

# CRS Report for Congress

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

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### **Summary**

In 1994, 34 Western Hemisphere nations met at the first Summit of the Americas, envisioning a plan for completing a Free Trade Area of the Americas (FTAA) by January 1, 2005. Nine years later, at the November 2003 Miami trade ministerial, the United States and Brazil, the FTAA co-chairs, brokered a compromise. It moved the FTAA away from the comprehensive, single undertaking principle, toward a two-tier framework comprising a set of “common rights and obligations” for all countries, combined with voluntary plurilateral arrangements with country benefits related to commitments. So far, defining this concept has proven elusive, causing the FTAA talks to stall and the January 1, 2005 deadline to be missed. At the fourth Summit of the Americas, held in Mar del Plata, Argentina, on November 4-5, 2005, Brazil, Argentina, Uruguay, Paraguay, and Venezuela blocked an effort to restart negotiations in 2006. Venezuela’s accession as a full member to Mercosur in July 2006 will only coalesce and harden resistance to an FTAA. This report will be updated.

### **Background and Negotiation Process**

In the aftermath of the 1980s debt crisis, much of Latin America embraced broad economic policy reform that included major strides toward trade liberalization. This trend 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 reform has been christened the “New Regionalism” to reflect the evolution from an “old” system of closed subregional agreements that dominated in the post-war era, to one based on more open and deeper commitments both within and outside the region. Examples include the North American Free Trade Agreement (NAFTA), the Southern Common Market (Mercosur), the Andean Community of Nations (CAN), the revitalized Central American Common Market (CACM), and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). Combined with unilateral, bilateral, and multilateral efforts, these subregional agreements have fostered trade opening, with average applied tariff

rates of the major Latin American countries falling from 40% in the mid-1980s to under 10% by 2002.<sup>1</sup>

Despite noted progress in Latin America's trade liberalization, the multiple free trade agreements (FTAs) that this "New Regionalism" cultivated also created complicated rules and discriminatory trading patterns. The impetus to simplify this situation, combined with the conviction that trade liberalization is a cornerstone for broader reform and development, initially generated widespread support for an FTAA. The United States has led the FTAA effort in expectation that it not only would open markets for U.S. goods and services, but would provide benefits to the entire region by: 1) increasing Latin American trade with the large U.S. market; 2) fostering reciprocal trade among Latin American countries; and 3) encouraging more foreign direct investment in Latin America.<sup>2</sup>

The negotiation process is organized into nine working groups responsible for: market access; agriculture; investment; services; government procurement; intellectual property rights; subsidies, antidumping, and countervailing duties; competition policy; and dispute settlement. The groups are directed by the Trade Negotiations Committee (TNC) and each is chaired by a different country on a rotating basis. There is also a consultative group on smaller economies, a committee on civil society to provide input from non-government parties (e.g., labor, academia, and environmental groups), a technical committee on institutional issues, and a joint government-private sector committee of experts on electronic commerce. Draft FTAA texts are released in all four official languages, with "bracketed text" reflecting areas of disagreement.<sup>3</sup>

Since 1994, there have been four summits and eight trade ministerial meetings. The first draft of the FTAA was adopted at the Quebec City Summit in 2001 and a second draft at the Quito ministerial in November 2002. At that time, Brazil and the United States became co-chairs of the TNC and were charged with guiding the negotiating process to completion. The third draft text was accepted at the November 2003 FTAA ministerial in Miami. Soon thereafter the negotiations stalled and the January 1, 2005 completion deadline was missed, exposing more clearly challenges to the negotiation process, especially the need to resolve differences between the United States and Brazil if the FTAA is to move forward.

The breadth of an emerging resistance to the FTAA became clearer at the fourth Summit of the Americas held on November 4-5, 2005, in Mar del Plata, Argentina. Amid dramatic and sometimes violent protests against President George W. Bush and the FTAA, which was not scheduled as the major topic of this summit, it was evident that Latin America was divided over how to proceed. A total of 29 countries supported renewing negotiations, and the United States pushed to set a specific date in 2006. Brazil, Argentina, Uruguay, and Paraguay (the Mercosur countries) rejected this idea, arguing that the conditions for achieving a balanced and equitable agreement did not yet exist. Venezuela went one step further, lobbying to end any further effort on the FTAA and to

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<sup>1</sup> Inter-American Development Bank. *Beyond Borders: The New Regionalism in Latin America. Economic and Social Progress Report*. 2002, pp. 25, 32-33, and 62, and private communication.

<sup>2</sup> *Ibid.*, pp. 24-29.

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

unify resistance against U.S. policies and presence in Latin America. The Summit declaration called for a time to explore problems in the FTAA process, while awaiting the outcome of the upcoming World Trade Organization (WTO) ministerial, indicating that at this juncture, there is no unified vision on how to proceed with the proposed FTAA.

## Major Negotiation Issues

The FTAA began as a commitment by 34 countries to consider a comprehensive trade agreement that would be accepted as a single undertaking, with all parties agreeing to it as a whole. This proved to be a challenging task given that U.S. priorities differ from those of key Latin American countries, making a balanced and mutually acceptable agreement difficult to define, as a short review of the negotiating issues suggests.

**Market Access and Trade Remedy Issues.** Market access is one of the most difficult challenges because two of the largest regional economies, Brazil and the United States, have different priorities. The United States has the lowest average tariff rate in the Western Hemisphere of 4.3% (8.5% for agriculture and 3.7% for industrial goods), but maintains high peak tariffs related to tariff rate quotas (TRQs) on agricultural products. It also subsidizes many agricultural products and has applied antidumping duties to a concentrated group of industrial products (steel) that Latin American countries export. By contrast, Brazil has much lower peak tariff rates, but a much higher average tariff rate of 10.9% (10.2% for agriculture and 11.0% for industrial goods) and relies on other trade barriers, as well.<sup>4</sup> The United States, therefore, has focused its attention on eliminating tariffs broadly, whereas Brazil and other countries want to address peak tariffs and TRQs.

Latin American efforts to address U.S. trade remedy laws and domestic support programs have focused specifically on opening the U.S. market further to agricultural, steel, and textile exports. Agriculture is a protected sector, but it is important for Latin America's economic output, employment, income, and exports. Historically, it has proven to be the most difficult area to liberalize, yet many Latin American countries consider tackling U.S. agricultural trade policies central to any discussion on market access. The United States is open to discussing many agricultural issues, but has made clear that it will not negotiate domestic agricultural subsidies in a regional pact because: 1) it would hurt U.S. exporters in the Latin American market relative to other agricultural exporting countries that subsidize, and 2) it would diminish the U.S. multilateral bargaining position on subsidies in the broader WTO talks.<sup>5</sup> The Summit declaration addressed this issue, indicating that progress on agricultural issues in the Doha Round appears necessary to resolve this major sticking point in the FTAA.

**Other Trade Barrier Issues.** The United States is also interested in non-goods trade, areas in which it is very competitive. Services trade, for example, is a vital issue, including such important sectors as financial services, transportation, engineering, and professional services. Intellectual property rights (IPR), government procurement, and competition policy are also critical U.S. issues. IPR violations throughout much of Latin

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<sup>4</sup> 2004 simple average Most Favored Nation (MFN) tariff rates as calculated by the Inter-American Development Bank.

<sup>5</sup> For details on agricultural trade issues, see CRS Report RL30935, *Agricultural Trade in the Free Trade Area of the Americas*, by Remy Jurenas.

America have hurt U.S. producers and no country has laws equal to the United States in protecting intellectual property. IPR rules, however, have been criticized for increasing the financial burden on developing countries and there are competing views as to whether greater IPR protection will increase or diminish levels of technology transfer and foreign direct investment. Competition policy is another difficult area because of the need to change regulatory regimes covering domestic economic activity. In government procurement, many Latin American countries, including Brazil, are reluctant to open up their systems, preferring instead to support, if not protect, domestic industry participation.

**Labor and Environment Provisions.** Discussion of labor and environment issues is key for U.S. support of trade agreements, but resisted by developing countries. Advocates for including these issues argue that lower standards provide an exploitive and unfair competitive advantage (lower costs) for exporting and attracting foreign investment, and that higher U.S. standards should 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. The United States set the precedent of including relevant provisions in all its FTAs, but there is still considerable disagreement over how strong the language should be, particularly in enforcing International Labor Organization (ILO) fundamental principles, and in defining the dispute settlement mechanism. The FTAA debate has yet to focus on this concern in detail, but it will eventually need to be addressed.

## **Status of Negotiations: A Two-Tier FTAA?**

Nearly three years ago, formal FTAA negotiations stalled. As the TNC co-chairs, Brazil and the United States have continued to meet to discuss the details of a framework for moving ahead, but negotiators face a huge challenge in trying to reconcile their divergent priorities. When the FTAA negotiations began, they were predicated on the assumption that all countries could gain from a comprehensive and inclusive agreement, one that would address everything from market access to trade remedies and rules-based issues. Currently, it is unclear how many countries may be ready to accept such broad obligations. The issues are highlighted in the debate between Brazil and the United States and form the basis for the November 2003 Miami Ministerial compromise.

Brazil's leadership role among developing countries is a cornerstone of its foreign policy, which for its trade strategy means acting as a counterweight to U.S. influence in the region.<sup>6</sup> Tension between the United States and Brazil heightened in May 2003 when Brazil challenged three U.S. policy initiatives. First was U.S. pursuit of subregional and bilateral trade arrangements, which Brazil suggested isolates Mercosur in the context of the FTAA negotiations. Second, Brazil argued that U.S. refusal to address agricultural subsidies and antidumping disciplines in the FTAA affected its key export sectors. Third, the U.S. offer of "differentiated" market access gave Brazil the least favorable treatment. Brazil responded with its "Three Track Proposal" requesting the United States: 1) conduct separate market access discussions with Mercosur (the "4+1" arrangement); 2) jettison investment, services, government procurement, and IPR issues along with agricultural subsidies and antidumping (per U.S. wishes) to the Doha WTO round; and 3) include

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<sup>6</sup> See CRS Report RL33258, *Brazilian Trade Policy and the United States*, by J. F. Hornbeck.

some rules-based issues in the FTAA discussions. The United States rejected this so-called “FTAA lite” proposal and continued to argue for a more comprehensive agreement.

Brazil’s tactics include an offensively focused effort to support its growing agricultural export sector by insisting on prioritizing market access and subsidy issues.<sup>7</sup> Equally important is its defensive position toward opening its less competitive sectors of the economy to developed countries (services, IPR, government procurement, and investment), while prioritizing Mercosur trade and domestic market development. Although the private sector may be more open to engagement with the United States, Brazil is one of the less dependent Latin American countries on the U.S. market and has no regional U.S. preferential arrangement at stake to protect (e.g. CBI), so as a matter of public policy has resisted pressure to accept a deeper FTAA, and in its stead has expressed a preference for U.S.-Mercosur (4+1) market access talks.<sup>8</sup>

U.S.-Brazil differences were the major factor determining the outcome of the 2003 jointly-authored *Ministerial Declaration*. Although the ministerial declaration reaffirms the commitment to complete a “comprehensive and balanced” agreement, it does so in the context of a rather unorthodox compromise. The declaration states that “*countries may assume different levels of commitments...[with a] common set of rights and obligations applicable to all countries...[and may also] choose, within the FTAA, to agree to additional obligations and benefits.*” The additional obligations may be defined in plurilateral negotiations, with a country’s benefits being linked to the obligations it undertakes. The trade negotiating committee (TNC) was instructed to clarify the differences, which has not been possible.

At the Puebla TNC meeting held February 2-6, 2004, negotiators could not agree on the core set of rights and obligations. Brazil’s position was unchanged and called for all industrial and agricultural goods to be in the market access provisions, while pressing for elimination of export subsidies and action on domestic price supports for agricultural goods. It did not want to go beyond WTO commitments for services, IPR, government procurement, or investment. The U.S. priorities were nearly the opposite, calling for the inclusion of the last four topics and limiting market access language to “substantially all” products. The United States agreed to the elimination of export subsidies, but not domestic support for agriculture, which is also being discussed in the WTO.

## Outlook

The fourth Summit of the Americas at Mar del Plata in November 2005 was punctuated by violent protests against President Bush and U.S. policy in general, as well as a failure to set a date for restarting FTAA talks. Some interpreted this as a sign of diminished U.S. influence in the region, which could bode poorly for any hope of

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<sup>7</sup> This despite evidence that ending agricultural subsidies would increase FTAA agricultural trade little compared to a far bigger gain from eliminating tariffs, particularly for Brazil. Salazar-Xirinachs, José M. Development Issues Posed by the FTAA. In Weintraub, Sidney, Alan M. Rugman, and Gavin Boyd, eds. *Free Trade in the Americas: Economic and Political Issues for Governments and Firms*. Cheltenham, Edward Elgar Publishing, Inc. 2004. p. 238.

<sup>8</sup> Lorenzo, Fernando and Rosa Osimani. *Negotiations of the Mercosur with the FTAA and the U.S.* Red de Investigaciones Económicas del Mercosur. Montevideo, Uruguay. July 2003.

resurrecting the FTAA in the near future. The United States, however, remains committed to the two-tier framework and is continuing to work with Brazil to forge a solution to the impasse.

In the meantime, Latin America's New Regionalism is thriving in the form of a growing number of bilateral and plurilateral trade deals, many anchored to the economies of Brazil and the United States — the de facto default approach to a stalled FTAA. The United States implemented CAFTA-DR on April 1, 2006, and is pursuing bilateral FTAs with Panama and two of the Andean countries. The USTR framework for negotiating these FTAs relies on similar language for many of the chapters, with detailed market access and other schedules developed for each country. This allows for considerable flexibility in addressing sensitive products and disciplines within a comprehensive agreement that includes many of the critical U.S. issues such as services trade, investment, government procurement, intellectual property rights, labor, and environmental concerns, but avoids any mention of domestic subsidies and antidumping. As well as this approach has worked on a bilateral basis (opinions differ on this, but FTAs are being implemented), the United States has so far not been able to replicate it at the regional level.

Nor has Brazil stood still in the regional integration game. Mercosur has four associate members and succeeded in consummating a long-awaited political and economic pact with the Andean Community in October 2004. Brazil pushed the integration effort further on December 9, 2004, when twelve countries agreed to form the South American Community of Nations, a loose agreement calling for lower tariffs and improved political dialogue. The most significant development occurred on July 2, 2006, when Venezuela became the first country to join Mercosur as a full member. President Chávez's staunch anti-Americanism and determined opposition to an FTAA bodes poorly for restarting the negotiations at any point in time. Bolivia has also been asked to join Mercosur, which would unite in one trade pact all the opposition to the FTAA.

As the FTAA negotiations flounder, the political trade dynamics of the region appear to have shifted. It is conceivable that the region may be heading toward a competitive if not bifurcated approach toward economic integration, with the United States and its FTAs on one side and an expanding Mercosur on the other. Those countries still not allied, such as the Caribbean nations, which have supported restarting the FTAA talks, would seem to be in an awkward middle position. With U.S. trade preference programs (CBI and GSP) up for renewal in a less than fully supportive U.S. Congress, U.S. trade strategy for the region may be up for reevaluation as well, particularly if the WTO Doha round fails to reach a "successful" conclusion.

The FTAA was initially proposed to simplify trade relations with a balanced, comprehensive, single undertaking in which all countries would be treated equally. This proved to be too difficult, slowing progress and giving way to a host of subregional agreements that will likely further complicate trade and investment decisions, if not the FTAA negotiations themselves. The lack of movement has opened a hole for anti-FTAA forces, so that getting the FTAA back on track in 2006 or later is one of the major challenges to U.S. Latin American policy. Recent political realignments in Latin America suggest this task has only become more difficult.