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## **TRADE FACILITATION AS PART OF CREATING THE FREE TRADE AREA OF THE AMERICAS (FTAA)**

The content of this article is the natural continuation of both [FAL Bulletin No. 167](#) and [FAL Bulletin No. 171](#). FAL Bulletin No. 167 advanced conceptually in the definition of the term *trade facilitation* and a general explanation of how some international bodies and the FTAA process itself deal with this issue. This month's article expands on the information regarding trade facilitation within the FTAA, which brings together the sizeable number of 34 countries from the Western Hemisphere.

Similarly, taking into account that FAL Bulletin No. 171 reported on some progress toward trade facilitation regulations within the framework of the Southern Common Market (Mercosur), the current article takes a complementary approach, reporting on developments favourable to trade facilitation in another agreement for economic integration, which basically proposes the creation of a free trade area. For more information or comments, please contact the author of this article: Miguel Izam ([mizam@eclac.cl](mailto:mizam@eclac.cl)), ECLAC International Trade Unit.

### **1. Summary and Introduction**

The objectives of the FTAA will be broader than those traditionally covered by a free trade zone, given that its goal is to move steadily toward eliminating the barriers not only to trade in goods and services between member countries, but also to investment.

In the case of the FTAA, the trade facilitation process deals with two different areas. The first involves the work currently going on within the negotiating groups and existing committees, especially the one working on electronic commerce. The second involves the concrete results already achieved with regard to business facilitation. In effect, with no prior negotiations, implementation of concrete measures began in 2000. Undoubtedly these results

can be considered a success, given that they have been achieved in advance of the estimated date for completing negotiations as a whole, scheduled for 2005.

This issue of the Newsletter, after offering an overview of the environment leading to the creation of the FTAA, the preparatory phase leading up to negotiations, and the negotiating process itself, provides a detailed report on the progress to date of the inter-governmental forum on the issue of business facilitation with respect to two areas. The first involves business facilitation measures dealing with customs issues. The second consists of transparency-related measures affecting the provision of relevant information to the public.

## **2. The FTAA process**

During the First Summit of Heads of State and Governments of the Americas in December 1994, in Miami, United States, all countries participating made a commitment to have a free trade area of the Americas (FTAA) by 2005, and to achieve substantial progress in this direction by 2000. Similarly, they decided that this would be a balanced, comprehensive process, consistent with World Trade Organization (WTO) rules and disciplines, and able to co-exist with bilateral and sub-regional integration agreements in which the countries of the Western Hemisphere already participate. Moreover, they clarified that the levels of development of smaller economies would be taken into consideration, along with the perspective of civil society, and that these agreements would be reached through consensus and as a single undertaking ("nothing is agreed until all is agreed"). To obtain the necessary technical assistance, they requested the support of a Tripartite Committee, formed by the Inter-American Development Bank (IDB), the Economic Commission for Latin America and the Caribbean (ECLAC) and the Organization of American States (OAS).

## **3. Preparation for Negotiations**

During the First Ministerial Meeting on Trade, held in Denver in June 1995<sup>(1)</sup>, the process of preparing for negotiations began. To do so, seven working groups were set up to deal with market access; customs-related business and rules of origin; investment; regulations and technical barriers to trade; sanitary and phytosanitary measures; subsidies, antidumping and countervailing duties; and smaller economies. During the Second Ministerial Meeting on Trade, held in Cartagena de Indias<sup>(2)</sup>, in March 1996, four more groups were set up to work on the following areas: government procurement, intellectual property rights, services, and competition policy. During the Third Ministerial Meeting on Trade, held in May 1997 in Belo Horizonte<sup>(3)</sup>, a working group on dispute settlement was established. Goals and general terms of reference were established when each working group was created. Later, based on their accumulated experience, the corresponding negotiating groups were set up, along with other formal bodies considered necessary to continue moving toward the FTAA.

## **4. The Negotiating Process**

During the Fourth Ministerial Meeting on Trade, held in March 1998 in San José<sup>(4)</sup>, the following nine negotiating groups were set up, with the understanding that their work would be interrelated: market access; investment; services; government procurement; dispute resolution; agriculture; intellectual property rights; subsidies, antidumping and countervailing duties; and competition policy. Similarly, the Consultative Group on Smaller Economies, the Committee of Government Representatives on the Participation of Civil Society, and the Joint Government-Private Sector Committee of Experts on Electronic Commerce were also created. The Trade Negotiations Committee (TNC) was also set up, composed of Vice-ministers of trade. Its main work will be to lead the negotiating process. An Administrative Secretariat was created to provide logistical and administrative support. The Ministers recommended that negotiations as such begin in April 1998, taking advantage of the opportunity offered by the Second Summit of Heads of State and Governments of the Americas, scheduled for that date in Santiago, Chile. Thus, the negotiating process was formally launched.

Finally, at the Ministerial Meeting in San José the TNC was charged with agreeing upon specific business facilitation measures that could be adopted by 2000. On this issue, there was already considerable experience, including contributions from the private business sector. At the Fifth Ministerial Meeting, which took place in November 1999 in Toronto<sup>(5)</sup>, participants focused primarily on two major issues that were independent of each other: the definition of the next steps to be taken by the nine negotiating groups and definition of some substantive aspects regarding specific business facilitation measures.

## **5. Business Facilitation as part of the Creation of the FTAA**

At the Ministerial Meeting in Toronto, participants decided that business facilitation would concentrate on two different areas. The first involved customs-related procedures and aimed to contribute significantly to negotiations between member countries by reducing transaction costs and creating a more consistent, predictable business environment. In this regard, the Ministers agreed upon eight specific measures to be implemented in early 2000, which are detailed in the relevant section. The second area dealt with the need to ensure that information relevant to the business community and the public in general was provided in a transparent manner. This information, which is mainly related to trade procedures and existing regulations, will be kept up to date using new technologies. The eleven measures agreed upon within this framework are included in the relevant section. The TNC was instructed to supervise the implementation of all the agreed-upon measures and the technical assistance that some countries require, as well as assuming the other responsibilities associated with business facilitation.

## **6. Business Facilitation Measures Covering Customs-Related Issues<sup>(6)</sup>**

These measures are as follows:

### **a) Temporary Importation / Temporary Admission of Certain Goods Related to**

**Business Travellers:** The purpose of these measures is to establish new or streamline existing customs procedures for the entry of, and suspension of duties on, promotional documents and other goods related to business travel, whether or not these goods accompany the business traveller. Primary elements include authorization for suspending customs duties; identification of promotional documents and other goods that do not require guarantees upon entry; establishment of streamlined procedures for promotional documents and other goods that remain in the country; establishing an allowable time period for temporary importation/temporary admission; where possible, minimizing the cost and administrative complexity of obtaining guarantees for temporary importation/temporary admission. Where possible, the amount of guarantees required should not exceed the amount of duties otherwise payable; and under normal circumstances, documentation and approval should be provided upon entry of the business traveller.

**b) Express Shipments:** The purpose of this measure is to develop and implement procedures to expedite express shipments, taking into account current international guidelines for this purpose, but still maintaining the appropriate control and customs selection. Its primary elements include providing for separate expedited customs processing for express shipments; establishing pre-arrival processing of information and data related to express shipments; permitting submission of a single manifest covering all of the goods in the shipment by the express service company, through electronic or other means; where possible, and with the appropriate guarantees, providing for the release of certain goods through submission of minimal documentation and/or deferred payment; in normal circumstances, express shipments should be released by customs authorities within six hours of the submission of necessary customs documentation provided the goods have arrived; and, in response to requests from express shipment companies, consideration could be given to providing extended hours of service and/or customs processing at premises under the control of the customs authority, at the discretion of customs authorities.

**c) Simplified Procedures for Low Value Shipments:** This measure seeks to establish simplified, streamlined and expedited procedures for low value shipment transactions while maintaining the appropriate customs control and selection. Primary elements include establishing minimal documentation, data and procedural requirements based on value of goods while maintaining the appropriate customs control and selection; and developing procedures to permit the electronic submission of information.

**d) Compatible Electronic Data Interchange (EDI) Systems and Common Data:** This measure aims to establish compatible electronic data interchange systems between traders and customs administrations that foster expedited clearance procedures. It also involves joint development of a core set of data elements required for the administration of national customs regulations and requirements associated with the customs clearance of goods; encouraging the establishment of compatible electronic data interchange systems between customs administrations that foster increased cooperation and information exchange; developing parameters for the bilateral or plurilateral exchange of information related to compliance with customs regulations and requirements. Its primary goals include developing electronic systems

accessible to the trading community; developing a capacity for electronic submission and processing of information and data prior to arrival of the shipment; developing a capacity for customs electronic/automated systems to work in conjunction with risk analysis and targeting; and working towards developing compatible electronic systems among customs administrations. An initial phase involves identifying current data elements used in electronic systems established per items (a) to (d) above, as required by each customs administration, including, if feasible, those data elements required to determine admissibility of entries or those required by other agencies; and working towards developing a set of common data elements for customs clearance of goods.

**e) Harmonized Commodity Description and Coding System:** The purpose of this measure is to apply the 1996 Harmonized Commodity Description and Coding System, at the six-digit level.

**f) Customs Information Dissemination/Hemispheric Guide on Customs Procedures:** This measure seeks to disseminate widely in the most user-friendly manner, basic up-to-date information on customs procedures, laws, regulations, guidelines, and administrative rulings, taking into account the *Hemispheric Guide on Customs Procedures* prepared by the Working Group on Customs Procedures and Rules of Origin. Its primary elements involve updating the *Hemispheric Guide on Customs Procedures*; disseminating the updated *Hemispheric Guide on Customs Procedures* through the FTAA Home Page; and establishing hyperlinks from the FTAA Home Page to national customs administrations' homepages for future updates to the country-specific information contained in the *Hemispheric Guide on Customs Procedures*.

**g) Codes of Conduct for Customs Officials:** The purpose of this measure is to elaborate and implement national codes of conduct applicable to customs officials, taking into account the Arusha Declaration of the World Customs Organization. Its primary elements involve introducing or amending national codes of conduct, legislation, policies or regulatory instruments applicable to customs officials with provisions on standards of conduct, conflict of interest, and possible sanctions and disciplinary action; and reviewing the 12 elements contained in the WCO Arusha Declaration for assessment of current practices and, if necessary, the development of national programs for the implementation of new procedures.

**h) Risk Analysis/ Targeting Methodology:** This measure seeks to encourage risk management systems used as criteria for required verification activities, while respecting the confidentiality of information. The objective would be to allow for focusing of customs enforcement activities on high-risk goods and travellers while facilitating clearance and movement of low-risk goods. Its primary elements involve developing processing and release customs procedures and systems that include risk analysis and targeting to identify high-risk goods, shipments and travellers; risk analysis through pre-arrival processing of information and data to identify or target high risk-goods, shipments and travellers that will be subject to inspection and/or other customs procedures.

As agreed at the Ministerial Meeting in Toronto, most countries began to implement these

measures in January 2000(7),. At the same time and under TNC supervision, the Ad Hoc Group of Experts on Customs-Related Business Facilitation Measures was created. This body met on five occasions in 2000(8),, to analyse the status of national implementation and support implementation where countries required it, and included taking into consideration their needs for technical assistance.

## 7. Transparency-Related Business Facilitation Measures:(9)

These measures are as follows:

- a) Disseminate and periodically update information on tariffs and trade flows prepared in the context of the Negotiating Group on Market Access.
- b) Publish and disseminate the document *National Practices on Standards, Technical Regulations and Conformity Assessment in the Western Hemisphere* prepared by the FTAA Working Group on Standards and Technical Barriers to Trade.
- c) Disseminate and periodically update the list of national contact points that provide information on national legislation and other measures affecting trade in services. This information will include name, title, office, address, telephone, fax and e-mail.
- d) Disseminate through the FTAA Home Page the existing procedures and requirements for temporary entry of business persons in each of the FTAA countries.
- e) Periodic dissemination of the statistical *Report on Foreign Investment in Latin America and the Caribbean* prepared by ECLAC by linking it to the FTAA Home Page.
- f) Disseminate through the FTAA Home Page and periodically update information on commercial arbitration regimes existing in the countries of the Hemisphere, including the institutions that provide commercial arbitration services.
- g) Disseminate through the FTAA Home Page and periodically update the *Compendium on Antidumping and Countervailing Duties Laws in the Western Hemisphere*, which includes information on national legislation and contact points.
- h) Disseminate through the FTAA Home Page and periodically update the *Inventory of Domestic Laws and Regulations Referring to Competition Policies in the Western Hemisphere*.
- i) Disseminate through the FTAA Home Page and periodically update the *Inventory of Dispute Settlement Mechanisms, Procedures and Legal Texts Established in*

*Existing Trade and Integration Agreements, Treaties and Arrangements in the Hemisphere and in the WTO.*

j) Make information on government regulations, procedures, and competent authorities more accessible, including via the use of Internet links to the FTAA Home Page, in the following areas: government procurement; subsidies, antidumping and countervailing duties; competition policy; services; intellectual property rights; investment; market access, which includes standards; agriculture, which includes sanitary and phytosanitary measures; and dispute settlement.

k) In the near future, include on the official FTAA Home Page ([http://www.alca-ftaa.org/alca\\_s.asp](http://www.alca-ftaa.org/alca_s.asp)) among new and suitably updated information, additional documents as they cease to be confidential.

With regard to the general status of this area, at this point virtually all of these measures have been implemented or are in an advanced stage of implementation

Notes:

(1) Colorado, the United States of America.

(2) Colombia.

(3) Minas Gerais, Brazil.

(4) Costa Rica.

(5) Canada.

(6) Although there were some changes, in general this section is the same as Annex II of the Ministerial Declaration issued in Toronto (4 November 1999).

(7) Detailed information on what was applied in each country in terms of each one of the eight measures is to be found at FTAA.TNC/cbf/w/01/Rev.6, which is the most up-to-date public, official FTAA document in this respect.

(8) Always in Miami in January, May, July, September and October.

(9) Although there were some amendments, this section basically corresponds to Annex III of the Toronto Ministerial Declaration, released on 4 November 1999.