

FREE TRADE IN THE AMERICAS: A PERSPECTIVE FROM THE ORGANIZATION OF AMERICAN STATES¹

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SUMMARY: I. *Introduction.* II. *Participation by the OAS in the FTAA Process.* III. *Questions on the FTAA Process.* IV. *Conclusion.*

I. INTRODUCTION

Momentum is building towards the creation of a Free Trade Area of the Americas (FTAA); that appears to be undeniable. What is more uncertain and therefore stimulates much speculative debate, is the final structure that the FTAA will take and the process that will be required to complete its construction. Although unanswerable at this stage, these questions and their examination contribute towards the emerging vision of an FTAA.

No matter what its final form, establishing an FTAA will require a combined effort of considerable political will and a tremendous amount of technical groundwork. Part I of this paper reviews the mandate that has been given to the Organization of American States (OAS) to participate in this process. It outlines the role played by the various organs of this regional organization in fulfilling that mandate and examines the steps that have been taken by these OAS organs to date. Part II of this paper considers three important questions that have been precipitated by the movement towards the FTAA.³ These questions are as follows: what are the prospects for the expansion of a North American Free Trade Agreement (NAFTA)? Is NAFTA an appropriate model for a hemispheric agreement? Do regional trading blocs weaken the multilateral trading system and the World Trade Organization (WTO)?

¹ This paper is based on remarks made during a panel presentation entitled *Free Trade in the American Continent* at a conference on *The Role of International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration*, which was held in Mexico City, June 6-7, 1996, and was co-sponsored by the American Society of International Law and El Instituto de Investigaciones Jurídicas.

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³ These three questions had been suggested to the panel members for consideration.

Keys to questions such as these may be revealed through examination of the process that is already underway.

II. PARTICIPATION BY THE OAS IN THE FTAA PROCESS

1. *Mandate Given to the OAS*

At the Summit of the Americas which was held in Miami, Florida, December 9-11, 1994, leaders of the western hemisphere did "resolve to conclude the negotiation of the (FTAA) no later than 2005 and agree that concrete progress toward the attainment of this objective will be made by the end of this Century".⁴ The OAS, with the support of other organizations, was called upon to implement the steps outlined towards achieving that goal.⁵ The various organs within the OAS that are participating in this role are outlined below.

2. *Outline of Participating OAS Organs*

A. *Political Organs of the OAS*

a. *Special Committee on Trade*

Already in 1993, recognizing "the prevailing economic and trade conditions in the Hemisphere, as evidenced, *inter alia*, in the spirit of the U. S. Enterprise for the Americas Initiative", OAS member states established the Special Committee on Trade (SCT).⁶ It is composed of high-level trade officials from all OAS member states and has as its objective "to promote trade liberalization and expansion among the countries of the Hemisphere".⁷ It has an Advisory Group, which is comprised of nine senior trade policy officials from the OAS member states.⁸

⁴ *Summit of the Americas: Declaration of Principles and Plan of Action* (December 11, 1994), reprinted in 34 I. L. M. 808 (1995), *Declaration*, at 811.

⁵ *Idem*, *Plan of Action*, at 813. For particulars, see note 12, *infra*.

⁶ *Establishment of the Special Committee on Trade* (Resolution adopted at the ninth plenary session, held on June 11, 1993) AG/RES.1220 (XXIII-O/93), paragraph 2, in OAS, General Assembly, Twenty-third Regular Session, *Proceedings*, OEA/Ser.P/XXIII.O.2 (30 September 1993) Vol. I at 46. See also, *Enterprise for the Americas Initiative* (Resolution adopted at the ninth plenary session, held on June 11, 1993) AG/RES.1222 (XXIII-O/93) in *idem*, at 56; *Support to the Enterprise for the Americas Initiative*, (Resolution adopted at the seventh plenary session, held on May 22, 1992) AG/RES. 1156 (XXII-O/92) in OAS, General Assembly, Twenty-second Regular Session, *Proceedings*, OEA/Ser.P/XXII.O.2 (21 June 1992) Vol. I at 27; *Support to the Enterprise for the Americas Initiative* (Resolution adopted at the eleventh plenary session, held on June 8, 1991) AG/RES. 1109 (XXI-O/91) in OAS, General Assembly, Twenty-first Regular Session, *Proceedings*, OEA/Ser.P/XXI.O.2 (20 August 1991) Vol. I at 72.

⁷ *Establishment of the (SCT)*, AG/RES.1220, *supra* note 6, paragraph 3.

⁸ *Idem*, Appendix, *Rules of Procedure for the Special Committee on Trade*, Article 9.

By its constituting resolution, the SCT is directed to “act in close cooperation and coordination with the regional and subregional organizations (ALADI, IDB, ECLAC, SELA) and with integration mechanisms (Andean Pact, CARICOM, MERCOSUR, SICA)”.⁹ Later, by operation of the *Plan of Action* adopted at Miami, the SCT is directed “to assist in the systemization of data in the region and to continue its work on studying economic integration arrangements in the Hemisphere, including brief *comparative descriptions of the obligations in each of the Hemisphere’s existing trade agreements* (emphasis added)”.¹⁰ This is to be done with the support of the Inter-American Development Bank (IDB), the United Nations Economic Commission for Latin America (ECLAC), and other specialized regional and subregional organizations.¹¹ The *Plan of Action* includes a timeframe for the initiation of work programs, and submission of preliminary and final reports by the SCT to the Ministers responsible for trade.¹² In this way the mandate for the SCT has been established. Supporting technical service to assist the SCT and its Advisory Group in fulfilling its mandate is provided by the OAS General Secretariat,¹³ which will be discussed further below.

b. Especial Committee of the Permanent Council on Inter-American Summits Management

Shortly after the Miami Summit, the Permanent Council of the OAS established a Special Committee on Inter-American Summits Management “to ensure effective, timely, and appropriate follow-up to the activities assigned to the OAS by the Summit of the Americas”.¹⁴ Economic integration and free trade, of course, was only one of the four areas in the Miami *Plan of Action*.¹⁵ Accordingly, the Special Committee oversees implementation of OAS activities in all four areas, the other three being promotion of democracy, eradication of poverty, and sustainable development.

⁹ *Establishment of (SCT)*, AG/RES.1220, *supra* note 6, paragraph 12.

¹⁰ *Summit: Plan of Action*, *supra* note 4, at 823. This direction forms the basis for the various analytical compendiums currently in production, discussed *infra*.

¹¹ *Ibidem*.

¹² *Ibidem*. The preliminary SCT report was required to be submitted to the meeting of Ministers responsible for trade in June 1995; the final report was required in March 1996.

¹³ *Establishment of (SCT)*, AG/RES.1220, *supra* note 6, paragraph 15.

¹⁴ *Inter-American Summits Management* (Resolution adopted at the ninth plenary session, held on June 9, 1995), AG/RES. 1349 (XXV-O/95), paragraph 4, in OAS, General Assembly, Twenty-fifth Regular Session, *Proceedings*, OEA/Ser.P/XXV.O.2 (28 August 1995) Vol. I at 133.

¹⁵ *Summit: Plan of Action*, *supra* note 4, at 814. The four categories are formally described as I. Preserving and Strengthening the Community of Democracies of the Americas, II. Promoting Prosperity Through Economic Integration and Free Trade, III. Eradicating Poverty and Discrimination in Our Hemisphere, IV. Guaranteeing Sustainable Development and Conserving our Natural Environment for Future Generations.

This Special Committee has prepared two reports in accordance with its mandate. Its first report, completed in December, 1995, was forwarded by the Permanent Council to foreign ministers.¹⁶ Its second report, completed in May, 1996, was forwarded by the Permanent Council to foreign ministers at the General Assembly of the OAS, which was held in Panama, in June, 1996.¹⁷ At that time, the General Assembly reaffirmed the mandate of this committee, but with its reporting requirements reduced to once per annum.¹⁸

The Special Committee also maintains communication with the Summit Implementation Review Group (SIRG) which has been organized by the United States Department of State.¹⁹

B. *Advisory Organ of the OAS*

a. Inter-American Juridical Committee

The Inter-American Juridical Committee (IAJC) serves the OAS as an advisory body on juridical matters.²⁰ It undertakes studies assigned to it by the General Assembly or the other organs specified in the *OAS Charter*, but may also initiate studies on its own.²¹ As a result, its rolling agenda is comprised of matters that originate from various sources, including resolutions by the General Assembly and Permanent Council. On its current agenda, there are a number of topics which are in some way relevant to economic integration, but the most directly applicable agenda item concerns "Juridical Dimensions of Integration and International Trade".²² Among various topics that have been

¹⁶ OAS, Permanent Council, *Report of the Special Committee on Inter-American Summits Management to the Ministers of Foreign Affairs in Compliance with Resolution AG/RES. 1349 (XXV-O/95)*, OEA/Ser.G, CP/doc.2674/95 rev.1 corr.1 (28 December 1995).

¹⁷ OAS, General Assembly, *Second Report of the Special Committee on Inter-American Summits Management to the Ministers of Foreign Affairs in Compliance with Resolution AG/RES.1349 (XXV-O/95)*, OEA/Ser.P, AG/doc.3329/96 (15 May 1996).

¹⁸ *Support to the Summit of the Americas Initiatives* (resolution adopted at the seventh plenary session, held on June 6, 1996) OEA/Ser.P, AG/doc.3389/96 (6 June 1996) in *Resolutions adopted by the General Assembly at its Twenty-Sixth Regular Session* (Provisional Version), OEA/Ser.P, AG/doc.3455/96 corr.1 (19 June 1996).

¹⁹ Permanent Council of the OAS, *Special Committee on Inter-American Summits Management, Summary of the meeting held on October 6, 1995*, OEA/Ser.G, CE/GCI/SA.3/95 (19 October 1995); Permanent Council of the OAS, *Special Committee on Inter-American Summits Management, Summary of the meeting held on February 6, 1996*. OEA/Ser.G, CE/GCI/SA.11/96.

²⁰ *Charter of the Organization of American States, as amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985 and by the Protocol of Managua in 1993*, Article 98, OAS, Permanent Council, OEA/Ser.G, CP/INF.3964/96 (16 May 1996) (published on a provisional basis).

²¹ *Idem*, Article 99.

²² OEA, Secretaria General, *Temario Anotado del Comité Jurídico Interamericano, Período ordinario de sesiones agosto 1996*, OEA/Sec. Gral., CJI/doc.2 rev.3 (18 junio 1996) (prepared for internal use by the IAJC).

examined under this aegis, the IAJC has conducted studies into methods for the settlement of disputes in regional and subregional integration and free trade agreements.²³ Its report on this subject matter has been forwarded to the Trade Unit, the SCT and its Advisory Group; the IAJC intends to work closely with these other bodies in the study of dispute settlement.²⁴

The work of the IAJC has also been brought to the attention of the General Assembly in its annual reports presented through the Permanent Council and reports submitted to the Special Committee on Inter-American Summits Management.²⁵ The General Assembly has instructed the IAJC "to continue its studies concerning the legal dimension of integration and international trade" and has recognized the importance of maintaining appropriate coordination between the IAJC and the SCT, the Permanent Council and General Secretariat.²⁶

C. Technical Organ of the OAS

The General Secretariat serves as the technical organ of the OAS by providing secretariat services to the other organs and carrying out the duties entrusted to it.²⁷ Critical to this role is good communication and coordination of work within the General Secretariat, particularly between the Trade Unit and the Secretariat for Legal Affairs.

a. Trade Unit

As requested by the OAS Member States,²⁸ in April 1995, the Secretary General created a Trade Unit within the General Secretariat.²⁹ This unit was

²³ *System for the Settlement of Disputes in the Mercosur*, CJI/SO/II/doc.1/94; *Settlement of disputes in NAFTA*, CJI/SO/II/doc.2/94; *Juridical Dimension of International Trade and Integration — Settlement of disputes in the Central American Integration System: Central American Common Market*, CJI/SO/II/doc.19/94; *System for the Settlement of Disputes in the Latin American Integration Association — LAIA*, CJI/SO/II/doc.48/94 rev.1; *Juridical Dimension of Integration — CARICOM Pact*, CJI/SO/II/doc.25/94; *Settlement of disputes in the Mercosur*, CJI/SO/II/doc.44/94, reprinted in OAS, Permanent Council, *Inter-American Juridical Committee Annual Report to the General Assembly*, OEA/Ser.G, CP/doc.2556/95 (22 February 1995); *The Juridical System for the Settlement of Disputes in the Andean Group*, CJI/SO/II/doc.27/95; *The Settlement of Disputes in the Central American Common Market*, CJI/SO/II/doc.42/95, reprinted in OAS, Permanent Council, *Annual Report of the Inter-American Juridical Committee to the General Assembly*, OEA/Ser.G, CP/doc.2711/96 (27 February 1996).

²⁴ *IAJC Annual Report* (1995), *supra* note 23, at 2.

²⁵ *Ibidem*, and Permanent Council of the OAS, Special Committee on Inter-American Summits Management, *Report of the Chair of the Inter-American Juridical Committee to the Special Committee on Inter-American Summits Management, Second Report*, OEA/Ser. G, CE/GCI-71/96 (16 April 1996).

²⁶ *Annual Report of the IAJC* (Resolution adopted at the eighth plenary session, held on June 7, 1996), OEA/Ser.P, AG/doc.3405/96 (7 June 1996), in *GA Resolutions* (Provisional), *supra* note 18, at 86.

²⁷ *OAS Charter*, *supra* note 20, Chapter XVI.

²⁸ *Establishment of the (SCT)*, AG/RES. 1220, *supra* note 6, paragraph 6.

²⁹ *Trade Unit*, Secretary General Executive Order 95-4 (3 April 1995).

established to provide technical support to the SCT, ensure effective coordination with regional and subregional integration organizations, strengthen trade information systems, and analyze various aspects of hemispheric trade relations.³⁰ Its work will be discussed in greater detail below.

b. Secretariat for Legal Affairs

The Department of International Law of the Secretariat for Legal Affairs has primary responsibility for providing advisory services to the other organs of the organization that “have a hand in the framing of international laws or the proposing of uniform national provisions”; it is also required to “establish, maintain and promote an extensive system of legal and judicial cooperation among the states, working in areas of common interest, with international agencies and with scientific, technical and academic bodies, and must disseminate the store of regional juridical information”.³¹ In order to discharge its responsibility in respect of legal matters concerning international trade, this department maintains relations both within and outside of the General Secretariat. Internally, the Secretariat for Legal Affairs and the Trade Unit have established a regular liaison for the exchange of information so that legal expertise can be called upon as required.³² Externally, the Secretariat for Legal Affairs provides secretariat services to the IAJC and advisory services to, *inter alia*, the Special Committee on Inter-American Summits Management. Through these mechanisms, the Secretariat for Legal Affairs maintains its store of information on current developments within the OAS system that are relevant to international trade in the Americas.

3. Progress to Date in the FTAA Process

A. Denver Trade Ministerial

a. Report on Work Underway

In accordance with the schedule outlined by the *Plan of Action* adopted at the Miami Summit, in June, 1995, the first meeting of the Ministers responsible for international trade was held in Denver, Colorado.³³ The SCT pre-

³⁰ *Ibidem*.

³¹ OAS, Permanent Council, *The Law in a New Inter-American Order* (Second Edition) (Working document prepared by the Office of the Secretary General) OEA/Ser.G, CP/doc.2744/96 (3 May 1996) at 64.

³² Internal documents on file with the Secretariat for Legal Affairs.

³³ Summit of the Americas Trade Ministerial, *Final Joint Declaration*, Denver, Colorado, June 30, 1995.

sented its initial report to which were annexed three supporting technical reports.³⁴ These included *An Analytical Compendium of Western Hemisphere Trade Arrangements* and *Toward Free Trade in the Americas*, both of which documents had been prepared by the Trade Unit, and *Preferential Tariff Elimination and Rules of Origin in the Americas*, prepared by the Inter-American Development Bank.³⁵

In preparation for this Ministerial, the SCT had met on two occasions.³⁶ Its Advisory Group had met four times.³⁷ In preparation for these meetings, various technical documents were completed by the OAS Trade Unit and other organizations providing secretariat services.³⁸ At its second meeting, the SCT decided to annex the three above-mentioned documents in its report to the Denver Trade Ministerial.³⁹

The *Joint Declaration* issued by the Ministers at Denver “stressed the importance of the SCT’s analyses in the preparatory phase of constructing the FTAA and of the work of the tripartite committee —OAS, IDB and ECLAC— in providing information for our subsequent decisions on future work for our governments”.⁴⁰

b. Establishment of Seven Working Groups

Recognizing the need for immediate preparatory work in the hemisphere, the Ministers established seven working groups to focus on the technical matters, that when taken together, cover many of the areas central to the FTAA’s formation.⁴¹ These groups are the following: market access; customs procedures and rules of origin; investment; standards and technical barriers to trade; sanitary and phytosanitary measures; subsidies, antidumping and countervailing duties; and smaller economies.⁴² The *Denver Declaration* stated that “(t)he overall program of each working group should include the identification and examination of existing trade-related measures in each area, with a view to

³⁴ OAS, *Interim Report of the OAS Special Committee on Trade to the Western Hemisphere Trade Ministerial* (1995).

³⁵ *Ibidem*.

³⁶ The SCT held its first meeting in Washington, D. C. on May 16-18, 1994 and met for a second time in Montevideo, Uruguay on June 14-15, 1995, *idem*.

³⁷ The Advisory Group met in Lima, Peru, October 6-7, 1994; Washington, D.C. February 2-3, 1995; Antigua, Guatemala, April 6-7; 1995; and Washington, D. C. June 1-2, 1995, *idem*.

³⁸ *Idem*, at 2.

³⁹ OAS, Permanent Council, *Report of the Secretary General on the Activities of the Trade Unit*, OEA/Ser.G, CP/doc.2774/96 (24 May 1996) at 4.

⁴⁰ *Denver Declaration*, *supra* note 33, paragraph 10.

⁴¹ *Idem*, paragraph 5.

⁴² *Ibidem*.

identifying possible approaches to negotiations".⁴³ The Annex to the *Denver Declaration* contained a Plan of Work specific to each of the working groups, including requirements for reports to the March 1996 Trade Ministerial.⁴⁴

The Ministers asked the Tripartite Committee to provide analytical support, technical assistance and relevant studies within their respective areas of competence, as requested by the working groups.⁴⁵ Subsequently, the Tripartite Committee decided upon an appropriate division of labour among its members to enable these three organizations to best support the mandates of the various groups.⁴⁶ As a result, the OAS provides the technical support to the following four of the seven working groups: investment, standards and technical barriers to trade, subsidies, antidumping and countervailing duties, and smaller economies.⁴⁷

B. Cartagena Trade Ministerial

a. Reports and Contributions to Economic Integration

In accordance with the schedule outlined by the *Plan of Action* adopted at the Miami Summit, on March 21, 1996 the Ministers responsible for International Trade met a second time, in Cartagena, Colombia.⁴⁸

In preparation for this meeting, the SCT had met in Sante Fe de Bogota, Colombia, on March 6, 1996 and had before it a revised version of the OAS *Analytical Compendium of Western Hemisphere Free Trade and Integration Arrangements*⁴⁹ and the final version of the IDB paper *Rules of Origin in Preferential Trade Agreements in the Americas*.⁵⁰ At Cartagena, the Chairman of the SCT reported on the progress achieved by the SCT on the tasks assigned to it by the Miami Summit.⁵¹ The Ministers agreed on the importance of the *Analytical Compendium*, directed that the SCT ensure it remains complete, accurate and up-to-date, and urged its publication upon approval of the final version; they noted that the *Rules of Origin* paper had been forwarded to the working group on customs procedures for consideration.⁵²

⁴³ *Idem*, paragraph 6.

⁴⁴ *Idem*, Annex. For example, the Working Group on Investment was instructed, *inter alia*, to create an inventory of regional investment agreements and treaties.

⁴⁵ *Idem*, paragraph 8.

⁴⁶ *Report on Trade Unit*, *supra* note 39, at 6.

⁴⁷ *Ibidem*.

⁴⁸ Summit of the Americas, Second Ministerial Trade Meeting, *Joint Declaration*, Cartagena, Colombia, March 21, 1996.

⁴⁹ *Report of Trade Unit*, *supra* note 39, at 5. This revised version had been expanded to include five new trade and integration agreements and had deepened its level of analysis, *ibidem*.

⁵⁰ *Ibidem*.

⁵¹ *Cartagena Declaration*, *supra* note 48, paragraph 14.

⁵² *Ibidem*.

The Ministers also received conclusions reached by the business sector at the Americas Business Forum, and recognized "the importance of the private sector and its participation in the FTAA process".⁵³

On the basis of reports from the chairpersons of the seven established working groups, Ministers were "convinced that substantial progress on preparing for negotiations has been achieved".⁵⁴ Accordingly, these working groups have been directed to carry out the tasks they had identified, under the direction of Vice Ministers, and are to submit to Vice Ministers concrete proposals on areas for immediate attention in advance of the 1997 Trade Ministerial.⁵⁵ In addition, Annex III to the *Cartagena Declaration* contains specific recommendations for their future work.⁵⁶

Recognizing the important analytical and technical work that had been done by the Tripartite Committee in support of the working groups, Ministers asked that the committee continue to provide such support.⁵⁷

b. Establishment of Four Additional Working Groups

As had been outlined earlier in Denver, at Cartagena, the Ministers established four additional working groups in the following areas: government procurement, intellectual property rights, services and competition policy.⁵⁸ They asked that the Tripartite Committee extend support to these new groups as well;⁵⁹ the OAS is doing so for the latter three groups.⁶⁰ Ministers also agreed that a working group on dispute settlement procedures should be established at the Third Ministerial next year and requested the OAS to "start compiling information on the dispute settlement mechanisms being used in bilateral and subregional trade agreements in the Hemisphere".⁶¹ Although no working groups were established in respect of the environment and labor, the importance of these topics was noted.⁶²

⁵³ *Idem*, paragraph 15.

⁵⁴ *Idem*, paragraph 6.

⁵⁵ *Idem*, paragraphs 6, 7 and 11.

⁵⁶ *Idem*, Annex.

⁵⁷ *Idem*, paragraph 12.

⁵⁸ *Idem*, paragraph 9.

⁵⁹ *Idem*, paragraph 12.

⁶⁰ *Report of Trade Unit*, *supra* note 39, at 9.

⁶¹ *Cartagena Declaration*, *supra* note 48, paragraph 9.

⁶² *Idem*, paragraph 15. Vice Ministers were directed to consider appropriate processes to address the protection of the environment, after having received the report of the committee that will be presented at the WTO Ministerial Meeting in Singapore. Ministers also recognized the importance of the further observance and promotion of worker rights and the need to consider appropriate processes in this area. *Ibidem*.

c. Future Directions

Ministers agreed that the Third and Fourth Ministerial and Business Forum Meetings will be held in the second quarter of 1997 in Brazil and in 1998 in Costa Rica, respectively.⁶³ They directed their Vice Ministers to discuss approaches for constructing the FTAA, to assess "when and how to launch the FTAA negotiations" and to report thereon prior to the 1997 Ministerial.⁶⁴

The tasks of the eleven working groups will continue with the support of the Tripartite Committee, as outlined above.

Endorsement for the continuation of the process is clear; at its recent meeting in June, 1996, the OAS General Assembly adopted a resolution to support the work program of the SCT, its Advisory Group, and the activities of the Tripartite Committee.⁶⁵ Particularly, the General Secretariat has been instructed to continue its technical and analytical support as requested by the working groups, taking into account available resources.⁶⁶

III. QUESTIONS ON THE FTAA PROCESS

1. *Approaches in the Methods of Work*

A. *Preliminary Considerations*

In Part I, this paper has outlined the participation of the OAS in the efforts underway towards creating an FTAA by the year 2005. This process has stimulated thought-provoking questions, such as whether there are prospects for the expansion of NAFTA, whether NAFTA constitutes an appropriate model, and whether regional trading blocks weaken the multilateral trading system.

To begin to answer these questions, it is important to reconsider what was agreed at the launching of the FTAA process. At the Miami Summit, leaders stated that "(w)e will build on existing subregional and bilateral arrangements in order to broaden and deepen hemispheric economic integration and to bring the agreements together".⁶⁷ This intention was repeated by Ministers in their Joint Declarations made at Denver and Cartagena.⁶⁸ It has been recognized

⁶³ *Idem*, paragraph 16.

⁶⁴ *Idem*, paragraph 4.

⁶⁵ *Trade and Integration in the Americas*, OEA/Ser.P, AG/doc.3441/96 (7 June 1996) in *GA Resolutions* (Provisional), *supra* note 18, at 161.

⁶⁶ *Ibidem*.

⁶⁷ *Summit: Declaration*, *supra* note 4, at 812.

⁶⁸ *Denver Declaration*, *supra* note 33, paragraph 2; *Cartagena Declaration*, *supra* note 48, paragraph 3.

that such "economic integration and creation of a free trade area will be complex endeavors".⁶⁹ By prescribing an approach, perhaps these statements reflect the type of agreement that is envisioned. Before concrete steps can be taken towards the negotiation of an FTAA, considerable technical work is required. As a starting point, it is necessary to identify the existing reality. This was recognized in the Miami Summit *Plan of Action*. Therein the hemispheric Ministers responsible for trade were directed to take concrete initial steps, including the determination of "areas of commonality and divergence in the particular agreements under review".⁷⁰ What is the picture created by the various hemispheric agreements that are already in place? In theory, addressing this question seems like a straightforward task, yet it does not appear to have been undertaken previously. This is where the technical work of the Tripartite Committee in support of the SCT and its Advisory Group is making a significant contribution. Much of this technical work is a critical prerequisite before the FTAA process can move forward.

B. Steps in the Process

a. Compilation of Information

The first step requires compilation of information and identification of the various agreements that have relevance. Certain logistical hurdles are encountered already at this stage; for example, it is necessary to obtain consistent versions of certain agreements in different languages. There is also the challenge of trying to "take a snapshot of a moving target". As the evolution of various regional agreements is continuing, the frame of reference for comparative analysis must continually be revised in order to include new developments and revisions.

b. Formulation

As a second step, formulation is required to enable some analytical comparisons. Here too, certain methodological problems have been encountered from the outset. Agreements that are applicable to trade in the western hemisphere include multilateral agreements (such as the WTO)⁷¹, bilateral agree-

⁶⁹ *Summit: Declaration, supra* note 4, at 812.

⁷⁰ *Idem*, at 822.

⁷¹ *Agreement Establishing the World Trade Organization*, annex to the *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* (done at Marrakesh on April 15, 1994), reprinted in Office of the United States Trade Representative, Executive Office of the President, *Uruguay Round: Final Texts of the GATT Uruguay Round Agreements Including the Agreement Establishing the World Trade Organization as Signed on April 15, 1994, Marrakesh, Morocco*, U. S. Gov't Printing Office, Superintendent of Documents, Washington, D. C.

ments, (such as the Chile Bilaterals)⁷² older agreements (such as the Andean Pact)⁷³, and new agreements (such as NAFTA)⁷⁴. Some agreements have as their objective the creation of a free trade area, whereas others strive for a customs union. Efforts to provide a valuable comparative analysis encounter the problem of “comparing apples with oranges”.

Compilation of information and formulation resulted in the *Analytical Compendium of Western Hemisphere Free Trade and Integration Agreements*.⁷⁵ In its present format, it compares 15 regional agreements plus the WTO. Pending approval of the final version, the document will be published by the OAS Trade Unit.⁷⁶

c. Subject-Specific Analysis

Overview of the relevant trade agreements evidences the need for more detailed assessment of agreements that bear on a particular subject matter. As a consequence, the general topic of “trade” is reconsidered as a composite of various sub-topics. The third step has been to focus on these particular sub-topics, or subject areas, which has been the objective of the eleven working groups that have now been established. The work of these groups has taken a similar approach; it has been necessary to identify those agreements relevant to each subject area, followed by formulation to enable comparison and analysis.

An example of this is the *Compendium of Bilateral Investment Treaties in the Western Hemisphere* which has been produced for the Working Group on Investment.⁷⁷ Similarly, a *Compendium of Antidumping and Countervailing Duty Laws* has been prepared for the Working Group on Subsidies, Antidumping and Countervailing Duties⁷⁸ and an *Inventory of National Practices on*

⁷² Chile has entered into bilateral agreements with Mexico (September 22, 1991), Venezuela (April 2, 1993), Colombia (December 6, 1993) and Ecuador (January 1, 1995).

⁷³ Signed May 26, 1969.

⁷⁴ *North American Free Trade Agreement, Agreement between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States*, done at Washington, on December 8 and 17, 1992 at Ottawa on December 11 and 17, 1992 and at Mexico City on December 14 and 17, 1992, 32 I.L.M. 289 (1993).

⁷⁵ OAS, Trade Unit, *An Analytical Compendium of Western Hemisphere Trade Arrangements* (Draft) (May 25, 1996).

⁷⁶ *Cartagena Declaration*, *supra* note 48, paragraph 14.

⁷⁷ OAS, Trade Unit, *Compendium of Bilateral Investment Treaties in the Western Hemisphere*, submitted to the FTAA Working Group on Investment, SG/TU/WG.INV/DOC.1/95/Rev.1 (22 January 1996) (Limited Distribution). The Trade Unit also produced *Foreign Investment Provisions in the Western Hemisphere Trade and Integration Agreements* (Preliminary Version) submitted to the FTAA Working Group on Investment, SG/TU/WG.INV/DOC.2/96/Rev.1 (4 March 1996) (Limited Distribution).

⁷⁸ *Report of Trade Unit*, *supra* note 39, at 7. Other documents prepared by the Trade Unit for this working group include *Inventory of Agricultural Export Subsidies and other Measures of Similar Commercial Effects*; *European Subsidized Agricultural Exports to the Americas*; *Review of Uruguay Round Negotiating Proposals in the Area of Agriculture*; *Review of Regional and Subregional Agreements and their*

Standards, Technical Regulations and Conformity Assessment in the Western Hemisphere has been prepared for the Working Group on Standards and Technical Barriers to Trade.⁷⁹ A variety of papers and studies has also been prepared to assist the Working Group on Smaller Economies.⁸⁰

d. Consideration of Domestic Legislation

In certain working groups, depending upon the subject area, the initial comparisons have been taken one step further. In these cases, it has been possible not only to compare the agreements, which fall into the realm of international legislation, but to examine domestic legislation as well. Once again, this analysis has required a similar approach: identification of domestic legislation relevant to the subject area, followed by formulation for comparison and analysis. Extension of comparative analysis to domestic legislation has been possible for the working groups on investment, competition policy, standards, and antidumping/countervailing duties.⁸¹ In some cases, the working groups have been able to start to identify similarities and divergences between domestic legislative systems.⁸²

2. Three Questions

A. What are the prospects for the expansion of NAFTA?

Participation of the OAS in the FTAA process has been outlined in an effort to illustrate two points. First, it appears evident that momentum is building towards trade liberalization throughout the Americas; this is largely driven by political will and supported by the technical work that is critically necessary to the process. Secondly, the complexities of the task should have become self-evident.

Therefore, although expansion of trade liberalization is clearly underway, it would be inappropriate and incorrect to characterize this movement as an

Provisions concerning Agricultural Export Subsidies and other Export Practices of Effect on Agricultural Trade; Inventory on the Application of Antidumping and Countervailing Duty Measures in Force in the Western Hemisphere, ibidem.

⁷⁹ *Report of Trade Unit, supra* note 39, at 8.

⁸⁰ *Ibidem.* These include *Special and Differential Treatment in International Trade; Observations on Small Economies and Western Hemisphere Economic Integration; Mechanisms and Measures to Facilitate the Participation of Smaller Economies in the Free Trade Area of the Americas; Small and Relatively Less Developed Economies and Western Hemisphere Integration.*

⁸¹ Discussions with OAS Trade Unit staff.

⁸² *Ibidem.*

expansion of NAFTA, *per se*. Rather, it may be more accurate to describe the current picture as a simultaneous ripening of various sub-regional initiatives.

B. Is NAFTA an appropriate model for a hemispheric agreement?

Under the best scenario, the form which the FTAA will eventually take will be allowed to emerge over time. As illustrated by the technical work that is already underway, at this stage there is considerable work that needs to be undertaken in an objective and analytical manner. Not only is it premature to select one type of agreement as a model for the FTAA, to do so would cut short the very valuable creative process which allows the most appropriate scheme to take its own shape. To choose one agreement that currently has only limited application would not serve any purpose. The question sets up a type of competition between agreements, which does not seem particularly helpful. It also presupposes that one model from those that currently exist will be selected to the exclusion of others. Instead, as matters unfold, the FTAA which eventually emerges may be quite a different type of agreement, comprised of the best elements from several.

C. Do regional trading blocs weaken the multilateral trading system and the WTO?

Efforts at the multilateral and regional levels can work together to reinforce the international trading order. The *WTO Agreement* makes specific provision for regional agreements in GATT Article XXIV.⁸³ Regional agreements often acknowledge the existing rights and obligations of parties under the *WTO Agreement* or other international agreements.⁸⁴ In the *Plan of Action* adopted at Miami, hemispheric leaders “reinforced(d) our strong commitment to multilateral rules and disciplines”.⁸⁵ They endorsed trade arrangements consistent with the provisions of GATT/WTO and that do not raise barriers to other nations.⁸⁶ This was repeated by Ministers responsible for trade in the *Denver Declaration*,⁸⁷ and *Cartagena Declaration*.⁸⁸

⁸³ *General Agreement on Tariffs and Trade* (AGATT 1947), 55 U. N. T. S. 194, Article XXIV. GATT 1947 has been incorporated into GATT 1994; GATT 1994, paragraph 1(a), in *Final Texts*, *supra* note 71, at 21.

⁸⁴ For example, NAFTA, *supra* note 74, Article 101.

⁸⁵ *Summit: Plan of Action*, *supra* note 4, at 821-822.

⁸⁶ *Ibidem*.

⁸⁷ *Denver Declaration*, *supra* note 33, paragraph 2.

⁸⁸ *Cartagena Declaration*, *supra* note 48, paragraphs 2 and 3.

Sometimes it is possible to achieve first at a regional or subregional level what seems insurmountable at the multilateral level. The consequence, however, may result in a multitude of regional and subregional agreements with conflicting obligations. Evidence of this is apparent in the analytical compendiums that are being created for the FTAA working groups.

Yet such concerns would appear to be outweighed by the progress that can be derived through the development of regional trading blocs. Rather than weaken the multilateral system, regional agreements promote development of trade law, promote adherence to, and application of, international law to international trade. In that manner, regional agreements can serve to strengthen the rule of law which is something that can only be beneficial to the multilateral trading system.

IV. CONCLUSION

The process towards the creation of a Free Trade Area of the Americas is clearly building momentum. To reach a stage where negotiations for such an agreement can even begin, however, requires sustained political will together with considerable supporting technical work. Participation by regional organizations such as the OAS and other members of the Tripartite Committee not only serves the process well, it also strengthens the participating organizations and further develops their inter-organizational relationships. This in turn promotes the ideals of regional co-operation and integration.

This paper has illustrated the role of the OAS in the FTAA process, has provided an overview of the progress made to date, and has examined the methods of work undertaken. In so doing, it is hoped that questions stimulated by this process can be considered in light of the complexities involved. Although the ultimate image of the FTAA remains illusive, questioning its development encourages the type of creative and transparent dialogue that will ultimately yield the best results. Such exchange is essential to meet the challenges that lie ahead.