

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

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I. INTRODUCTION

Momentum is building towards the creation of a Free Trade Area of the Americas (FTAA). That much 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 II of this article 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 III of this article considers three important questions that have been precipitated by the movement towards the FTAA.¹ These questions are: What are the prospects for the expansion of a North American Free Trade Agreement (NAFTA)? Is the NAFTA an appropriate model for a hemispheric agreement? Do regional trading blocs weaken the multilateral trading system and the World Trade Organization (WTO)? Keys to questions such as these may be revealed through examination of the process that is already underway.

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

II. PARTICIPATION BY THE OAS IN THE FTAA PROCESS

A. 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 “resolve[d] 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.”² The OAS, with the support of other organizations, was called upon to implement the steps outlined towards achieving that goal.³ The roles of the various organs within the OAS in implementing these steps are outlined below.

B. Outline of Participating OAS Organs

1. Political Organs of the OAS

a. Special Committee on Trade

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).⁴ It is composed of high level trade officials from all OAS member states⁵ and its objective is “promoting trade liberalization and expansion, among the countries of the Hemisphere.”⁶ An Advisory Group, comprised of nine senior trade policy officials from the OAS member states, was formed to assist the Committee in fulfilling its mandate.⁷

The SCT is directed to

act in close cooperation and coordination with the regional and subregional organizations (ALADI [Latin American Integration Association], IDB [Inter-American Development Bank], ECLAC

2. Summit of the Americas: Declaration of Principles and Plan of Action, Dec. 11, 1994, 34 I.L.M. 808, 811 [hereinafter Miami Declaration].

3. See *id.* at 813. For particulars, see *infra* note 11.

4. See *Establishment of the Special Committee on Trade*, AG/RES. 1220, OAS GAOR, 23d Reg. Sess., 9th Plen. Sess., para. 2, at 46, 47, OEA/ser. P/XXIII.O.2 (1993) [hereinafter *Establishment of the SCT*]; see also *Enterprise for the Americas Initiative*, AG/RES. 1222, OAS GAOR, 23d Reg. Sess., 9th Plen. Sess., at 56, OEA/ser. P/XXIII.O.2 (1993); *Support to the Enterprise for the Americas Initiative*, AG/RES. 1156, OAS GAOR, 22d Reg. Sess., 7th Plen. Sess., at 27, OEA/ser. P/XXII.O.2 (1992); *Support to the Enterprise for the Americas Initiative*, AG/RES. 1109, OAS GAOR, 21st Reg. Sess., 11th Plen. Sess., at 72, OEA/ser. P/XXI.O.2 (1991).

5. See *Establishment of the SCT*, *supra* note 4, para. 1, at 47.

6. *Id.* para. 3.

7. See *id.* para. 5, at 48.

[United Nations Economic Commission for Latin America and the Caribbean], SELA [Latin American Economic System]), and with integration mechanisms (Andean Pact, CARICOM [Caribbean Community], MERCOSUR [Common Market of the South], SICA [Central American Integration System]).⁸

The Plan of Action adopted at the Miami Summit directs the SCT “to assist in the systematization 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.”⁹ This is to be done with the support of the IDB, ECLAC, and other specialized regional and subregional organizations.¹⁰ The Plan includes a time frame for the initiation of work programs and submission of preliminary and final reports by the SCT to the Ministers responsible for trade.¹¹

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,¹² which will be discussed further below.

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

Shortly after the Miami Summit, a Special Committee of the Permanent Council on Inter-American Summits Management was established “to ensure effective, timely, and appropriate follow-up to the activities assigned to the [OAS] by the Summit of the Americas.”¹³ Economic integration and free trade, of course, was only one of four areas in the Summit Declaration and Plan.¹⁴ The Special Committee oversees implementation of OAS activities in all four of these areas.

8. *Id.* para. 12, at 49.

9. Miami Declaration, *supra* note 2, at 822 (emphasis added). This direction forms the basis for the various analytical compendiums currently in production, discussed *infra*.

10. *See id.*

11. *See id.* at 822–23. 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. *See id.*

12. *See Establishment of the SCT, supra* note 4, para. 15, at 49.

13. *Inter-American Summits Management*, AG/RES. 1349, OAS GAOR, 25th Reg. Sess., 9th Plen. Sess., para. 4, at 133, 134, OEA/ser. P/XXV.O.2 (1995).

14. *See* Miami Declaration, *supra* note 2, at 814. The four categories are formally described as: 1) Preserving and Strengthening the Community of Democracies of the Americas; 2) Promoting Prosperity Through Economic Integration and Free Trade; 3) Eradicating Poverty and Discrimination in Our Hemisphere; and 4) Guaranteeing Sustainable Development and Conserving Our Natural Environment for Future Generations. *See id.*

This Special Committee has prepared two reports in accordance with its mandate.¹⁵ Its first report, completed in December, 1995, was forwarded by the Permanent Council to the 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 U.S. Department of State.¹⁹

2. *Advisory Organ of the OAS: 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.²²

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.”²³ Among various topics that have been examined

15. Resolution 1349 requires the SCT to report in writing in December and at each regular session of the General Assembly. See *Inter-American Summits Management*, *supra* note 13, para. 6, at 134.

16. See *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)*, OAS Permanent Council, OEA/ser. G CP/doc.2674/95 rev.1 corr.1 (1995).

17. See *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)*, OAS GAOR, 26th Reg. Sess., OEA/ser. P AG/doc.3329/96 (1996).

18. See *Support to the Summit of the Americas Initiatives*, OAS GAOR, 26th Reg. Sess., 7th Plen. Sess., para. 4, at 39, 40, OEA/ser. P AG/doc.3389/96 (prov. ed. 1996).

19. See *Summary of the Meeting Held on October 6, 1995*, OAS Permanent Council, Special Comm. on Inter-Am. Summits Mgmt., OEA/ser. G CE/GCI/SA.3/95 (1995); *Summary of the Meeting Held on February 6, 1996*, OAS Permanent Council, Special Comm. on Inter-American Summits Mgmt., OEA/ser. G CE/GCI/SA.11/96 (1996).

20. See Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3, as amended by the Protocol of Buenos Aires in 1967, the Protocol of Cartagena de Indias in 1985, and the Protocol of Managua in 1993, OAS Permanent Council, art. 98, OEA/ser. G CP/INF.3964/96 (prov. ed. 1996) (entered into force Jan. 29, 1996) [hereinafter OAS Charter-1996 edition].

21. See *id.* art. 99.

22. See *id.*

23. *Temario Anotado del Comité Jurídico Interamericano*, OEA Secretaria General, OEA/Sec. Gral. CJI/doc.2 rev.3 (1996) (author’s translation).

under this aegis, the IAJC has conducted studies and submitted reports on methods for the settlement of disputes in regional and subregional integration and free trade agreements.²⁴ Its report on this subject matter has been forwarded to the SCT and its Advisory Group and the Trade Unit of the OAS General Secretariat.²⁵ The IAJC intends to work closely with these other bodies in the study of dispute settlement.²⁶

The work of the IAJC has also been brought to the attention of the General Assembly in IAJC's annual reports presented to the Permanent Council and reports submitted to the Special Committee on Inter-American Summits Management.²⁷ 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.²⁸

3. *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.²⁹ 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.

24. See System for Resolving Disputes in the Mercosur, CJI/SO/I/doc.1/94 (1993), in *Annual Report to the General Assembly*, OAS Permanent Council, Inter-Am. Juridical Comm., at 95, OEA/ser. G CP/doc.2556/95 (1995) [hereinafter *1995 Annual Report*]; Settlement of Disputes Within NAFTA, CJI/SO/I/doc.2/94 (1994), in *1995 Annual Report*, *supra*, at 105; The Juridical Dimension of Integration—Settlement of Disputes in the Central American Integration System (CAIS) or the Central American Common Market, CJI/SO/II/doc.19/94 (1994), in *1995 Annual Report*, *supra*, at 129; Regime for Settling Disputes in the Latin American Integration Association—LAIA, CJI/SO/II/doc.21/94 (1994), in *1995 Annual Report*, *supra*, at 137; Juridical Dimension of Integration—Caricom Pact, CJI/SO/II/doc.25/94 (1994), in *1995 Annual Report*, *supra*, at 148; Settlement of Disputes in the Mercosur, CJI/SO/II/doc.44/94 (1994), in *1995 Annual Report*, *supra*, at 345; Juridical Dimension of Integration: The Jurisdictional System for the Settlement of Disputes in the Andean Group, CJI/SO/II/doc.27/95 rev. 1 (1996), in *Annual Report of the Inter-American Juridical Committee to the General Assembly*, OAS Permanent Council, Inter-Am. Juridical Comm., at 75, OEA/ser. G CP/doc.2859/97 (1997).

25. See *Annual Report of the Inter-American Juridical Committee to the General Assembly*, OAS Permanent Council, Inter-Am. Juridical Comm., at 2, OEA/ser. G CP/doc.2711/96 (1996).

26. See *id.*

27. See *Report of the Chairman of the Inter-American Juridical Committee to the Special Committee on Inter-American Summits Management: Second Report*, OAS Permanent Council, Inter-Am. Juridical Comm., OEA/ser. G CE/GCI-71/96 (1996).

28. See *Annual Report of the Inter-American Juridical Committee to the General Assembly*, OAS GAOR, 26th Reg. Sess., 8th Plen. Sess., at 86, 87, OEA/ser. P AG/doc.3405/96 (prov. ed. 1996).

29. See OAS Charter-1996 edition, *supra* note 20, art. 106, at 28.

a. *Trade Unit*

As requested by the OAS Member States,³⁰ in April 1995, the Secretary General created a Trade Unit within the General Secretariat.³¹ This unit was 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.³² 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 in the proposing of uniform national provisions.”³³ 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.”³⁴ In order to discharge its responsibility in respect of legal matters concerning international trade, this department maintains relations both within and outside the General Secretariat.³⁵

The Secretariat for Legal Affairs and the Trade Unit have established a regular, internal liaison for the exchange of information so that legal expertise can be called upon as required. 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.

30. See *Establishment of the SCT*, *supra* note 4, para. 6, at 48.

31. See Unidad de Comercio, Secretaria General Orden Ejecutiva No. 95-4 (1995) (on file with the *Houston Journal of International Law*).

32. See *id.* at 2.

33. *The Law in a New Inter-American Order: Second Edition*, OAS Permanent Council, Off. of the Secretary Gen., at 64, OEA/ser. G CP/doc.2744/96 (1996) (working document).

34. *Id.*

35. See *id.*

C. *Progress to Date in the FTAA Process*

1. *Denver Trade Ministerial*

a. *Report on Work Underway*

In accordance with the schedule adopted at the Miami Summit in June 1995, the first meeting of the Ministers responsible for international trade was held in Denver, Colorado.³⁶ At the meeting the SCT presented its initial report to which were annexed three supporting technical reports.³⁷ These annexes included *An Analytical Compendium of Western Hemisphere Trade Arrangements* and *Toward Free Trade in the Americas*—both prepared by the Trade Unit—and *Protection, Preferential Tariff Elimination and Rules of Origin in the Americas*, prepared by the Inter-American Development Bank.³⁸

Prior to the Denver Trade Ministerial, the SCT met twice³⁹ and the SCT's Advisory Group met on four occasions.⁴⁰ In preparation for these meetings, various technical documents were completed by the OAS Trade Unit and other organizations providing secretariat services.⁴¹ At its second meeting, the SCT decided to annex the three above-mentioned documents in its report to the Denver Trade Ministerial.⁴²

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 work by the tripartite committee—the OAS, IDB, and ECLAC—in providing information for our subsequent decisions on future work for our governments.”⁴³

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

36. See Summit of the Americas Trade Ministerial, June 30, 1995, Final Joint Declaration [hereinafter *Denver Declaration*] (on file with the *Houston Journal of International Law*).

37. See *Interim Report of the OAS Special Committee on Trade to the Western Hemisphere Trade Ministerial*, OAS Permanent Council, Special Comm. on Trade (1995) [hereinafter *SCT Interim Report*] (on file with the *Houston Journal of International Law*).

38. See *id.* at Annex.

39. 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. See *id.* at 1–2.

40. 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. See *id.* at 1 n.1.

41. See *id.* at 2–3.

42. See *Report of the Secretary General on the Activities of the Trade Unit*, OAS Permanent Council, at 4, OEA/ser. G CP/doc.2774/96 (1996) [hereinafter *Report on Trade Unit*].

43. *Denver Declaration*, *supra* note 36, para. 10, at 3.

central to the FTAA's formation.⁴⁴ These groups are: "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 the working group on the Smaller Economies."⁴⁵ 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 identifying possible approaches to negotiations."⁴⁶ The Annex to the Denver Declaration contained a plan specific to each of the working groups, including requirements for reports to the March 1996 Trade Ministerial.⁴⁷

The Ministers asked the Tripartite Committee "to provide analytical support, technical assistance, and relevant studies within their respective areas of competence, as may be requested by the working groups."⁴⁸ Subsequently, the Tripartite Committee decided upon an appropriate division of labor among its members to enable these three organizations to best support the mandates of the various groups.⁴⁹ "As a result, the OAS Trade Unit 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."⁵⁰

2. Cartagena Trade Ministerial

a. Reports and Contributions to Economic Integration

In accordance with the schedule outlined at the Miami Summit, on March 21, 1996, the Ministers responsible for international trade met a second time in Cartagena, Colombia.⁵¹ In preparation for this meeting, the SCT met in Sante Fe de Bogota, Colombia, on March 6, 1996, and considered a revised version of the *Analytical Compendium of Western*

44. See *id.* para. 5, at 2.

45. *Id.*

46. *Id.* para. 6.

47. See *id.* Annex. For example, the Working Group on Investment was instructed, among other things, to "create an inventory of [regional] investment agreements and treaties." *Id.*

48. *Id.* para. 8, at 2.

49. See *Report on Trade Unit*, *supra* note 42, at 6.

50. *Id.*

51. See Summit of the Americas Second Ministerial Trade Meeting, Mar. 21, 1996, Joint Declaration [hereinafter Cartagena Declaration] (on file with the *Houston Journal of International Law*).

*Hemisphere Free Trade and Integration Arrangements*⁵² and the final version of the IDB paper *Tariffs and Rules of Origin*.⁵³

At Cartagena, the Chairman of the SCT reported on the progress achieved by the SCT on the tasks assigned to it at the Miami Summit.⁵⁴ 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.⁵⁵ *The Rules of Origin* paper was forwarded to the working group on Customs Procedures for consideration.⁵⁶ The Ministers also received conclusions reached by the business sector at the Americas Business Forum, and recognized “the importance of the role of the private sector and its participation in the FTAA process.”⁵⁷

On the basis of reports from the chairpersons of the seven established working groups, the Ministers were “convinced that substantial progress on preparing for negotiations has been achieved.”⁵⁸ Accordingly, these working groups have been directed to carry out the identified tasks, 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.⁵⁹ In addition, Annex III to the Cartagena Declaration contains specific recommendations for their future work.⁶⁰ Recognizing the important analytical and technical work that had been done by the Tripartite Committee in support of the working groups, the Ministers asked that the committee continue to provide such support.⁶¹

b. Establishment of Four Additional Working Groups

As had been outlined earlier in Denver, the Ministers at Cartagena established four additional working groups in the following areas: Government Procurement, Intellectual Property Rights, Services, and Competition Policy.⁶² They asked that the Tripartite Committee extend support to these new groups as well.⁶³ The OAS Trade Unit is doing so for the latter three groups.⁶⁴

52. See *Report on Trade Unit*, *supra* note 42, at 5. This revised version, ultimately presented at the Cartagena meeting, had been expanded to include five new trade and integration agreements and had deepened its level of analysis. See *id.* at 6.

53. See *id.* at 5.

54. See Cartagena Declaration, *supra* note 51, para. 14, at 3.

55. See *id.*

56. See *id.*

57. *Id.* para. 15, at 3.

58. *Id.* para. 6, at 2.

59. See *id.* paras. 6, 7, 11, at 2–3.

60. See *id.* Annex III, at 7.

61. See *id.* para. 12, at 3.

62. See *id.* para. 9, at 2.

63. See *id.* para. 12, at 3.

64. See *Report on Trade Unit*, *supra* note 42, at 9.

The 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.”⁶⁵ Although no working groups were established in respect of the environment and labor, the importance of these topics was noted.⁶⁶

c. Future Directions

The 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.⁶⁷ 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 prior to the 1997 Ministerial.⁶⁸ 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.⁶⁹ 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.⁷⁰

III. QUESTIONS ON THE FTAA PROCESS

A. *Approaches in the Methods of Work*

1. *Preliminary Considerations*

In Part II, this article 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 the NAFTA, whether the NAFTA

65. Cartagena Declaration, *supra* note 51, para. 9, at 2.

66. *See id.* para. 15, at 3. 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.” *Id.* The Ministers also recognized “the importance of the further observance and promotion of worker rights and the need to consider appropriate processes in this area.” *Id.*

67. *See id.* para. 16, at 3.

68. *See id.* para. 4, at 1.

69. *See Trade and Integration in the Americas*, OAS GAOR, 26th Reg. Sess., 8th Plen. Sess., para. 1, 6, at 161–62, OEA/ser. P AG/doc.3441/96 (prov. ed. 1996).

70. *See id.* para. 2, at 161.

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.”⁷¹ This intention was repeated by Ministers in their Joint Declarations made at Denver and Cartagena.⁷² It was recognized that such “economic integration and the creation of a free trade area will be complex endeavors.”⁷³

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 at the Miami Summit. 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.”⁷⁴

What is the framework for trade already in place as a result of the existing hemispheric agreements? 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.

2. *Steps in the Process*

a. *Compilation of Information*

The first step requires the compilation of information and identification of the various agreements that have relevance. Certain logistical hurdles have already been encountered at this stage. For example, it is necessary to obtain consistent versions of certain agreements in different languages. Moreover, 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. This results in the challenge of trying to “take a snapshot of a moving target.”

71. Miami Declaration, *supra* note 2, at 811.

72. See Cartagena Declaration, *supra* note 51, para. 3, at 1; Denver Declaration, *supra* note 36, para. 2, at 1.

73. Miami Declaration, *supra* note 2, at 812.

74. *Id.* at 822.

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;⁷⁵ bilateral agreements such as the Chile Bilaterals; older agreements such as the Andean Pact; and new agreements such as the NAFTA.⁷⁶ 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 *An Analytical Compendium of Western Hemisphere Trade Arrangements*.⁷⁷ In its present format, it compares fifteen regional agreements plus the WTO. Pending approval of the final version, the document will be published by the OAS Trade Unit.⁷⁸

c. *Subject-Specific Analysis*

An overview of the relevant trade agreements evidences the need for a 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.⁷⁹ Similarly, a *Compendium of Antidumping and Countervailing Duty Laws* has been prepared for the working group on Subsidies, Antidumping and Countervailing Duties.⁸⁰ An *Inventory of*

75. See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125 (1994).

76. See North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 289, 605 [hereinafter NAFTA].

77. See *SCT Interim Report*, *supra* note 37, Annex.

78. See Cartagena Declaration, *supra* note 51, para. 14, at 3.

79. See *Compendium of Bilateral Investment Treaties in the Western Hemisphere*, OAS Trade Unit, SG/TU/WG.INV/DOC.1/95/Rev.1 (1996); see also *Foreign Investment Provisions in the Western Hemisphere Trade and Integration Arrangements*, OAS Trade Unit, SG/TU/WG.INV/DOC.2/96/Rev.1 (1996) (preliminary version) (reporting also to the FTAA working group on investment).

80. See *Report on Trade Unit*, *supra* note 42, 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*

National Practices on Standards, Technical Regulations and Conformity Assessment in the Western Hemisphere has been prepared for the working group on Standards and Technical Barriers to Trade.⁸¹ A variety of papers and studies have also been prepared to assist the working group on Smaller Economies.⁸²

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. In some cases, the working groups have been able to start identifying similarities and divergences between domestic legislative systems.

B. *Three Questions*

1. *What Are the Prospects for the Expansion of the NAFTA?*

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

Therefore, although expansion of trade liberalization is clearly underway, it would be inappropriate and incorrect to characterize this movement as an expansion of the NAFTA, per se. Rather, it may be more accurate to describe the current picture as a simultaneous ripening of various subregional initiatives.

Americas; Review of Uruguay Round Negotiating Proposals in the Area of Agriculture; Review of Regional and Subregional Agreements and their Provisions Concerning Agricultural Export Subsidies and Other Export Practices of Effect on Agricultural Trade; and Inventory on the Application of Antidumping and Countervailing Duty Measures in Force in the Western Hemisphere. See id.

81. *See id.* at 8.

82. 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; and Small and Relatively Less Developed Economies and Western Hemisphere Integration. See id.*

2. *Is the 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, there is still considerable work that must 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, but to do so would cripple the 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 a quite different type of agreement, comprised of the best elements from several models.

3. *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 Article Fourteen of the General Agreement on Tariffs and Trade (GATT).⁸³ Regional agreements often acknowledge the existing rights and obligations of parties under the WTO or other international agreements.⁸⁴

At the Miami Summit, hemispheric leaders “reinforce[d] [their] 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 at the Denver⁸⁷ and Cartagena Trade Ministerials.⁸⁸

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.

83. See Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1144, 1154 (1994).

84. See, e.g., NAFTA, *supra* note 76, art. 101.

85. Miami Declaration, *supra* note 2, at 821.

86. See *id.*

87. See Denver Declaration, *supra* note 36, para. 2, at 1.

88. See Cartagena Declaration, *supra* note 51, paras. 2, 3, at 1.

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 the development of trade law, and the adherence to and application of international law to international trade. In that manner, regional agreements can serve to strengthen the rule of law. This is something that can only be beneficial to the multilateral trading system.

IV. CONCLUSION

The process towards the creation of a FTAA is clearly building momentum. To reach a stage where negotiations can begin, however, requires sustained political will combined 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, but it also strengthens the participating organizations and further develops their inter-organizational relationships. This in turn promotes the ideals of regional cooperation and integration.

This article 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 the questions stimulated by this process can be considered in light of the complexities involved. Although the ultimate format of the FTAA remains unknown, questioning its development encourages the type of creative and frank dialogue that will yield the best results. Such exchange is demanded by the challenges that lie ahead.