

BUILDING THE FREE TRADE AREA OF THE AMERICAS A PROPOSAL BY CANADA

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I. INTRODUCTION

This Article addresses what form and shape to give to the Free Trade Area of the Americas, how to approach the negotiations, and when to begin.

II. PROGRESS TO DATE

The Free Trade Area of the Americas process was launched by Heads of Government in Miami in December 1994. They directed Trade Ministers to review work in existing fora and to develop an action plan for the FTAA.

At Denver in June 1995, Trade Ministers "agreed to begin immediately a work program to prepare for the initiation of negotiations of the FTAA in which barriers to trade and investment will be progressively eliminated." Ministers created seven working groups in priority areas to carry out preparatory work for negotiations and to report back to them at Cartagena. They also held a preliminary discussion on the form and shape of the negotiation of hemispheric free trade, addressing two fundamental issues—the scope of specific rights and obligations and the approach to use to achieve the FTAA.

At Cartagena, in March 1996, Trade Ministers reviewed the work undertaken since Denver, created four additional working groups, and reaffirmed that the FTAA should:

- (a) maximize market openness through high-level disciplines built on existing agreements;
- (b) be consistent with the WTO;
- (c) be balanced and comprehensive in scope covering at least all areas included in the Summit of the Americas Plan of Action;
- (d) not raise barriers to third countries; and
- (e) represent a single undertaking comprising mutual rights and obligations.

Ministers also examined approaches for negotiating a FTAA that would build on existing sub-regional and bilateral agreements and bring them together. Recognizing the varied and complex nature of possible approaches, they instructed their Vice-Ministers to make recommendations regarding appropriate approaches before the Belo Horizonte Ministerial Meeting. In addition, Ministers considered

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the timing and means of launching negotiations to establish the FTAA. While agreeing that further preparations were warranted, they directed Vice-Ministers to evaluate and recommend, before Belo Horizonte, when and how to launch FTAA negotiations, taking into account the need for concrete progress by the year 2000.

III. NEXT STEPS

Against this background, Vice-Ministers must assess and recommend to Trade Ministers, by the May 1997 Belo Horizonte meeting, answers to three fundamental questions:

1. What should be the scope of the FTAA in terms of specific rights and obligations?
2. How will we negotiate the FTAA? Among the thirty-four members of the hemisphere? Among existing sub-regional agreements? A combination of these two approaches?
3. When should we start negotiations, taking into account the need for concrete progress by 2000 and the agreed deadline for conclusions of negotiations by 2005?

A. What

The FTAA should co-exist with sub-regional agreements like MERCOSUR, the NAFTA, and other bilateral and plurilateral free trade agreements. It would thus complement rather than replace or supersede existing sub-regional agreements.

The FTAA should be a *single undertaking*. The single undertaking means *one agreement* containing the rights and obligations agreed upon during negotiations. It would provide for common rights and obligations among all member countries, some of which may also be members of sub-regional agreements with deeper or more extensive obligations.

As a comprehensive agreement that would co-exist with sub-regional agreements, in those cases where inconsistencies could arise between the FTAA and a pre-existing sub-regional agreement, it would be necessary for the members of the sub-regional agreement to determine which of the two would prevail.

The FTAA must be a WTO-consistent agreement. As set out in more detail below in the section on the Proposed Scope of Negotiations, the FTAA must, at a minimum, include the elimination of tariffs on all products with limited exceptions as may be negotiated by members. Negotiations should result in *tariff elimination* for most intra-regional trade in less than ten years. However, in the case of some members, such as smaller less developed economies, tariff elimination for some products might take longer than ten years. Clear and predictable *rules of origin* will need to be developed to ensure that the benefits of the agreement accrue to goods produced in the Western Hemisphere. Also,

customs procedures which facilitate the administration of the rules and simplify transactions for producers and traders will be an essential part of developing the FTAA process. This would include the development of common customs interpretations and procedures.

There are other trade measures on goods and services which must be included in the FTAA, in some cases to incorporate WTO rights and obligations into the agreement, in others to establish a process and timetable to go beyond WTO commitments and, in yet other cases, to incorporate into the agreement new specific provisions. Firm commitments on investment should be included as well, reflecting the level of commitments in existing sub-regional and bilateral agreements.

Finally, the FTAA should include an institutional framework (governing body, committees, and secretariat), dispute settlement procedures, and funding arrangements as well as provide for discussion of other issues, such as relevant labor and environmental matters.

B. How

Two possible approaches to negotiations have been discussed over the past eighteen months. One approach would involve bringing together the various sub-regional agreements into a Free Trade Area of the Americas. The other would involve deliberate action (i.e., participation in negotiations) by the thirty-four members. Canada is on record as favouring the latter approach.

To ensure the most effective negotiating process, each participant should represent itself in the negotiation of specific issues. There may be limited exceptions, however, where groups of countries maintain common external policies such as a common external tariff. In those cases, it would be expected that those countries would not negotiate individually. *Negotiating groups*, under the direction of a steering Committee, should be created based on the existing working group structure (recognizing that some groups may be merged and new groups created (e.g., institutional issues and dispute settlement)). These groups would be chaired by individuals chosen for their professional competence, due regard being given to intra-regional equilibrium. It may be desirable to have fewer negotiating groups, with a wider scope and meeting for longer periods of time, to reduce travel and other costs, taking into account the needs of smaller less developed members.

Negotiating groups will require *secretariat support*, which would be provided by a dedicated body formed of individuals chosen on the basis of trade policy expertise, language capabilities, familiarity with countries in the Western Hemisphere, and the FTAA process. Funding could be provided by the members of the Tripartite Committee. Secretariat functions should be understood to mean the provision of logistical and administrative support such as organization of meeting facilities and translation services, maintaining negotiating archives, preparing minutes of negotiating meetings, and maintaining the reference text of a draft Agreement during the negotiations. Secretariat functions would not

normally include the conduct of studies of the provision or written advice on issues under negotiation.

The negotiations should be held in *one centrally located, easily accessible location*, offering suitable meeting facilities, including secretarial support for delegations as well as telecommunication, interpretation, and translation services. Meetings of negotiating groups should, as much as possible, be held sequentially rather than concurrently, to minimize travel and other costs and maximize the effectiveness of negotiating teams. It may also be desirable, at the appropriate time, to hold steering group meetings concurrently with meetings of negotiation groups in order to provide guidance to negotiators.

C. When

Heads of Government should announce the launch of negotiations at the *March 1998 Summit in Santiago*, aiming to conclude negotiations no later than December 31, 2003 so as to provide the signatories sufficient time to carry out necessary domestic steps to ratify and implement the Agreement by January 1, 2005. In Santiago, Heads of Government should also announce that a special Trade Ministerial meeting would be held early in 2000 to revise the concrete progress made in achieving the FTAA.

Ministers in Belo Horizonte should therefore mandate Vice-Ministers to prepare the programme of negotiation, including the structure, organization, and location of negotiations. Finally, Trade Ministers should meet immediately prior to the Santiago Summit to review and approve the recommendation to launch negotiations.

IV. PROPOSED SCOPE OF NEGOTIATIONS

The negotiations should aim for an agreement that fulfills the requirements of the WTO for a free trade area. The agreement should therefore include the following elements, recognizing that the negotiations will define the nature and content of specific commitments in each area:

Market Access

Ensure that all tariffs and specified non-tariff barriers be phased out within ten years (limited product exceptions).

Include provisions to enable smaller less developed members to negotiate special phase-out schedules on some products.

Provide for clear and predictable rules of origin.

Develop common customs procedures providing for advance rulings, certificates of origin, verification procedures, information exchange, and common custom forms.

Provide for emergency safeguard measures.

Subsidies

Establish new disciplines on agricultural subsidies.

Trade Remedies

Provide for the reform of anti-dumping and countervailing duty measures.

Technical Barriers & SPS Measures

Incorporate WTO provisions; establish mechanisms to facilitate removal of specific technical barriers to trade among and between members.

Introduce new disciplines on transparency and due process in domestic regulatory systems reflecting the principles of good regulatory practice.

Government Procurement

Provide for effective liberalization of government procurement, reflecting their principles on transparency, non-discrimination, and due process.

Cross-Border Trade in Services

Expand on WTO GATS disciplines by providing non-discriminatory treatment with limited exceptions.

Investment

Provide for rules on the treatment of FTAA investors and their investments, including transparency, non-discrimination (with limited exceptions), expropriation, and transfer of funds.

Competition Policy

Provide, as appropriate, for disciplines on the interaction between trade and competition policies.

Intellectual Property

Provide for full implementation of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).

Dispute Settlement

Develop procedures modeled on the WTO process.

Institutional and Miscellaneous Provisions

Provide for clauses on the relationship of the FTAA to other Agreements, general obligations such as non-discrimination, and accession procedures.

Provide for an executive body and committee structure, a permanent secretariat, and funding arrangements.

However, the above list of elements for negotiation does not correspond to the existing working group structure and should not be construed as necessarily representing a proposed negotiating structure.

Speech delivered Thursday, February 27, Tucson, Arizona.

