procurement.
- June 15, 2003 - Presentation of requests for improvements in the initial offers.
- July 15 - ? - Period for presenting improved offers
- November 20-21, 2003 - Miami Ministerial
- December 31, 2004 - Negotiations conclude.
- December 31, 2005 - FTAA implementation begins.

Survey of Major Issues in the Agriculture Negotiations:

Market Access

The framework that was established for the tariff negotiations applies to both agricultural and non-agricultural products. There are two essential components: establishment of the starting point for reductions, referred to as the base rate, and the pace at which tariffs will be cut.

Base Rate. In the WTO, tariff reductions are negotiated from bound, or trade agreement, levels. As a result of the Uruguay Round, all agricultural tariffs are now bound in the WTO, but the commitments for developing countries are often ceiling bindings, that is tariff commitments at a level above the rates they actually apply. However, in the FTAA it has been agreed that, the base rates will be those tariffs that were actually being applied in October 2002, not the WTO bound rates. Country groups with common external tariffs are allowed to use those rates rather than their national tariffs, and Caricom is allowed to use its WTO bound rates for some agricultural products.

Pace of Tariff Elimination. In the FTAA we have established four elimination categories. Category A is immediate elimination upon entry into force of the agreement, category B is elimination within 5 years, category C is elimination within 10 years and category D is elimination over a period longer than 10 years.

Current Issues. There are currently three fundamental issues of principle outstanding in the area of market access. These are whether products can be excluded from liberalization, whether the principle of regional MFN should apply and how to take into account differences in levels of development or size of economies.

Exclusions. Another issue in the market access negotiations, especially in the agricultural sector, is the question of whether or not products can be excluded from the liberalization process. Since the beginning, Ministers have agreed on the principle that everything is subject to negotiation. Nevertheless, throughout the negotiations some countries have tried to obtain agreement that tariffs have to be eliminated on every product while other countries have sought the right to explicitly exclude sensitive products from liberalization. With the tabling of initial offers, this issue has arisen again as many countries have refused to place some of their sensitive products into any of the four tariff elimination categories. Since the offers are confidential, I cannot provide any more detail on this issue, other than to say that, to respect the mandate that everything is subject to negotiation, the United States put every product in one of the four categories and we will be using our requests for improvement in offers to encourage others to do the same.

Regional MFN and differential treatment for smaller economies. The other two major issues: Regional MFN and how to take into account differences in levels of development and size of economies are closely related. In the WTO, a fundamental principle is Most Favored Nation or MFN treatment. This is the principle that any concession granted to one partner has to be extended to all other WTO members. In the FTAA, some countries would like to apply this same concept, which they call Regional MFN. It would mean that if a country agrees to put a product in a particular elimination category for one country, that same treatment should be extended to all other FTAA participants. Another way to express this idea is that each country should have only one tariff elimination schedule for all its partners. The main proponents of this principle are the Mercosur countries, Canada, Costa Rica and Chile. In the view of the United States, this principle is in direct contradiction to Ministerial guidelines which provide that different trade liberalization timetables may be negotiated and that offering more rapid tariff reductions is one way to take into account differences in level of development and size of economies. The United States has actually tabled four different initial tariff offers, one

for the Caribbean Community countries, one for other countries currently benefiting from tariff preferences under the Caribbean Basin Initiative or CBI, one for the Andean Community and a fourth offer for all other FTAA participants. Most other countries have tabled only a single offer, although Chile did provide preferential treatment for the Caribbean Community countries in its initial offer. Mercosur considers that the U.S. bilateral approach puts them at a disadvantage.

Non-tariff measures. In the area of non-tariff measures, discretionary import licensing has been clearly identified in both the Negotiating Group on Market Access and the Negotiating Group on Agriculture as requiring additional disciplines. Quantitative restrictions and import prohibitions are also addressed while Technical Barriers to Trade and Sanitary and Phyto-Sanitary Measures are dealt with separately. In addition, the use of price bands has been identified as an issue in the agriculture text. The negotiating Group on Agriculture has also established a counter-notification procedure for non-tariff measures, which would allow a participant to notify a measure of another country as a barrier and require a bilateral consultation process with the results reported to all participants.

Export Subsidies

One of the earliest agreements in the area of agriculture is that export subsidies should be eliminated in the hemisphere. This agreement is built into the 1998 San Jose Ministerial Declaration. However, there are two sub-issues on which there is still substantial disagreement. These are: how to respond to subsidized exports from countries outside the hemisphere and whether any commitments should be made on export subsidies by FTAA participants on products exported outside the hemisphere. With regard to the issue of subsidized exports from non-FTAA countries, the United States has proposed that FTAA countries be allowed to reintroduce export subsidies in the hemisphere if they are facing competition from such trade and the importing country does not take any action to deal with it. Many of the other FTAA participants agree that something should be done to address this situation, but none are willing to accept the reintroduction of export subsidies as the appropriate remedy. Finally, some countries seek limitations on FTAA country export subsidies to non-hemispheric destinations. The goal of these limitations would be to ensure that resources which had been used to provide subsidies within the hemisphere are not redirected to markets outside the hemisphere where FTAA participants compete. The United States views this concept as totally outside the mandate of the FTAA.

Other Measures That Distort Trade in Agricultural Products

Another difficult issue in the negotiations on agriculture is the question of how to develop disciplines on other measures that distort trade in agricultural products, especially in the case of domestic support. Five policies have been identified in this area, domestic support, export credits, food aid, monopoly rights of state trading enterprises and differential export taxes. In each case, some FTAA members believe disciplines need to be established in the FTAA while others believe disciplines should only be established in

the WTO. Although countries line up differently on each of these policies, a key conflict is between the U.S., Canada and Mexico on one side and everyone else on the issue of domestic support. The NAFTA countries argue that it is not possible to discipline domestic support by destination and that acceptance of FTAA disciplines would be tantamount to unilateral disarmament since no disciplines would be imposed on the European Union or other countries outside the hemisphere. Therefore, they maintain that restrictions on domestic support can only be negotiated in the WTO. The other countries argue that domestic supports give northern producers an unfair advantage that has to be neutralized if they are to be expected to reduce market access barriers in the FTAA. The United States supports FTAA disciplines on state trading and differential export taxes.

Sanitary and Phytosanitary Measures

Discussions on Sanitary and Phytosanitary Measures in the FTAA have taken a two-pronged approach. One element is to establish a transparency mechanism and the other is to work on a text for the Agriculture chapter of the agreement. The transparency mechanism includes the requirement for countries to transmit to the FTAA the SPS notifications they have made in the WTO. It also includes a counter-notification procedure which allows countries to complain about a specific measure in place in another country and provides for a consultation process with reports to the rest of the FTAA parties. The U.S. objectives for this part of the negotiation are to increase familiarity and compliance with the WTO SPS Agreement in the hemisphere, to establish a framework to facilitate resolution of SPS problems in the region and to encourage cooperation among FTAA countries in order to strengthen our influence in international standard setting bodies and other international organizations.

How to treat differences in size of economy and levels of development

From the beginning of the FTAA, one of the most contentious issues has been how to take into account the differences in level of development and size of economies in the region. The smaller countries have pushed for up-front guarantees on issues such as market access and limits on new obligations in many of the negotiating areas, while the larger countries have argued that these differences should be taken into account on a case by case basis as concerns on specific issues arise. An important step in dealing with this issues was the decision taken by the TNC in September, 2001 which established guidelines for addressing the differences in size of economies and levels of development. This document, TNC/18, is publicly available on the FTAA web site. It provides that measures to take account of these differences should be decided by the individual negotiating groups on a case-by-case basis, that they should accommodate the needs of all countries, including existing market access conditions, that they should included transitional measures which could be supported by technical cooperation programs and that they could include longer periods for compliance with obligations. The FTAA structure includes a Consultative Group on Smaller Economies which is tasked with monitoring this issue across the negotiations. At the Quito Ministerial an important step was taken to address this issue with the establishment of the Hemispheric Cooperation Program. This program is designed to help countries identify where they will need

assistance to negotiate and implement the FTAA agreement and to match those needs with donor organizations such as the Inter-American Development Bank, USAID, and other organizations who can help.

Conclusion:

The FTAA is moving into the phase where real trade-offs will start to be made. This will intensify after revised market access offers are tabled this Fall. In the agriculture area, progress in the WTO negotiations will play an important role, but market access deals will increasingly become the main business of the negotiations as we approach end of 2004. It is possible to conclude the FTAA on time if there is political will, but there are a lot of challenges. These include uncertainty about the attitude of the new Brazilian administration, weakness in the economies of many of the countries in the region and the threat to political stability that accompanies that weakness, as well as the lack of public support for the FTAA in many countries. Only time will tell if these challenges can be overcome.

Additional Reading:

Summitry in the Americas: A Progress Report by Richard Feinberg who was the Senior Director for Inter-American Affairs in the National Security Council during the first Clinton Administration. Published by the Institute for International Economics in May, 1997.

FTAA web site: www.ftaa-alca.org

Guidance and Instructions to the FTAA Entities – April 10, 2003

Quito Ministerial Declaration – November 1, 2002

Second Draft FTAA Agreement – November 1, 2002

Guidelines or Directives for the Treatment of the Differences in the Levels of Development and Size of Economies - November 1, 2002

Document on Methods and Modalities for Negotiations - October 1, 2002