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**LESSONS FROM THE NAFTA: SOME POLICY RECOMMENDATIONS FOR
THE FREE TRADE AREA OF THE AMERICAS */**

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I. ABSTRACT

FTAA is aimed at building an enduring framework of political and economic cooperation in the region. In its formation, discussions have focused not only on market access but on investment and information flows which have increased substantially within the hemisphere. The growth and development of integration schemes has in recent years produced strong expectations for further rapid expansion in these areas. Simultaneously, as the level of integration increases, it also implies that countries will become more dependent on changes in each other's economies.

Perhaps as a counter response to past integration schemes in Latin America, there is a tendency towards over simplifying the institutional aspects of free trade agreements and concentrating solely on eliminating barriers to trade. Many of the objectives of the FTAA are straightforward and shared; but putting them into practice is not a simple matter. While it is clear that the goal behind the FTAA is to guarantee market access, how successful countries will be in opening each others markets will be more determined by how this access is formalized and institutionalized.

Non-tariff barriers have replaced tariffs and a major obstacle to market access has become the lack of enforcement operating under a broad understanding of the rules of fair competition in trade. The FTAA should concentrate on these principles. This should be accomplished through clear and consistent rules, but rules by themselves will not be sufficient. They need to be accompanied by a strong monitoring process to ensure they are enforceable and not circumvented through other forms of restrictive practices.

With this objective in mind, this policy report will analyze four areas of operation of the NAFTA agreement that have important implications towards guaranteeing market access in a free trade area: 1) Antidumping policy; 2) Dispute Settlement Mechanism and its relationship to antidumping; 3) Rules of Origin and Customs regulations and 4) Labour and Environment side agreements.

The NAFTA provides important lessons in the above four areas. Furthermore, since it is an agreement between developed economies and a developing economy, it is a useful guide to draw on, as member countries embark in the negotiating process towards an FTAA. The NAFTA is undeniably the strongest of all groupings followed by Mercosur where the two represent 95% of GDP and 85% of trade in the region. Consequently, these two groupings will have the strongest say in how the FTAA is formed.

- Antidumping is one of the most contentious issues in the NAFTA Agreement. Many times, claims of dumping have been merely a cloak for protectionist practices aiming at keeping more competitive suppliers from gaining market share.
- The dispute settlement mechanism is relatively new and its overall effectiveness is still in doubt. The validity of Chapter XIX which deals with the settlement of antidumping issues has been brought into question by US and Mexicans alike.
- The settlement of disputes are handled through a Panel that is required to interpret and apply national laws giving rise to concerns about the ability to correctly interpret antidumping claims based on laws from another country. Chapter XX dealing with the settlement of general and political issues has not been controversial.
- Rules of origin under the NAFTA are highly restrictive and complex, sometimes diminishing the benefits of the trade agreement. The costs involved in determining which goods qualify are very high and can outweigh the benefits of tariff preferences. Customs requirements can also be redundant and complex thereby causing major delays in shipment.
- Labor and Environment side agreements have not proven to be as effective in solving the issues in these areas. Instead they are more potential barriers to trade in a free trade area while contributing to overload the trade agenda of integration schemes.

II. ANTIDUMPING LEGISLATION, COMPETITION POLICY AND THE NAFTA

With the ongoing reduction of trade restrictions within and among countries in the Hemisphere, increasing attention is being paid to the effects of anti-competitive practices. The relationship between trade integration, antidumping regulations and competition laws is one of the most contentious issues in trade negotiations. This is because the existence of a free trade agreement by itself does not necessarily mandate any change in the antidumping law of the member countries nor does it mean that dumping cases automatically disappear.

The debate on how to treat the issue of antidumping when forming free trade areas basically splits into three camps: 1) those who advocate eliminating antidumping regulations and transferring the jurisdiction for dealing with antidumping cases to agencies in charge of competition policy. (Guasch and Rajapatirana, 1997, Finger, 1993, Warner 1992); 2) those who propose a more gradual approach to initially harmonize their antidumping laws and later replace them with a common competition policy; (Cunningham and LaRocca, 1996); and 3) those who wish to maintain antidumping regulations and keep them separate from competition policy (Stewart and Brightbill, 1997).

Some FTAA participating countries favor doing away with national antidumping remedies against hemispheric imports and rely on competition policy which does not differentiate between imports and domestically produced products in identifying unfair practices. The role of competition policy is to ensure market access and to remove barriers to the competitive process while trade policy is more politicized and therefore more actively managed. The way antidumping cases are interpreted and handled under trade policy can promote or hinder the goals of competition policy.

Canada has advocated a NAFTA wide competition policy to replace antidumping and countervailing duties. This approach is already being implemented in the Canada-Chile bilateral free trade agreement of 1996, where antidumping cases against each other are prohibited. It is also being considered between Chile and Mexico in their present agreement. Outside the region, the European Union utilizes competition policy in lieu of antidumping regulation as is done in the Australia-New Zealand Trade Agreement.

Within the FTAA process, the United States prefers to keep antidumping regulations and competition policy separate, limiting competition policy to focus on eliminating monopolies and other anti-competitive practices that prevent the penetration of products, services and investment. (Moss and Lande, 1997). This is along the lines of the NAFTA-model. At the February 10-12,

1998 FTAA Vice-Ministers meeting, there was a split on whether to negotiate competition policy and antidumping/countervailing duties together or separately. However, on March 19, Trade Ministers agreed to have a separate negotiating group on antidumping and competition policy, chaired by Peru and Brazil respectively. (Inside US Trade, March 20, 1998). At this meeting, the final Ministerial declaration did not contain any reference to the possibility of eliminating antidumping measures in the future framework of a FTAA as initially proposed by Mexico and Chile. (Inside US Trade, Special Report, March 23, 1998).

This is unfortunate, because antidumping regulations are by and large anti-competitive and inefficient in their actual use. They are often the result of market power of specific domestic industries that want protection from outside competition. The way an antidumping case becomes an instrument used to create entry barriers ranges from the misuse of its conceptual interpretation, the arbitrariness in the calculation of dumping margins and the neglect of a full account of costs and benefits. In some cases, antidumping is the response to having reduced quantitative restrictions and tariffs available to protect domestic industries and has become a favorite choice for protectionism not only in the United States and Europe, but in Latin America as well. Latin America has increased its use of antidumping especially within regional sub-groupings. (Guasch and Rajapatirana, 1997). Currently, cases dealing with antidumping in the trading system are concentrated in textiles and garments, steel, some agricultural products, chemicals, plastic products and fertilizers.

The World Trade Organization has tried to address the antidumping issue, but so far with mixed results. Although countries agreed to the antidumping rules in the WTO, the dispute settlement mechanism dealing with dumping was weakened. This was done by promulgating that WTO panels reviewing antidumping cases be limited to considering whether the national authorities properly established the facts and whether their evaluation was non-biased and objective. According to WTO rules, antidumping duties can be imposed when there is dumping and injury to an industry from the actions of another country. However, injury is difficult to demonstrate and this allows antidumping provisions to be used in a lax manner as a way to limit foreign competition.

At the Santiago Summit, Mexico and Chile proposed to examine trade remedy law under the antidumping/countervailing duties negotiating group for a report by December 2000 deadline. These countries prefer to eliminate trade remedy laws from the FTAA. (Americas Trade, March 23, 1998). Ministers also agreed that work in different negotiating groups may be interrelated such as agriculture and market access, services and investment, competition policy and subsidies, antidumping and countervailing duties.

While antidumping rules have become common in Latin America, competition policies are still in their infancy. Only a handful of countries have adopted to a limited extent competition policy; Chile, Venezuela, Peru, Mexico Colombia, Jamaica and Brazil, whereas, the United States and Canada have a longer tradition in competition policy. Since it is a relatively new concept, there is little experience to base an evaluation on. This has added to the difficulties for some countries in determining how to handle competition policy and antidumping issues in the FTAA process.

III. DISPUTE SETTLEMENT MECHANISM IN THE NAFTA AS A MODEL FOR THE FTAA

How the dispute settlement mechanism in the FTAA may look depends to a large degree on:
1) whether antidumping and countervailing duty disputes are to be included in the mechanism and
2) the type of model the FTAA will decide to follow.

In the NAFTA, the dispute settlement mechanism basically covers two areas: antidumping (Chapter XIX) and political issues and disputes in general (Chapter XX). A dispute settlement mechanism is needed in all trade agreements to ensure that they function in a fair and efficient manner for all parties involved. However, the core question regarding the NAFTA dispute settlement mechanism as a model for an FTAA is whether to transfer responsibility for antidumping regulations to the area of competition policy. Lessons from NAFTA seem to indicate that antidumping and countervailing duty disputes present some of the most frequent threats to cohesion in a future FTAA. This observation is derived from three years experience under NAFTA where the majority of the disputes concern Chapter XIX.

A practical example of the difficulties inherent in Chapter XIX is well illustrated in the first bi-national panel case of the NAFTA. This case involved a proceeding instituted by US steel producers concerning antidumping duties levied against them on steel products imported into Mexico. In a three-to-two decision, the panel ruled in favor of US producers. (Lopez, 1997). However, two years later after a change in the panel's makeup, a second panel made a contrary ruling against US steel makers. (Journal of Commerce January 22, 1998). This was possible because there is a NAFTA provision that allows a panel to reopen a case when it believes serious errors have been made.

Mexico's action against US steel exporters spotlights the tentative nature of the dispute resolution process. Having entered their fourth year of operation there are still large areas of uncharted legal territory to be explored. NAFTA's dispute resolution cases are still new and there is a lot of learning left to be done. There is still confusion as to which jurisdiction should handle disputes; at the local, national, regional or international level. Moreover, panels are required to interpret and apply national law giving rise to concerns about national sovereignty issues. For these reasons, antidumping claims would be better handled multilaterally. However, if antidumping is for now a reality, countries need to learn to negotiate forcefully and effectively to minimize the cost inherent in these disputes.

There are basically three possible models to be considered for the dispute settlement mechanism for the FTAA : 1) the NAFTA-model; 2) the Mercosur-model; and 3) a WTO-type multilateral setting. The NAFTA model for 3 years in operation is by in large more rule-oriented;

the Mercosur model for 6 years in operation is more dependent on the involvement by the countries' presidents to resolve issues and is more of an informal process; the WTO for 2 years in operation is more of a supra-national tribunal. Which model will be adopted depends on the ability of the negotiating nations to successfully bridge cultural differences and future perceptions about the success or failure of each of these mechanisms. Canada has proposed that FTAA dispute procedures be shaped on the WTO model. (Lopez, 1997). A rule-based model may be better since it eliminates power of large countries over smaller countries.

However, rules by themselves are not sufficient. They need to be enforced and monitored to avoid non-compliance. It is important to note that when the US Congress enacted the WTO legislation, it also reserved the right to overrule a WTO ruling as well as the right to withdraw from the WTO altogether in case it does not wish to comply with an adverse ruling.

How to handle dispute resolution remains uncertain. A new working group in the FTAA to address this issue was only established in the summer of 1997 and the draft work program presented by Canada, in its role as Chair of the FTAA, provided the least detail on dispute settlement compared to other areas of negotiation. (Inside US Trade, May 29, 1998). However, the 19 March 1998, Ministerial declaration gave the mandate to the relevant negotiating groups, to study issues relating to the interaction between trade and competition policy including antidumping measures. (Inside US Trade, Special Report March 23, 1998).

IV. RULES OF ORIGIN AND CUSTOMS PROCEDURES

Another important issue pertains to rules of origin and customs procedures. Rules of origin are used as a way to ensure that the benefits from integration are kept among member countries and to prevent outside countries from taking advantage of tariff differences. Moreover, by requiring a high domestic content among member countries, it artificially forces foreign investment in these countries as non-member countries look for ways to circumvent restrictions to market access.

In the course of establishing regional agreements two models stand out for consideration for the FTAA: 1) A more restrictive NAFTA-model rules of origin; and 2) a WTO model that requires the harmonization of rules of origin.

Hundreds of pages of NAFTA are devoted to rules for determining which goods qualify for what benefits. Because they are usually complex, the costs of determining which goods qualify can be substantial, and the benefits of the trade arrangement is actually diminished by the cost of complying with these rules. (Skud, 1996). For this reason they adversely affect small and new firms entering the trading system since large firms have more experience in handling them and are more able to cover the costs of compliance.

Specifically, rules of origin in the NAFTA are made up of changes in tariff classification and value-content. Changes in tariff classification are the least costly of the two but they hurt outside countries as foreign exports can be faced with unexpected changes in tariffs according to the way they are classified. For the member country, it is when a rule of origin requires a value test, that the cost is the greatest. This is because enforcement of a value-content test requires a review by a team of custom auditors requiring administrative or judicial resolutions, all performed at the company's expense (Skud, 1996).

These costs increase as more countries are added to a free trade area. At times, the cost may exceed the tariff preference and thus exporters may choose to forego the tariff reduction altogether. If processing occurs in multiple countries, materials may have to be tracked from country to country. This certainly was a problem that existed in the EU under Article 115 and with the Single European Market it was eliminated (Rich, 1992). This is a very big issue that needs addressing in all free trade areas with restrictive rules of origin. In this regard, a customs union like the EU and Mercosur are more appealing than free trade areas, in that they can eventually eliminate rules of origin.

The WTO-model which is still under negotiation seeks to harmonize multilateral rules of origin and should be based on simple neutral rules as opposed to accomplishing protectionist objectives. However, some of the most restrictive NAFTA rules are being discussed as possible bases for US proposals in the WTO negotiations (Jensen-Moran, 1997).

The restrictive NAFTA-type model appears to favour members of both the policy and business communities in the US by requiring high levels of investment in the NAFTA countries. (Skud, 1996). Canada favours a more WTO-type model. If a NAFTA-type model were to apply in the FTAA, this would mean that auto components, electronic products, textiles, telecommunications, trucks, household appliances, furniture and tobacco products would tend to be produced within the hemisphere to obtain tariff benefits. These are the industries mainly targeted under the NAFTA rules of origin. (Jeri-Jensen). Furthermore, it increases the political leverage of these industries and their market power, at times at the expense of more competitive producers who are not members of the Agreement. Already, under the NAFTA this happened in the Canadian garment industry in relation to restrictions from Asian cloth imports. An entirely new hemispheric agreement or using future WTO rules of origin as a foundation for FTAA rules is a better alternative.

Preferential rules of origin and Customs procedures are closely related to each other. Custom requirements can be redundant and unnecessarily complex, and cause major delays in shipment. If customs rules were harmonized and simplified, rules of origin would also function better. This would imply that an exporter in one party could ship goods to any other party with the same documents and under the same legal requirements. Under an FTAA made up of 34 countries, enforcement would be more difficult than under a NAFTA. For this reason, officials of member countries would need to meet regularly to resolve problems that develop in these two areas. Such regular contacts could defuse disputes at an administrative level before they become political issues. These recommendations apply for the NAFTA as well as for the FTAA.

V. LABOUR AND ENVIRONMENT SIDE AGREEMENTS IN THE NAFTA AND THE FTAA

On September 1993, The United States, Canada, and Mexico signed the North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC). These agreements were a response to the concerns of US environmentalists and labor movements who feared that the NAFTA would adversely affect member countries' laws in a "downward harmonization" of environmental standards and have a "downward pressure" on wages and jobs. Under this scenario, large number of firms would relocate to Mexico to benefit from cheap labor and would move environmentally sensitive production to Mexico forcing US companies to lower their environmental standards in order to compete on a more equal footing. This has not really happened.

Examining the performance of the side agreements, it is noteworthy that since NAFTA only one out of 11 complaints regarding environmental issues filed has resulted in an actual investigation whose findings have not been released yet. (The CEC objective is not to enforce compliance but to clarify the state of the facts according to its Director). Likewise, to date, labor panels have reviewed six cases (5 Mexico and 1 US) but restricted themselves to fact-finding. Issues raised by labor, environmental groups and import competing industries central to NAFTA continue to be of concern in the FTAA context and on the fast-track process.

In the Agreement, NAFTA countries tacitly agreed that Mexico would improve the enforcement of its environmental laws. In interpreting the "failure to effectively enforce" provision, it is also significant to note that the United States does not always effectively enforce its own environmental laws (Schiller, 1997). For instance, both the Bush and Clinton administration have failed to comply with a statutory requirement to submit a report comparing air quality standards among major US trading partners. Furthermore, little progress has taken place on the free movement of people since it is a highly sensitive political issue.

The US Administration (USTR), has argued for labor and environment study groups in preparation for the FTAA negotiations. However, at the March 19 Ministerial Meeting in Costa Rica, it was agreed to keep both environment and labour outside the context of the FTAA process and to create a Committee to hear views from different groups. Nonetheless, environmentalists working within the FTAA feel they should have elevated labour and the environment to the same level as intellectual property rights. (Americas Trade, May 28, 1998). This group is suggesting that all reports from the Committee be made public and the opinion of experts be considered. The AFL-CIO also pointed out that the Committee falls short of the demands by hemispheric labor groups and seek to make it a stepping stone to a negotiating group on labor and environmental

standards. They pointed out that the Committee should be given equal stature to business in the negotiation process. (Americas Trade, May 28, 1998). In the meantime, AFL-CIO is also working with labor unions in Latin America to try to get their support.

Conversely, Mexican and Brazilian Ministers propose that the Committee be limited to receiving suggestions, listing them and presenting them to ministers for discussion. The Mexican minister argues that labor and environment issues are better promoted through free trade rather than place additional restraints on negotiations by including them with trade issues, a view the Brazilian minister amply agrees with. (Americas Trade, May 28, 1998). At the suggestion of Mexico, reference was made to taking into account work undertaken by the WTO on the environment and for the International Labor Organization to be the competent bodies to set and deal with labour issues. (Inside US Trade, Special Report, March 23, 1998).

This is an important accomplishment as there are valid concerns that labor and environment issues could be used as protectionist devices against rising imports from developing countries. The argument goes that child labour exploitation, denial of workers rights and collective bargaining is not only a violation of human rights but provides developing countries with unfair competitive advantages in international trade and investment. However, according to an OECD study, (OECD, 1998) it appears that low labour standards tend to deter rather than attract foreign direct investment and that there is no evidence that low-labour standard countries have better export performance than countries with higher standards.

The same study concludes that the demand for environmental quality rises as countries become richer as government's face increasing popular pressure to move in the direction of greater spending in this area. It further illustrates that strong and natural complementarities exist between trade and investment policies on one hand and more efficient environmental policies on the other and that the risk of redeployment of productive resource towards low-standard countries should not be overstated because companies generally seek consistent environmental enforcement.

Nonetheless, the debate is not over. Minority Leader Richard Gephardt of the US Congress is pushing to "remedy" what he considers the exclusion of labor and environmental issues from the FTAA process. (Americas Trade, March 19, 1998). This may very well be the most controversial and politicized issue for integration in the Americas.

VI. OTHER DEVELOPMENTS RELATED TO THE FTAA

Apart from the above considerations, the wide ranging differences in economic size and levels of development of the negotiating countries and regional groupings is of particular concern especially as to its effect on the path and pace of the FTAA process. NAFTA's population is 372 million compared to Caricom's 6.2 million (without Haiti), and NAFTA's GDP is ten times larger than that of the next largest group, Mercosur. Many of the small economies are concerned about being caught between the two largest groupings in the Hemisphere, NAFTA and Mercosur, and being unable to influence the negotiating process.

These smaller countries are concerned that they may not be able to compete in a free trade within the FTAA because of their lack of infrastructure and technological know-how. Although care is being taken to avoid adverse effects for these economies, there has been no consideration of a development fund from the larger to the smaller economies as has been set-up within the European Union. There is also concern over the United States terminating Generalized System of Preferences (GSP) and preferences under the Caribbean Basin Initiative (CBI) to these countries as the FTAA comes into being. Although it would be a logical outcome, the impact on these countries would depend on whether the FTAA goes beyond what these preferential agreements provide or not. (Americas Trade, April, 1998).

In parallel with FTAA discussions, a variety of trade agreements have proliferated. As of July 1997, there were at least 56 trade or economic cooperation agreements in existence or under negotiation. Many are bilateral. Chile and Mexico concluded their negotiations to deepen their goods-only trade agreement and signed the accord at the Santiago Summit. (Americas Trade, March 19, 1998). Both countries are also exploring areas sensitive to the US such as the possible elimination of antidumping measures, as was done in the Canada-Chile bilateral agreement. The Andean Group and Mercosur are presently also in negotiations for a free trade agreement.

The content of existing agreements will have an impact on how negotiations on diverse trade issues will be decided. Convergence and compatibility throughout this process remains a challenge to be solved, more so as NAFTA and Mercosur have very different structures. NAFTA is a free trade agreement where each country maintains its own trade policies with non-members while MERCOSUR aims towards a customs union with a unified tariff to outsiders.

On the US side, a major question hanging over the FTAA negotiations is whether the fast-track negotiating authority will be restored. Senior officials in the US government have acknowledged that fast track will not likely be presented for a vote this year. Democrats are also hesitant to antagonize trade unions during an election year. Others have pointed out that fast-track

is not needed until negotiations begin in 2005. Nevertheless, the failure to renew fast-track legislation does not mean that everything is paralyzed. It is worthwhile remembering that fast-track was not approved in the Uruguay Round until two years after the negotiations began. However, delays in obtaining fast-track authority will likely slow the momentum towards trade liberalization.

Such uncertainty over fast-track undoubtedly raises doubts and adds a certain skepticism concerning the level of support in Congress and the US regarding the goal of achieving an FTAA before the year 2005. The US is faced with the question of whether its interests can best be served by leading the formal process towards an FTAA or by standing on the sidelines and waiting to see how integration develops within the regional groupings already in existence.

Within the US there is uncertainty over the political consensus in favour of hemispheric free trade. This also highlights the uncertainty over the type of FTAA that may be wanted. Mercosur partners have concerns about the suitability of the NAFTA model for the FTAA while US ambivalence is strengthening Brazilian interest in first deepening and broadening Mercosur. The recent progress of the Brazilian economy and, most importantly, its macroeconomic stability may also bring into question the path and pace of the FTAA.

Brazilian officials have emphasized the need to improve market access for agricultural goods as a precondition to successful FTAA negotiations in addition to leather goods and textiles. They view this a necessary condition to Mercosur opening their markets for telecommunications services and energy. Emphasis has also been made on opposing a sectoral market access approach. (Americas Trade, May 14, 1998). The US initially requested that agriculture and market access groups be combined but it now agreed to separate groups. (Americas Trade, April 3, 1998).

The relative success of Mercosur, as well as Chile's consistently high rates of economic growth, demonstrates that preferential access to the US market is not an indispensable prerequisite for regional development. Chile has almost doubled its exports to the United States without a bilateral agreement. Its export growth is due to its own unilateral liberalization in this country and to low tariffs in the US. Chile has also diversified across its export markets in Asia, Europe, and Latin America. Meantime, Mercosur has also increased trade among the countries belonging to it. Furthermore, countries don't have to negotiate as individuals. Negotiating as a trading block can be more effective, especially with a larger trading partner like the US. For example, a bilateral cooperation agreement was signed between Mercosur, as a group, and the European Union, December 1995, another with Chile in June 1996, and a third with Mexico in July 1997.

While Brazilian and Canadian officials argue that subregional agreements are beneficial as countries learn from experience on a smaller level and gradually adjust to competition, the US perspective has been that the FTAA should take precedent over smaller agreements. The US views them more as possible stumbling blocks as countries may not pursue a broader trade initiative if countries become accustomed to having special access to a specific market. (Americas Trade May 14, 1998).

It appears that the Asian financial crisis which introduces a level of concern to some Latin American countries coupled with the lack of fast track from the US helped win support among other Latin American countries for a slower approach on the FTAA, as proposed by Brazil all along.

On the other hand, US trade with the region accounts for nearly 37% of total trade. (Hornbeck, September, 1997). Although US trade with Latin America represents 7% of total US trade, it is growing faster than trade with any other region. Moreover, US exports to Latin America are more likely to continue increasing as import demand in Asia slows down. Therefore, concluding an FTAA should rationally be in the long-term interest of the US. The key for smaller countries will be to actively participate in creating institutions under FTAA that will ensure a fair and enforceable free trading environment.

At the Santiago Summit Hemispheric trade ministers agreed for negotiations to begin before September 30, 1998. It was agreed that nine groups will handle negotiations for the first eighteen months of talks but allowing for flexibility and changes, as required. The management of the negotiations will rest with Ministers and intermittently, a vice ministerial Trade Negotiation Committee (TNC) will be charged with guiding the work of the negotiation groups and deciding on institutional issues. The first meeting of the TNC was on June, 1998. The Chairmanship of the FTAA will rotate among different countries. The country that will chair the FTAA process will host the ministerial meetings and will chair the TNC. The chairs will be assisted by vice chairs except for the last negotiations November 2002 to December 2004 where the US and Brazil will co-chair the talks until the negotiations conclude.

Canada will be the first chair and Argentina will serve as the vice chair, from May 1998 to October 1999. The FTAA Secretariat will be in Miami from May 1998 to February 2001 and then move to Panama from March 2001 to February 2003 and lastly to Mexico City from March 2003 to December 2004. Negotiations will be held at the site of the Secretariat except for the Ministerial meetings which will be held in the country that holds the chair at the time while negotiation groups will begin September, 1998.

VII. CONCLUSION AND RECOMMENDATIONS

Integration is not solely a technical undertaking but also a political process that consists of finding issues to negotiate, and identifying areas of shared national interests and cooperation. Domestic needs should be spelled out clearly by each country during negotiations to assure broad national support and continuity to the process. An important lesson to remember from past integration schemes in Latin America is the potential conflict between national and regional interests. In case of conflict, national interests have generally been preferred over regional interests. This could happen in the FTAA where the initial goals could be replaced by a form of integration limited to a small number of sectors and areas of interest. (This is in fact, one of the alternatives being discussed for granting fast-track approval in the US Congress at the present time).

In fact, in the US debate on whether to grant fast track approval and what it implies for future integration schemes like the FTAA, one of the original concepts has been lost and needs to be recaptured: The US should provide "trade not aid". This view is enthusiastically supported by Latin America and the United States alike.

Examining NAFTA's performance since its inception, the following lessons can be learned and applied by countries in their negotiations towards an FTAA:

1. In the area of antidumping NAFTA demonstrates that antidumping and countervailing duty disputes present frequent restrictions to trade liberalization. In the NAFTA as in other trade agreements, it can be used as a barrier to market entry for more competitive suppliers. The danger is that countries with more market power or more experience in negotiating dumping claims may use the FTAA to their advantage leaving smaller countries with less experience in the process more vulnerable. To make sure that the goals of the FTAA in assuring market access are achieved the following points should be considered:

- Antidumping regulation should be better handled under competition policy which is an area less managed and less politicized.
- Favour replacing antidumping on behalf of safeguard provisions.

2. The dispute settlement mechanism under NAFTA is new and Chapter XIX which deals with antidumping issues has been brought into question regarding its effectiveness. If the FTAA were to adopt a WTO model it should:

i) follow development and application of sound competition policies in reviewing antidumping cases;

ii) provide continuous monitoring to identify issues for resolutions by Governments.

3. Under the NAFTA, rules of origin are very restrictive and complex, diminishing the benefits of a trade arrangement because of the costs involved in determining which goods qualify. These costs increase as more countries are involved. Customs requirements can also be redundant and complex causing major delays in shipment.

To enhance the benefits and minimize the costs of integration it may be useful to:

- Eliminate rules of origin as external tariffs converge;
- Harmonize and simplify customs rules;
- Have continuous communication at the administrative level between customs officials and officials of member countries to resolve problems that develop with rules of origin before they become political issues;
- Provide extensive help to traders to understand the rules under an FTAA through education programs and publications that explain laws in simple terms;
- Improve customs by reducing the time that goods are processed. This could be done by providing a single border clearance. Currently many border functions involve several other agencies besides the customs administration including environmental, safety, and phytosanitary agencies;
- Encourage cross border cooperation by customs agencies to allow importers to comply with all requirements at one time, in one place;
- Avoid detaining shipments, since in most cases payment of duties and submission of information not required for entry can be delayed until after goods have been released to importers; a customs bond or other surety mechanism can ensure that duties are paid and documents are provided;
- Provide all information electronically, eliminating paper documents will also help to speed processing and reduce its costs, a standard already exists which is a UN protocol for electronic communications called (EDIFACT).

4. Labor and environment have become the “new generation of trade issues” and an area of concern for developing countries. They are better dealt with outside trade agreements as opposed to linking them to threats of trade sanctions. In this regard:

- It would be preferable to transfer discussion of them from the FTAA to other specific undertakings sponsored by the ILO and the WTO.

5. The FTAA is being pursued in the hope of attaining substantial trade benefits but this is based more on belief than proof. It would also be worthwhile to review the costs and benefits of pursuing an expansion of an enlarged regional trade association compared with a broader geographical (or multilateral approach). Does a regional approach result in more trade diversion than trade creation and what are the net economic costs?. Do the benefits of increased regional investment offset such costs? Questions such as these deserve greater scrutiny and resources to evaluate.

BIBLIOGRAPHY

- Cunningham, Richard O. and A.J. LaRocca, "Harmonization of Competition Policies in a Regional Economic Integration", *Law and Policy in International Business*, Vol. 27, 1996.
- Finger, Michael, Antidumping: How it Works and Who Gets Hurt, University of Michigan Press, 1993.
- Guasch Luis and S. Rajapatirana, "Antidumping and Competition Policies in Latin America and the Caribbean: Total Strangers, Rival Siblings or Soul Mates?," Washington, D.C., World Bank, April 1997.
- Hornbeck, J.F., "A Free Trade Area of the Americas: Toward Integrating Regional Trade Policies", CRS Report for Congress, Washington, D.C., September 25, 1997.
- Jeri-Jensen, Moran, "Choice at the Crossroads: Regionalism and Rules of Origin", *Law and Policy in International Issues*, Vol. 27, 1996.
- Lopez, David, "Dispute Resolution Under a Free Trade Area of the Americas: The Shape of Things to Come", *Inter-American Law Review*, Vol. 28, 1997.
- Moss, Ambler and S. Lande, "A Critical Year for Hemispheric Free Trade: Can Countries Agree on a Blueprint?", *Inter-American Law Review*, Vol. 28 1997.
- Rich, Patricia, "Recent Changes in the European Union and Their Potential Effects on Latin America", ECLAC, LC/R.1507, Santiago, March, 1995.
- Schiller, David, "Great Expectations: The North American Commission on Environmental Cooperation Review of the Cozumel Pier Submission, *Inter-American Law Review*, Vol. 28, 1997.
- Skud, Timothy, "Customs Procedures as the Residual Barriers to Trade", *Law and Policy in International Business*, Vol. 27, 1996.
- Stewart, Terence P. and T. C. Brightbill, "Trade Law and Competition Policy in Regional Trade Arrangements", *Law and Policy in International Business*, 1997.
- The Journal of Commerce, "Steel Case Tests Panel's Mettle", January 22, 1998.

US Department of Commerce, Study on the Operation and Effects of the NAFTA, July 1997.

Warner, Presley "Canada United States Free Trade: The Case for Replacing Antidumping with Antitrust", *Law and Policy in International Business*, Vol. 23, 1992.

Zamora, Stephen, "Allocating Legislative Competence in the Americas: The Early Experience Under NAFTA and the Challenge of Hemispheric Integration", *Houston Journal of International Law*, Vol. 19, 1997.