



FTAA Negotiations and Florida's Role in Hemispheric Integration

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Summit of the Americas Center

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Introduction

For reasons of its fortuitous location and crucial economic interest, Florida has been extremely supportive of the Free Trade Area of the Americas (FTAA) and the negotiation process that began in September 1998 in Miami. The state's business and public sectors believe firmly that Florida's future is intimately linked to the successful completion of the negotiations by or before the year 2005. At the Cartagena, Belo Horizonte, San José, Toronto and Buenos Aires meetings of the Americas Business Forum, held in conjunction with the Hemispheric Trade Ministerials, Florida's private and public sector representatives have repeatedly demonstrated their deep commitment to the FTAA process. Indeed, the efforts of the state delegation resulted in the initial location of the FTAA Secretariat in Miami, where the first round of the discussions was effectively managed from 1998-2001.

It is obvious that many priorities have shifted in the new post-September 11 world. The fight against terrorism has resulted in the need to focus on domestic security concerns and defense strategies within this new international context. As a result, the search by the Bush Administration for a more comprehensive Latin American policy appears to have been sacrificed for the time being. The regional trade agenda, however, remains active. After much discussion, the U.S. House and Senate recently approved the Trade Act of 2002. Progress on hemispheric trade items such as the Andean Trade Preference Act renewal in the recent Trade Act of 2002, the U.S.-Chile FTA, the U.S.-Dominican Republic Trade and Investment Council, and the U.S.-Central America FTA, which the US Administration is pressing for by the end of the year, are further evidence that though trade is a highly political issue, it remains a U.S. priority. Florida's business and community leaders strongly support these advances and eagerly anticipate the eventual passage of the FTAA.

Miami and the State of Florida successfully hosted the Secretariat for three years. Within this time period significant progress was made toward the eventual launching of an FTAA. The Secretariat has closed its operations in Miami and is now functioning in Panama. Florida is certain that the Miami

experience was instructive for Panama as it provided an excellent setting for the initial stages of the negotiating process. Next year, the Secretariat will move to Puebla, Mexico and in 2005, when the FTAA is fully launched, a permanent Secretariat will be necessary to handle the administration of the FTAA treaty.

As a result of the administrative secretariat's three-year presence in Miami, Florida's private and public sector leadership is even more firmly convinced that Miami is strategically positioned to become the site of the Permanent FTAA Secretariat. Some of the reasons are obvious: Miami has more direct, daily flights to and from Latin America and the Caribbean than any other city in the Americas, and the infrastructure to support the negotiating process—including physical space, translation facilities and the like—is already in place. Furthermore, the private sectors of Florida and Greater Miami provided considerable material support to the temporary FTAA Secretariat and pledged to expand support significantly for a permanent installation. The public sector—the Governor, the state's political leadership, the City of Miami and the Miami-Dade County governments—has committed itself to ensure that the Permanent Secretariat of the FTAA will receive the finest facilities in Miami to support the functioning of the final FTAA agreement. The US Government has also contributed funding for aspects of the Permanent Secretariat and is expected to provide substantially more as the FTAA Secretariat building is made ready. Florida FTAA, Inc. was launched in May 2001 to manage Florida's relationship with the FTAA process, and to make available financial resources and facilities for special FTAA and trade negotiating needs. A number of standing committees have been established to facilitate these goals, including: U.S. Advocacy Committee, International Diplomacy Committee, Site Selection and Development Committee, and the Public Affairs Committee. A statewide Board of Trustees sustains these efforts through contributions of funds, counsel and personal involvement.

As instructed by the trade ministers at the Buenos Aires Hemispheric Trade Ministerial meeting in April 2001, the FTAA now includes a Technical Committee on Institutional Issues. Since June 2001 this committee has met seven times in Panama to

determine the design of the overall architecture of the FTAA agreement and future permanent Secretariat. They are currently considering the following organizational structures: 1) a political body that will direct the political guidance of the process; 2) an executive body to oversee the Technical Committee and the Administrative Secretariat; 3) a technical body composed of the Technical Committee which will supervise the implementation of the Agreement chapters; and 4) an Administrative Secretariat to handle all logistical and operational requirements.

Florida is well prepared to meet these institutional needs. Its business and public sectors have been deeply involved in assessing and backing the negotiating process through workshops, conferences and other venues. This brief document presents the results of a statewide consulting process with Florida's business sector. The itemized list represents the consensus views of representatives from each area affected by the nine negotiating groups. Some of these views are constructively critical. Earlier versions of this paper were presented in Belo Horizonte, Brazil; San José, Costa Rica; Toronto, Canada; and most recently Buenos Aires for consideration by the trade ministers of the Americas as well as the delegates to the Americas Business Forum.

Background and Consultation

This paper represents a consensus of views expressed by leaders of Florida's business and public affairs communities on the movement toward hemispheric free trade by 2005. The initial document was developed through broad-based, statewide consultation, carried out from April 1999 through January 2000 by the Summit of the Americas Center (SOAC) at Florida International University (FIU) and Steel Hector & Davis LLP. Business and public affairs leaders throughout the state received copies of the document, which was based on the results of a statewide survey, along with requests for their input. Trade and economic development specialists from across Florida held meetings in Miami and submitted their remarks on the document to SOAC. Drafts of the position paper have been widely circulated and posted on

the Summit of the Americas Center website. This version was updated based upon meetings and consultations with a Florida Position Paper Working Group and members of the Team Florida FTAA Board. It has been submitted to the Americas Business Forum organizers for consideration at the October 30-November 1, 2002 Quito Meeting.

The final document was authored and edited by Eduardo A. Gamarra of FIU's Latin American and Caribbean Center, Carl A. Ciria of the Summit of the Americas Center, and Shanker A. Singham of Steel Hector & Davis LLP. Principal contributors were: Hugh Simon, Florida Undersecretary of State for International Affairs; Joanne Emslie-Korn, of the Jacksonville Chamber of Commerce; Gilbert Lee Sandler and Lauren Pérez of Sandler, Travis & Rosenberg, PA; Martha Roberts of the Florida Department of Agriculture and Consumer Services; Michael Stuart of the Florida Fruit and Vegetable Association; Ines Calderon of Florida FTAA, Inc; and Maria Strong of Smith & Metalitz LLP and the International Intellectual Property Alliance (IIPA). Elisa N. Gallo, Cristina C. López-Gottardi and Vilma Zamora of the Summit of the Americas Center contributed to and coordinated this effort.

Market Access

As one of the principal points of entry into the United States and a leading export center to Latin America and the Caribbean, Florida is concerned with the issue of market access. With the exception of tariffs on certain agricultural products specifically discussed in this document, Florida is committed to the progressive elimination of all tariff and non-tariff barriers, and any other measure with equivalent effects, that may restrict trade between participating countries. We fully support efforts to implement the customs-related Business Facilitation Measures (BFMs) recommended for implementation by the Trade Ministers at the Toronto meetings. In that spirit, the Summit of the Americas Center joined with the Organization of American States (OAS) and private sector partners to sponsor a major OAS Business Facilitation Seminar in Miami in December of 2000. There industry and government representatives from Latin America and the Caribbean reviewed progress in BFM implementation. Florida strongly believes in the importance of these measures, and applauds the progress being made. The proper implementation of these measures is a key component to facilitating trade flows, and therefore a key component of Florida's trade agenda.

Florida-based companies are working hard with national associations and customs officials in countries throughout the region to promote BFM implementation and considerable advances have been made. We believe that the negotiators should continue to identify, endorse and implement other short-term measures that improve customs and other procedures affecting the flow of trade, and to ensure that BFMs once agreed are properly and completely implemented.

The State's leadership believes that all tariffs must be subject to negotiation and endorses the view that different trade liberalization timetables may be established to meet the specific needs of FTAA countries. Given Florida's proximity and special relationship to the Caribbean, the State urges FTAA negotiators to facilitate the integration of smaller economies and increase the focus on the issues that should be economic priorities to the Caribbean, including increasing consumer benefits and promoting competition in the region's economies. This

spring, the Summit of the Americas Center organized a small workshop in Castries, St. Lucia to explore this theme, bringing together experts from the region and some representatives from the State of Florida.

Florida's key interests and concerns are summarized below:

- Considering that almost 80% of Florida's trade in 1998 involved the 34 Summit of the Americas countries, the U.S. negotiators should be fully briefed on the particular benefits to Florida of an agreed FTAA. In 2001 exports to Latin America totaled 4/5 of all Florida merchandise exports. Brazil was the highest recipient of Florida exports followed by Venezuela, Dominican Republic, Colombia and Costa Rica. Imports from Latin America were 1/2 of all merchandise imports into the U.S. through Florida. Based on these figures it is clear that Florida will be positively affected by the creation of the FTAA.
- Information about the negotiating group's progress in market access should be available to Florida on a timely basis.
- The many participating countries' trade negotiators are inadequately prepared to deal with the complexities of international trade law. Florida believes that technical assistance to better prepare national negotiators will improve the process for successful conclusion of an FTAA agreement. In support of these aims, the Summit of the Americas Center offers an International Trade Negotiation Skills Course, a two-phase intensive training experience that has now graduated a total of 91 public and private sector professionals from several Latin American countries, including: Argentina, Brazil, Dominican Republic, Colombia, Ecuador, Costa Rica, Guatemala, Panama, Paraguay, Peru, Uruguay, Venezuela and the United States. In addition, in early October the center conducted a workshop for negotiators from the Dominican Republic specifically focused on Market Access issues, and is prepared to support other countries in the region with the same service.
- Aggressively pursue opening of new markets and reciprocity of market access in current markets for agricultural products.

- Establish early reduction/elimination of tariffs on high-value goods, as it would provide early economic benefits and demonstrate concrete progress in the FTAA process.

- Border procedures in many countries of the FTAA represent substantial barriers to international trade. In light of this problem, Florida recommends that the FTAA negotiating countries:

- Immediately adopt and fully implement without extensions of time, the commitments under the WTO Customs Valuation agreement.

- Adopt and implement the WTO Harmonized System for the classification of merchandise.

- Support adoption and implementation of the procedural standards in the revised Kyoto Convention.

- Participate in developing and implementing a globally uniform system of rules of origin. In addition, FTAA rules of origin should allow Certificates of Origin and all other import documentation to be submitted electronically. Electronic submission of Certificates of Origin will facilitate trade by improving customs efficiency and reliability, and reducing custom clearance times. This in turn will translate into improved market access throughout the region.

- Adopt and implement the Customs procedural guidelines adopted by the International Chamber of Commerce and endorsed by the WCO.

- Adopt and implement a surety-based control and release system at the borders, assuring the timely delivery of goods into commerce and proper enforcement of all customs, health, safety and other measures.

- Monitor pre-shipment inspection regimes closely to ensure that they do not hinder the flow of goods or violate the standards set by international agreements.

- Publish, disseminate and systematically update in an easy-to-use, standard format, the text and explanatory materials setting forth customs proce-

dures and rules of origin governing trade in each country, regional and sub regional agreement. The information should be disseminated on appropriate Internet sites, and eventually, on a single Internet site for the hemisphere.

- Defend and promote the right of consumers to import goods for personal use through the international postal and express delivery companies.

- The countries should participate in regular public conferences with the business community to discuss existing and new customs procedures.

- Many barriers to trade extend beyond technical customs regulations and tariff barriers. Some countries maintain discriminatory tax laws that protect local products or avoid the application of GATT 1994 Article III.2. Florida is opposed to all taxes that give preferential treatment to local producers over foreign exporters.

Several countries maintain laws with many protections for local distributors. These laws prevent foreign suppliers from properly servicing foreign markets, to the detriment of local consumers. The resulting distribution bottleneck negatively affects other local distributors. These laws significantly impede the progress of the countries that maintain them and violate GATT 1994 Article III.4 as well as the distribution services commitments in GATT, Article XVII.

Agriculture

The implications of the FTAA negotiations in this area are significant for Florida, for which agriculture is a key industry. In the main, Florida's agricultural sector endorses the spirit of the FTAA negotiations, with specific comments regarding the objectives adopted by the trade ministers in San José, Costa Rica in February 1998 and by the heads of state in Santiago, Chile in April of the same year. The following observations reflect the consensus views of Florida's agricultural sector.

- Florida's agricultural sector supports a fair and equitable international trade environment.

- Florida is one of the most diverse agricultural states in the nation, producing nearly 250 products and commodities for commercial sale. In the aggregate sense, the FTAA may be good for agriculture in the United States, but its impact will vary across commodities and within sub-commodity sectors. Thus, in the ongoing trade negotiations in Panama, the impact of any agreement on each commodity sector must be carefully scrutinized by Florida.

- Specific rules to address perishable, seasonal and cyclical agriculture must be developed.

- Florida's agricultural sector supports strong trade laws, such as antidumping and countervailing duty, that are consistent with existing WTO rights and obligations. In the case of safeguard actions, national laws should conform to the WTO Agreement on Safeguards, and should permit prompt action that reflects the peculiarities of perishable and seasonal agricultural products. Florida agriculture believes FTAA member countries should work together to get a clarification of the Safeguard Agreement or a change to Article XIX of the GATT 1994 to ensure that safeguard actions are not limited to situations where "unforeseen developments" are demonstrated.

- Florida's citrus and winter vegetable growers believe that further reductions in the duty on orange juice, sugar and fresh winter vegetables beyond the agreements achieved at the Uruguay Round are unacceptable.

- Phytosanitary non-tariff barriers must be scientifically based and transparent. The WTO SPS Agreement should be adopted and enforced by all nations.

- It is the view of Florida's agricultural sector that Florida's experience with NAFTA has not been positive, owing largely to ineffective safeguard provisions for perishables and to the Mexican peso crisis of 1994-1995 and the resulting exchange rate fluctuations. Any process of negotiations toward free trade arrangements will have to come to terms with appropriate safeguard provisions for perishables and monetary policy, especially currency devaluation, to allow for a level playing field in agricultural

products. An FTAA agreement should include safeguard provisions, which would assist FTAA countries in responding to currency fluctuations.

- Florida's agricultural sector believes environmental, labor and safety standards between trading partners should be equivalent to allow Florida to compete fairly with countries where these standards are more lax.

- Trade-distorting practices such as export subsidies, particularly those outside the FTAA, and state trading enterprises, must be eliminated.

Services

Florida's economy is driven primarily by the services sector, which accounts for more than 78% of annual GSP (gross state product). Increasingly, the health of the state's economy is tied to the liberalization of the trade in services with Latin America and the Caribbean. According to the U.S. Department of Commerce International Trade Administration, Florida is one of the fastest growing states for high quality jobs generated by the services sector (in 1999). As a result, Florida is especially committed to the progressive liberalization of trade in services.

The following recommendations reflect the view of representative members of the services sector in Florida:

- The implementation of structures to promote both the export and import of services is in Florida's best economic interest.

- Florida is mainly a service sector state; as such, it enjoys a competitive advantage in areas that include the establishment of multinational representative offices and the export of health, education, finance, tourism, technology and professional services.

- Non-tariff barriers in the region impede the free movement of management, technical and professional services and thus hinder the growth and development of cross-border business in the hemisphere. Barriers range from restrictions on the substance and modality of the work that may be per-

formed, to time-consuming bureaucracy and paperwork.

- In many cases, non-tariff barriers take the form of monopoly concessions. The provision of services through monopolies—whether of private entities or government corporations—may be the result of delicate and difficult political processes in the various countries of the hemisphere. Action should be taken in this respect, for the free flow of services can promote strong economic growth.
- Countries should commit to setting up systems to evaluate experience and educational qualifications from country to country, with a view to mutually recognizing qualified service providers.
- With regard to regulating the provision of services, it may be possible to replicate the concessions applied under NAFTA in the legal area; for example, restricting the licensing of foreign legal consultancy to matters that pertain to the individual's country of origin.
- With respect to telecommunication services, Florida is concerned about specific regional trends:
 - In certain countries, private telecommunications may be violating competition safeguards enshrined in the Reference Paper to the WTO Basic Telecommunications Agreement.
 - In many countries, privatization of government-owned telecommunications providers has led to the replacement of public monopolies by private monopolies, and has failed to provide adequate market contestability for non-national providers.
 - Florida urges all countries to adhere to the standards established in the WTO Basic Telecommunications Agreement. Countries should allow their competition agencies to have as great a say as possible to ensure that competition safeguards are met. Regulation of telecommunications providers cannot be left solely to communications regulators.

Intellectual Property Rights

Florida agrees with the overall objective of reducing distortions in hemispheric trade and promoting and ensuring adequate and effective protection of intellectual property rights. The state also ratifies the view that changes in technology must be considered in any negotiation process. The principal issues for Florida include the following:

- A firm commitment must exist on the part of all countries in the Americas to enforce IP laws.
- The FTAA negotiations should strive to create uniformity among the countries' trademark regulations.
- Intellectual property issues on the Internet, such as copyright, should be addressed in the FTAA negotiations.
- Inadequate protection of IP in other hemispheric countries may cost Florida companies millions of dollars in the software, pharmaceutical, creative arts and entertainment, agriculture, and high technology sectors.
- Rather than lowering the IP standards of more developed countries, developing countries should receive assistance to improve their IP laws and their enforcement mechanisms.
- Countries should implement and enforce their existing commitments under the TRIPS agreement.
- Recognizing that the proper protection of intellectual property rights is a key element in encouraging economic development, Florida believes that new competition laws should not be used to weaken intellectual property protection.
- Strong intellectual property protection, far from being an obstacle in efforts to get essential medicines to poor people, is a critical component of addressing global healthcare needs. It is only through strong patent protection that new drugs will be developed in the future to treat diseases, both new and old.
- A robust IP framework—one that fosters responsibility and halts the theft of the fruits of creative

endeavor through effective remedies—will provide beneficial economic and cultural prospects to the citizens and nations of this hemisphere.

Government Procurement

Florida maintains a keen interest in expanding access to the government procurement markets of the FTAA countries. Florida believes that an urgent need exists to establish a framework that guarantees the transparency of government procurement processes and that ensures impartial and fair mechanisms for the resolution of procurement complaints and appeals by suppliers. Florida's main concerns include the following:

- The scope of government procurement can be a controversial matter. Thus, it is imperative to define this scope broadly, to include accessibility to services.
- Government procurement dealings must be transparent. Transparency is a vital factor in the liberalization of government procurement policies and all countries in the Western Hemisphere must abide by the same transparency regulations. Florida advocates that all FTAA countries sign the WTO Agreement on Transparency in Government Procurement as a matter of urgency when such agreement is reached.
- A dispute settlement mechanism should be established to handle conflicts over government procurement practices and the application of policies and dispositions. Coordination with the dispute settlement working group is of the utmost importance.
- Foreign providers should be given the same treatment as local providers. They should not be required to maintain a legal or other presence within the national territory of the procuring government.
- Notice of intent to procure goods and services should be given with enough time for providers—both foreign and local—to prepare and submit proposals.

- No Latin American country is a signatory to the WTO Government Procurement Agreement. Florida considers this to be a significant gap in the regulation of government procurement contracts. Accordingly, Florida urges all countries in the hemisphere to adhere to the Government Procurement Agreement with as few exemptions as possible. Florida considers that nothing prevents countries not already signatories to the code from adhering in any subsequent WTO Round and quickly resolving the terms of that accession in the FTAA negotiations.

Investment

Florida supports the objective of establishing a legal framework to provide guiding principles for investment in the Americas. Florida believes that the state could benefit immensely from an FTAA that permits the free flow of trade and investment. As such, it supports the creation of a stable and transparent environment that supports foreign and domestic investors. As part of the integration framework, economies must pay particular attention to the creation of vehicles that enable businesses to take advantage of the integration process by expanding production, thus contributing to improved economic welfare. To further the broad objectives of the FTAA, Florida recommends the following provisions to guarantee the hemisphere's investors and their investments substantive and procedural rights.

- A right to “national treatment” or “most favored nation” status applicable to all measures, whether directed at pre- or post-investment actions.
- Full protection under international law.
- A right to repatriate, in convertible foreign exchange, all investment earnings, whether debt or equity; all earnings on intellectual property; and all proceeds from the sale or other disposition of investments, subject only to certain narrowly drawn exceptions related to the enforcement of the criminal and antitrust laws that are in conformity with the FTAA or the preservation of essential foreign exchange reserves.
- A prohibition against imposing a variety of trade-related (TRIMs) and other listed measures, as a con-

dition of approving a foreign investment. Prohibited measures should include, among others, required export levels; required local procurement; nationality of senior managers; and linking the right to import materials and equipment to foreign exchange earnings.

- If FTAA countries are given the right to identify industries or economic sectors to be exempted from FTAA disciplines, exemptions should conform to the following rules:

- Identification should be on an "opt-out" versus "opt-in" basis. All sectors and industries within a member state should be subject to all FTAA disciplines unless expressly and formally declared exempt by the member state involved.

- Each member must present a declaration of all exemptions after the FTAA has been signed and may not thereafter add to this list.

- Prior to this declaration, each member must, in a timely fashion, supply all other members with a list of proposed exemptions and must engage in good faith negotiations concerning their propriety with all members having an interest in the industry or sector involved.

- All industries or economic sectors declared exempt from FTAA disciplines should be subject to a "standstill" to bar any addition to or amendment of measures relating to the exempt industry or sector if the effect would be to increase the degree to which those measures deviate from FTAA disciplines.

- The FTAA negotiators should consider enacting a rule prohibiting any member state from nationalizing or expropriating an investment from another member state, or from taking any action "tantamount to an expropriation," unless the action taken is for a "public purpose" and is accompanied by the payment of full compensation in a convertible currency.

- Florida is aware that the interpretation of "tantamount to an expropriation" must be sensitive to the particular factual nuances of each case and that only through informed and thoughtful case-by-case

decisions can a workable interpretive body of law emerge.

- Investors from member states should have the right to initiate an arbitral proceeding to hear and adjudge their claim that a member government has violated the terms of the FTAA chapter on investments. If the claim is sustained, investors should be entitled to receive damages or coercive relief, or both. These awards would be judicially enforceable under either the New York or Panama Conventions or, if ICSID is involved, under the terms of that convention.

- Although much progress has been made toward the privatization of state enterprises, foreign investment regimes in the Americas maintain sectors reserved for the state or which limit FDI. These are sectors that Florida-based companies, as well as U.S.-based companies in general, cannot enter full force. They include, among others, banking and finance, mining, military equipment, transport, electric power, insurance, telecommunications, and media and brokerage services. Such reservations must conform to the conditions described above concerning exemptions from FTAA disciplines.

- Facilitation measures are the most important for business. These measures should bring existing rules together and harmonize regulations and norms governing trade, investment and finance. The end result will be lower market entry and transaction costs.

Competition Policy

Florida's business community is acutely aware of the significance of achieving sound agreements that promote a fair and competitive business environment. The state's business leadership endorses the need to establish juridical and institutional coverage to eliminate anticompetitive business practices. Along these lines, Florida's business community eagerly anticipates the establishment of mechanisms that guarantee free competition among and within the countries of the hemisphere. With these overall objectives in mind, Florida proposes the following:

- Allowing for enhanced, transparent and sound competition among the nations of the Americas would establish a firm grounding for economic growth.
- Rules barring public sector restraints of trade that are anticompetitive in nature should be negotiated in the competition policy chapter, and should be a priority for FTAA member countries. It should be understood that this is intended to deal with practices in which certain undertakings are given special treatment by governments, or regulations that enforce anti-competitive practices, and not to deal with anti-dumping or countervailing duty laws, which are properly the subject of another chapter. It should also be understood that nothing in this statement requires any government to privatize any public service.
- A priority under trade regulations should be the abolition of practices such as horizontal price cartelization, bid rigging, horizontal market division and output restriction.
- For purposes of any competition policy negotiations only, practices such as below cost pricing, price discrimination and resale price maintenance should be deemed illegal only if a structural analysis of the market suggests that, in the particular case investigated, the anticompetitive effect outweighs any positive competitive benefit.
- Antitrust laws in FTAA countries should disfavor monopolies or attempts to monopolize.
- The FTAA competition chapter should state that all countries must enforce competition laws in compliance with the guiding WTO principles of most favored nation and national treatment. In other words, the agencies may not apply competition laws differently between local and foreign actors.
- The FTAA competition chapter should include some variant of the principle of positive comity, taking account of the enforcement imperatives and resources of national enforcement agencies of other FTAA signatories.
- The FTAA competition chapter should ensure that competition agencies are independent of national

trade ministries, and are able to investigate anti-competitive public sector restraints on trade.

Subsidies, Antidumping and Countervailing Duties

- Florida (with the exception of Florida agriculture) supports the objectives agreed upon in San José and Santiago in 1998 in this area and urges FTAA negotiators to develop all necessary mechanisms to assure compliance with the WTO Agreement on Subsidies and Countervailing Measures. Florida believes that improvements in the rules and procedures regarding the operation and application of trade remedy laws will, in the long run, prevent the establishment of unjustified barriers to trade in the hemisphere.
- Florida agriculture supports ensuring that all member nations of the FTAA have laws and regulations that are consistent with existing WTO antidumping and subsidy agreements. Florida agriculture supports transparency in the operation of national laws, public access to laws, regulations and decisions by national authorities where such laws are used. Florida agriculture also supports an ongoing dialogue among administrators on issues where clarification or harmonization would improve the operation of the laws as long as such "clarifications" do not undermine existing U.S. law.
- Florida (with the exception of Florida agriculture) considers that the FTAA negotiations must identify which types of subsidies should be allowed, which should be prohibited, and which are actionable. The definitions of the various categories of subsidies must be clear to avoid confusion and unnecessary disputes among parties.
- To avoid unjustified protectionism on the part of states and for a state to apply antidumping measures against the products of another country, Florida (with the exception of Florida agriculture) suggests that FTAA members investigate the feasibility and WTO consistency of rules, providing the complaints must show that a domestic industry is materially injured or threatened by imports of foreign products.

Dispute Settlement

Florida endorses the objective of establishing a fair, transparent and effective mechanism for dispute settlement among FTAA countries, taking into account inter alia the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes. State business and public sector leaders support the use of arbitration and other alternative dispute settlement mechanisms to solve private trade controversies in the framework of the FTAA. Along these lines, Florida recommends:

- The creation of special mechanisms for quick dispute resolution to resolve commercial issues that involve perishable products (such as agricultural goods) and other urgent cases. Since Florida has a strong agricultural industry, delayed dispute resolution would negatively affect the state. Such special mechanisms would not replace existing rights under U.S. trade laws.
- Following the examples of other dispute settlement models, including the WTO Dispute Settlement Body, a central coordinating body should be responsible for assisting in dispute resolution. Such a body would ensure the transparency of the process by making documents and other information about the dispute resolution procedure available to the public.
- The system for dispute resolution should include time limits on the presentation of documents and default procedures to avoid unnecessary delays. The countries of the FTAA should ultimately present their disputes to a panel of impartial, competent experts. This panel's decisions would further clarify FTAA rules and regulations, thereby avoiding unnecessary disputes in the future.
- Florida legislation supports in-state international arbitration. Consequently, the state would be an ideal site for dispute resolution.
- To avoid confusion in applying FTAA rules, Florida advocates that the system of dispute resolution be in effect by 2005, when the FTAA is implemented.
- Florida recognizes the gaps in the current WTO dispute resolution process. Florida (with the excep-

tion of Florida agriculture) urges countries in the FTAA negotiations to agree that WTO panels, in addition to ruling that a particular regulation or practice is a violation of WTO rules, must be able to rule that a violation will be deemed to be ongoing unless certain elements are removed from violating regulations or practices.

Smaller Economies

The majority of participants in the FTAA consist of small economies in the Caribbean and Central America, whose early integration into the negotiation and implementation process needs to be guaranteed. Florida is the leading U.S. state in its close trade relationships with the smaller Caribbean and Central American economies, and is constantly seeking fast and stable trade expansion.

In the next phase of the FTAA negotiations, Florida's private and public sector urge the United States to support special actions as incentives and help ensure the eventual full participation of the smaller economies in the FTAA. Florida welcomed the breakthrough represented in the enactment into U.S. law in 2000 of the Caribbean Basin Trade Partnership Act (CBTPA), opening the U.S. market to more of the products of these countries. For similar reasons, Florida strongly encouraged the renewal of the Andean Trade Preference Act (ATPA or Bill H.R. 3009) that was approved by the Senate on May 23, 2002 and was included in the Trade Act of 2002.

Florida is pleased with the recent U.S. action strongly supporting Trade Capacity Building efforts. On April 30, 2002 United States Trade Representative Robert Zoellick reiterated a firm U.S. commitment to the Doha agenda, stating that: "It is a priority of this administration to help developing nations build capacity – by training cadres of trade negotiators, assisting with the implementation of trade agreements, and by linking trade and development planning. Last year, the United States allocated \$555 million to trade capacity building in developing countries. The President's announcement in Monterrey of a 50% increase in development aid, after many lean years, backs a U.S. strategy to make aid, trade, and reforms mutually reinforcing." (Address to American Society of Business Editors and Writers.)

To guarantee an early integration of the smaller economies into the FTAA, Florida supports the following proposals:

- Smaller economies need to be guaranteed financial and technical assistance during the implementation of FTAA mechanisms and the training of human resources to allow for a more equitable distribution of the costs and benefits linked to participation in the FTAA. All information concerning available technical assistance regarding FTAA issues should consistently be forwarded to the executive bodies of the smaller economies. Florida strongly suggests more flexible approaches to financial and development assistance to improve the smaller economies' global competitiveness, productivity and integration into the FTAA.
- The United States should strengthen its leading position in providing smaller economies general market access and access to technological improvements in order to reinforce their capacity to join the FTAA as early in the process as possible. Furthermore, Florida encourages the United States to participate in actively promoting investments, capital flow and mobility of workers in the Caribbean and Central America.
- Considering the policy concerns and limitations regarding their participation in the FTAA and their ability to comply with hemispheric free trade regulations, preferential treatment for smaller economies has to be provided by extending deadlines and providing temporary exemptions in implementation of and compliance with specific FTAA commitments.

Florida's state universities are prepared to actively support the smaller economies in the Caribbean and Latin America in the improvement and consolidation of institutional mechanisms needed to comply with current and future standards agreed upon through the FTAA negotiation process. Florida International University is at the forefront of these efforts. As an example of this initiative, this February the Summit of the Americas Center convened a group of regional experts for a workshop in Castries, St. Lucia to discuss the challenges facing the Caribbean in the FTAA context.

In addition, the center has conducted three International Trade Negotiation Skills Courses, which assist governmental and private sector representatives from throughout the FTAA region to improve their negotiation skills, prepare their countries' negotiation positions and prepare for the implementation of FTAA obligations. These courses have graduated 91 persons representing public and private sector entities in 13 different Latin American and Caribbean countries.

A fourth course will be offered in November 2002 in Miami. In March, the course was delivered to negotiators from the Dominican Republic. Two additional workshops are being conducted for the same group this fall. The first workshop, in early October 2002, concentrated on Market Access issues, and the second in November 2002 will focus on Impact Analysis. The Summit of the Americas Center is also collaborating with the Interamerican Development Bank on a Trade Capacity Assessment Project for Trinidad and Tobago. This program will run through the fall of 2002, and is an excellent example of the kinds of initiatives and support Florida is providing to the region.



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