

Brazil-U.S. Dialogue
at the VI Americas Business Forum

Hosted by the
Brazil - U.S. Business Council

Quito, October, 29, 2002

BRAZIL-U.S. PRIVATE SECTOR
CONSENSUS RECOMMENDATIONS FOR THE FTAA

MARKET ACCESS

Tariffs and Non-tariff barriers

- The FTAA Agreement should result in progressive elimination of all tariff and non-tariff barriers to trade.
- The entire tariff universe should be open to negotiation and tariff elimination.
- The FTAA Agreement should require each FTAA country to grant “national treatment” to goods of any other FTAA country in accordance with Article III of the General Agreement on Tariffs and Trade 1994 (GATT 1994). This means that FTAA countries must treat imported goods no less favorably than they treat like domestic goods in respect of all laws, regulations and requirements affecting their sale, purchase, transportation and use.
- Sensitive products should have waiver periods and longer elimination schedules previously established.
- The preferences of the General System of Preferences (GSP) in effect at the time of the presentation of the offers should be preserved during the transition period.
- No member country should raise or create new fees for customs proceedings. A timetable for eliminating these fees at or after this Agreement goes into effect should be established

- No new non-tariff barriers shall be implemented during the transition period, and the process for dismantling such barriers should be accelerated so as to achieve free trade in the hemisphere.
- The FTAA Agreement should oblige member countries to progressively eliminate, according to a schedule attached to the FTAA Agreement, tariffs and other fees or charges they impose which are not related to an import service.
- Customs valuation should be applied in conformity with the rules of the WTO. Consultations between countries should be encouraged to prevent the application of customs valuation as a non-tariff barrier.
- The reference prices should be eliminated as soon as the Agreement enters into force.
- Export and import price requirements, import licensing conditioned on the fulfillment of a performance requirement, and voluntary export restraints not allowed under the WTO, should be eliminated immediately after the Agreement enters into force.
- The grant of import licenses should not be made contingent on requirements of purchase of national goods, minimum percentage of local content or exporter performance.
- Each FTAA country should be required to notify all other FTAA countries of all existing import licensing procedures and fees imposed in connection with importation and exportation. Thereafter, they must notify any new procedures or fees and changes to existing procedures or fees within 60 days of publication.
- Efforts should be made to achieve a convergence of treatments given to the special trade systems existing in the region (restitutions or exemptions, temporary admission, regimes for importing trade samples, and others).
- With regard to special national export/import systems that provide for suspension, restitutions and exemption of customs tariffs (such as the drawback regimes), the parties will maintain their rights and obligations in accordance with their legislation and the commitments assumed in the WTO.
- Regarding products originating in industrial free zones, export processing zones and similar systems, the full compliance with the Agreement requirements of origin is sufficient to keep them from adopting any discriminatory treatment in terms of intra-hemispheric trade.
- No member country should raise or create new fees for customs processing.
- Prohibitions or restrictions on imports and exports should be eliminated, preserving only those related to scientifically based matters of human and animal safety and health.

Safeguards

- The FTAA agreement should include a chapter on safeguards consistent with WTO provisions. The possibility of applying safeguards should exist after the Agreement has come into force.
- Upon the expiration of the period of effect of the safeguard, the preference applied shall be the one provided for in the original timetable for tariffs elimination.
- Prior consultations should be established between the parties before safeguards are applied. Maximum deadlines should be defined for the conclusion of the consultations process.

Customs Procedures

- The FTAA countries should establish a system (such as surety, satisfactory guarantee, bond, or other appropriate instrument) that enables the eligible importer or agent to obtain the goods immediately (not posing environment, health or safety threats) prior to the completion of administrative requirements and payment of duties, taxes or fees.
- Member countries should provide for the possibility of temporary admission of goods, as long as the pre-set parameters are fully respected by the Parties.
- The FTAA Agreement should also permit all import documentation to be submitted electronically. The Parties shall publish over the Internet their customs laws, regulations and procedures, including any changes made to them. 5 The use of electronic media should be promoted in communicating with users and to improve customs infrastructure.5. The use of interchangeable data transfer systems should be encouraged among member countries.
- The FTAA Agreement should eliminate the need for consular transactions for FTAA goods, including related fees. Consular transactions are requirements that customs documents accompanying goods of one country intended for export to another must first be certified by the consul of the importing country.
- Customs procedures should be transparent and should not become barriers to trade.
- The Parties shall publish over the Internet their customs laws, regulations and procedures, including any changes made to them.
- Member countries shall review their laws and procedures in order to incorporate the best current practices and promote simplification of bureaucracy to facilitate the movement of goods and to reduce the costs involved.
- The use of electronic media should be promoted in communicating with users and to improve customs infrastructure.
- The use of interchangeable data transfer systems should be encouraged among member countries.
- Simplified procedures should be established for the import of commercial samples and advertising material.

- Simplified procedures should be provided for express shipments and de minimus values established in the hemisphere.
- Simplified procedures should be provided for low value imports.
- Cooperation schemes should be developed among customs to combat smuggling and fraud..

Technical Barriers

- The FTAA countries should take steps to make the sanitary and phytosanitary health certification process more transparent and efficient, including publishing regulations and explanations of the certification process in English, Portuguese and Spanish on the Internet and creating mechanisms that allow companies track the progress of their certification requests online.
- The countries shall ensure that rules and regulations relating to health and the environment are applied on a non-discriminatory and scientifically proven basis. Prohibitions or restrictions on imports and exports should be eliminated, preserving only those related to scientifically based matters of human and animal safety and health.
- The FTAA countries should accept one standard, one test, third party certification or supplier's declaration of conformity accepted everywhere, at the customer's choice.
- Each FTAA country should provide electronically to the other FTAA countries' standards inquiry points the full text of draft technical regulations at the time that the country sends notification of such measures to the WTO pursuant to the TBT and SPS Agreements.
- The Parties should recognize the rights and obligations of the WTO Agreement on Technical Barriers to Trade (TBT) and the Code of Good Practices and pledge to follow the principles of transparency, most-favored-nation treatment and non-discrimination.
- The hemispheric Agreement should include goods and services and apply to all levels of government, especially agencies linked to the system of product registration standardization, metrology and conformity assessment.
- Technological and human-resources infrastructure shall be developed through a program of cooperation among the countries.
- A Working Group should be created within the FTAA negotiations to discuss and develop the following themes along with governmental and non-governmental organizations: technical standards and regulations, conformity assessment and certification, metrology and mutual recognition.

Rules of Origin

- The FTAA Rules of Origin should incorporate the criteria of change in tariff

classification and specific requirements/specific transformations as proof that a product using materials imported from outside the region is original from a country of the region, with allowance for special sectoral rules of origin.

- The FTAA Agreement should adopt straightforward, transparent, and easy-to-use rules to determine origin.
- The specific requirements/transformations shall not be transformed into trade barriers between Parties, and shall be defined by various methods. 8 The FTAA Rules of Origin shall include the “accumulation of origin”.
- The agreement should contain an appendix specifying the rules of origin on a product-by-product basis.
- It is fundamental to set up a consultation system between the governments and the private sector of the Parties in order to make it feasible to establish and implement the FTAA Rules of Origin on suitable bases.

Customs Procedures Related to Rules of Origin

- A uniform classification system should be adopted including the harmonization of emitters and the basic characteristics of certificates such as application forms, periods of validity and information previously agreed upon between the Parties.
- The certificate of origin shall be the only document to accredit goods originating in the Americas to the preferential trade provided for in the Agreement.
- A system should be created for administrating the Rules of Origin, including interpretation, modification and supervision of the application of the rules of origin.
- The adoption of self-certification for the purpose of simplifying and reducing exporting costs will require institutions and procedures equipped to verify product origin.
- In cases of claims of false, unreliable or incorrect certificates of origin, the competent authorities of the countries shall be qualified to initiate investigations by sending written questionnaires to exporters and/or producers of other countries of the hemisphere as well as visiting the facilities of companies to check that the rules of origin are being complied with. Visits shall be preceded by notification to the competent authority of the countries to be visited and to the companies involved.

Business Facilitation

- The FTAA countries should recommit themselves to the complete and rapid implementation of the customs-related business facilitation measures adopted at the 1999 Toronto Trade Ministerial by June 2003. The business facilitation

process is an essential part of the FTAA, and implementation of the business facilitation measures should remain a priority in the FTAA process.

AGRICULTURE

- Agricultural trade is a major component of international trade and must be treated as all other goods in the FTAA. Primary goals in the FTAA should include the removal of all tariff and non-tariff barriers to trade in agricultural products, clear rules on the application of sanitary and phytosanitary regulations, and the elimination of all subsidies on exports and measures of equivalent effect.
- The entire tariff universe should be negotiated and tariffs eliminated, and quick tariff reduction should take place, particularly in high tariff areas.
- The FTAA should include disciplines on domestic supports.
- For the purpose of the negotiations, all non-ad valorem tariffs will be transformed into their ad valorem equivalents, which will be taken as references for the tariff elimination.
- In the transition period until the complete elimination of tariff and non-tariff barriers, the minimum-access quotas should be expanded, and a common and transparent process should be established for their administration.
- Minimum entry price schemes and price band systems for imported commodities and related finished food products must be eliminated. Such mechanisms undermine the integrity of the market access negotiations.
- FTAA countries cannot realize the full benefits of liberalization without a concerted effort to remove non-tariff barriers, especially product standards, mandatory labeling, and sanitary and phytosanitary requirements. The guiding principle should be the limitation of technical standards and regulations to only those necessary to protect public health and safety. Some examples of existing practices that obstruct trade and should be addressed in the negotiations are:
 - Pre-import registration procedures that demand proprietary product content and process information that goes far beyond what is necessary to establish safety.
 - Excessive inspection, sampling, and quarantine practices for foods that are not justified by risk management principles.
 - Requirements that industry re-test and re-certify products that have already been tested for conformity to similar standards in multiple markets.

- The legal text of the FTAA on sanitary and phytosanitary measures (SPS) should provide for strict implementation of the WTO Agreement on SPS by establishing mechanisms for notification and counter-notification of sanitary and phytosanitary measures and other non-tariff barriers, for the purpose of preventing these from becoming unjustified obstacles to trade.
- The FTAA member countries should commit themselves to the effective implementation of the WTO Agreement on the application of sanitary and phytosanitary measures (SPS Agreement) in the intra-hemispheric trade
- The FTAA countries should implement measures to make the sanitary and phytosanitary health certification process more transparent and efficient, including publishing regulations and explanations of the certification process in English, Portuguese and Spanish on the Internet and other means, as well as creating mechanisms that allow companies to track the progress of their certification requests online and by other means.
- The FTAA countries should only apply sanitary and phytosanitary measures to provide the appropriate level of protection for human, animal and plant life or health. When applied, said measures should be based on scientific principles and should not be maintained without sufficient scientific evidence.
- The FTAA countries should eliminate agricultural export subsidies (as defined in the WTO Agreement on Agriculture) in the region and ban subsidized imports from outside of the region as soon as is feasible.

ANTI-DUMPING, SUBSIDIES AND COUNTERVAILING DUTIES

- FTAA should assure that antidumping and countervailing duty regulations conform to agreed standards, that they are clear and transparent, and that all parties to enforcement actions have adequate opportunity to present their views as to avoid the possibility of this instrument being used for protectionist purposes in intra-hemisphere trade.
- FTAA should include disciplines on antidumping proceedings affecting intra-FTAA trade in goods, acknowledge that an FTA changes economic conditions, help ensure trade remedies are not abused and facilitate liberalization beyond WTO disciplines.
- With respect to subsidies, the negotiations should be based on the identification by the parties of the various types of subsidies that have relevant distorting effects on trade, and the Agreement should establish ways to assure that all identified subsidies will be eliminated in time periods that should not exceed that of tariff elimination.
- National authorities should provide for judicial review in cases where administrative officials are alleged to have departed from standards in law and regulation.

- To guarantee fair comparison between the normal value and the constructed export price, authorities should present a justification for the use of the method of constructing the export price, as well as the normal value for determining dumping, in order to prevent arbitrary measures.
- In the case of subsidy, the authorities should guarantee greater transparency by making public the methodology used to calculate the amount of the subsidy.
- Voluntary price undertakings taken by exporters should also not be above the price adequate to neutralize the injury caused to the domestic industry (Lesser duty rule).

SERVICES

- The Agreement should promote ambitious liberalization while respecting the need for appropriate and least trade-disruptive regulation. There should be no quantitative restrictions on the provision of services to those sectors or methods of provision of services for which the parties have entered into liberalization commitments. With respect to domestic regulation of services, the parties shall assure that the general application measures are administered in a reasonable, objective and impartial manner and shall not create any discrimination against foreign suppliers.
- The FTAA Agreement should provide for an obligation for an FTAA Party to remove non-discriminatory quantitative restrictions.
- The FTAA Services Agreement should not exclude any sector on an a priori basis.
- The Agreement should provide most favored nation treatment on an immediate and unconditional basis to all the parties – respecting the principle of coexistence between the FTAA and the subregional and bilateral agreements with higher level of integration in force in the hemisphere in those sectors not covered by the FTAA– and national treatment to those sectors and methods of provision of services that are included on their lists of liberalization offers.
- The FTAA Agreement should remove non-discriminatory quantitative restrictions.
- The provisions of the Agreement should compromise national and sub-national government segments.
- The hemispheric agreement should be based on the following principles: non-discrimination, treatment of the four modes of provision of services - including commercial presence.
- The disciplines established by the agreement should apply to all segments of the services sector with no discrimination against new and evolving services, as well as to all their modes of provision. In principle, therefore, the negotiations of the FTAA Agreement on Services should exclude no sector.

- The Agreement should guarantee the preservation of the right of the Parties to regulate services activities in their territories now and in the future, with due respect to the principle of national treatment.
- With respect to the proposal to include labor standards in the text of the FTAA — a subject discussed in the services negotiating group — we wish to register our opposition. Nearly all economists agree that trade liberalization raises incomes, and higher incomes lead in turn to improvements in labor standards. Efforts to block trade liberalization in the interest of promoting workers' rights fly in the face of these facts. All too often, calls for trade-linked mechanisms to enforce labor standards are simply protectionism by another name. In fact, advocates of labor rights often seek to restrain trade in the very sectors where Latin America's economies are at their most competitive. Thus, while we support efforts to improve working conditions and ensure workers' rights, it is not appropriate to address this issue in the text of a trade agreement.
- Potentially, even before completion of the FTAA Agreement, the FTAA countries should encourage the use of the WTO Guidelines for Mutual Recognition Agreements in Accounting by responsible authorities within the Western Hemisphere for the development of sector-specific agreements on mutual recognition of equivalency of licensing and qualification requirements for professions (e.g., architecture, engineering, and accountancy), where appropriate.
- We support the incorporation of a framework for transparency within the FTAA, as recommended by the 2001 services negotiation workshop at the VI Americas Business Forum, which ensures that laws, regulations, and procedures affecting trade in services are promptly published or otherwise made available to the private sector, with appropriate opportunity for advance comment by interested parties. Additionally however, the FTAA countries should take the necessary steps to ensure transparent and timely authorization procedures, where authorization is required to supply a service.
- At the earliest possible date — and potentially even before completion of the FTAA Agreement — we would like to support the creation of the proposed "FTAA Visa", established during the 2001 services workshop at the VI Americas Business Forum. Furthermore, the FTAA countries should agree to provide business visa treatment on a most-favored nation basis to all FTAA countries including the implementation of simplified procedures for temporary entry of business people, establishing multiple entry visas as the norm and eliminating special requirements for those providing technical assistance.
- The FTAA countries should indicate implementation dates for each of two phases of the Inter-American Telecommunications Commission (CITEL) mutual recognition agreement (MRA) for conformity assessment of telecommunication equipment.
- The FTAA countries should recommit themselves to the complete and rapid implementation of the customs-related business facilitation measures adopted at the 1999 Toronto Trade Ministerial. The business facilitation process is an

essential part of the FTAA, and implementation of the business facilitation measures should remain a priority in the FTAA process with completion by June 2003.

INVESTMENT

- The FTAA Investment Agreement should have a broad coverage, providing for both direct and portfolio investments.
- The FTAA Agreement should endorse expropriation disciplines and should guarantee investors the right to transfer funds into and out of the FTAA host country without delay.
- The FTAA Agreement should include provisions on transparency to make laws, regulations and administrative practices publicly available; to the extent practicable, to provide advance notice and comment periods for proposed laws, regulations and administrative practices; and to promptly respond to requests for information.
- With respect to the proposal to include labor and environmental standards in the text of the FTAA — a subject discussed in the investment negotiating group — we wish to register our opposition. While we support efforts to improve labor and environmental protection, it is not appropriate to address this issue in the text of a trade agreement.
- The FTAA Agreement should provide nationals of one Party with the right to enter and temporarily stay in the territory of another Party for the purpose of establishing, maintaining, advising or providing other essential services to an investment. It should also give investors the right to hire their top managerial personnel without regard to nationality.
- The FTAA countries should take the necessary steps to accede to the OAS Inter-American Convention Against Corruption and deposit instruments of ratification with the OAS.
- The FTAA countries should take the necessary steps to accede to arbitral conventions, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).
- Given the existence of great economic disparities among countries and between regions in the same country of the hemisphere, the multinational financing agencies, such as the IDB and the World Bank, should provide for the mobilization of financial resources for investing in the social and physical infrastructure in those countries and regions, as well as for research and technological development.

INTELLECTUAL PROPERTY

- Accordingly, the negotiations on intellectual property within the scope of the FTAA shall focus on strengthening intellectual property rights protection through effective application of the provisions contained in several international agreements in effect, in particular the TRIPS Agreement, in an effort to reduce trade barriers, to eliminate distortions that affect the trade relations between the member countries and to reduce piracy and counterfeiting.
- Specifically, the FTAA countries should immediately adopt and implement measures to reduce piracy and counterfeiting in the Hemisphere, within each country and at its borders, including measures along these lines:
 - a) strengthen coordination for anti-piracy efforts;
 - b) improve judiciary performance through training and orientation aimed at deterring intellectual property crimes and infringement; and
 - c) Improve intellectual property legislation with relevant sanctions and speedier processes.
- The FTAA countries should protect against unfair commercial use of any undisclosed test data received as part of an application to market a specific new pharmaceutical or chemical product according to TRIPS.
- The Chapter of the FTAA Agreement on Intellectual Property should be drawn up to further the reduction of trade barriers and the elimination of distortions that affect trade relations among member countries, as well as to foster the effective transfer of technology between developing and developed countries, and vice-versa, as well as exchange of information between patent authorities.
- Member countries should adopt measures that contribute to promote effective transfer of technology to developing countries, including the elimination of existing restrictions, in addition to supporting public and private initiatives that strengthen the research capacity of the various countries in the hemisphere by promoting technology innovation throughout the region. To this end, instruments such as credit, subsidies and tax exemptions should be employed. Multilateral financial institutions such as the IDB should open financing lines to sponsor innovation and the transfer and diffusion of technology in the hemisphere and improve functioning of patent offices.
- Member countries should adopt measures to equip and qualify organizations for the protection and defense of intellectual property in the region so as to ensure that rights are effectively respected.

GOVERNMENT PROCUREMENT

- The principles of competition, transparency and non-discrimination (national treatment and most favored nation treatment) should constitute the central core of the Agreement. The procedures relating to the variety of stages of government procurement should adequately translate these principles.
- The FTAA Agreement should require the publication of laws, regulations, judicial decisions and other measures specifically governing government procurement.
- The FTAA Agreement should require that tendering procedures be transparent, open and competitive. In addition, it should include clear and predictable rules for choosing different procurement methods and flexibility for government purchasers to take full advantage of electronic communications and emerging technologies.
- The FTAA Agreement should require advance public notice of procurement opportunities with enough information to allow suppliers to assess their interest in participating.
- The FTAA Agreement should require that government procurement entities promptly inform all suppliers that submitted tenders of the contract award decision, as well as disseminate this information in an electronic or paper medium widely accessible to the public.
- To the greatest extent possible, participation of sub federal levels of government should be encouraged in the government procurement agreement.
- The FTAA Agreement should include rules to ensure that tender documentation provides clear and complete descriptions of the specifications and other requirements for the contract, as well as the criteria used to evaluate tenders.
- It is essential to have reliable and detailed statistical information on government procurement (amounts, characteristics and so forth) in each one of the parties.

E-COMMERCE

- The FTAA should create an environment that spurs the growth of electronic commerce.
- The FTAA should provide principles that support the maintenance of open markets for electronic commerce, as well as secure strong commitments for those services supporting electronic commerce.
- The FTAA should also provide principles not to impose new restrictions that affect e-commerce, to avoid the creation of any unnecessary barriers to e-commerce and where regulations are necessary, that they be least trade restrictive, and that there be a commitment to extending the practice of not imposing customs duties and taxes on electronic commerce.

- The principle of “technology neutrality” should be included for transmission technology and goods, whether sent in physical or digital form. A “good” shall not become a “service” simply because it has been digitized.
- The FTAA countries should take the necessary steps to ensure the effective protection of privacy with regard to the processing of personal data and transborder data flows on global information networks while allowing the free flow of information, and foster cooperative approaches to privacy protection among governments, consumers, and business, which should recognize a variety of national approaches, including effective self-regulation, based on internationally-accepted principles of fair information practices.
- The FTAA countries should take the necessary steps to recognize, through agreements of mutual acknowledgement, the authentication and digital signature in all their effects, especially legal ones, regardless of the technology or method used - including biometrics - or the legal nature of the certifying body (either public or private). Likewise, guarantee the validity, for legal ends and presentation in court, of records, documents or any other evidence that is transmitted, received, stored or made available in electronic form, regardless of the technology used to authenticate them, with due observance of minimum levels of safety.
- Digital documents should have the same validity as physical documents in customs business issues and signatures.
- The FTAA countries should agree not to impose tariffs or taxes on online transactions at rates higher than those levied on non-online transactions.
- We support the recommendation set forth at the e-commerce negotiation workshop at the 2001 VI Americas Business Forum that prohibits a divergence in taxation rates between online and non-online transactions.
- Seek to establish and maintain international committees for technological and educational cooperation aimed at promoting events, seminars and regular training.
- Member countries should stimulate interoperability of systems of payment in real time among countries.
- Authorize the emission of Certificates of Origin, and other customs documentation by electronic medium.
- Guarantee the validity, for legal ends and presentation in court, of records, documents or any other evidence that is transmitted, received, stored or made available in electronic form.
- Create or encourage the creation of informative sites on the following themes: consumer rights in each country, a list of consumer protection agencies with direct links to those organizations and an interactive list of unsecure sites that have had negative experiences reported;
- Create or enhance legislation that guarantees protection of individual privacy, making it a crime to use personal information wrongly.

COMPETITION POLICY

- The FTAA should mandate that member countries apply strong national competition policies, to promote cooperation among national competition authorities and to avoid activities and measures that encourage or tolerate public and private anti-competitive behavior, such as cartels, government anti-competition practices, under invoicing, as well as other unfair practices.
- The agreement should be a contribution towards the implementation and consolidation of national and sub-regional competition policies, including mechanisms for cooperation among the countries of the hemisphere. This cooperation is of utmost importance for the investigation and application of measures against anti-competition practices that have a trans-border impact and/or distort trade flows
- In projecting and applying measures and policies concerning competition, the Parties should observe the principles of transparency and non-discrimination (national and most-favored-nation treatments).

DISPUTE SETTLEMENT

- The FTAA Agreement should encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of private commercial disputes.
- The FTAA Agreement should require governments to provide appropriate procedures and remove legal and other obstacles to ensure the observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards.