



FOCAL

Canadian Foundation for the Americas
Fondation canadienne pour les Amériques
Fundación Canadiense para las Américas
Fundação Canadense para as Américas

Submission by the

Canadian Foundation for the Americas (FOCAL)
September 2000 to the

**FTAA - COMMITTEE OF GOVERNMENT REPRESENTATIVES
ON THE PARTICIPATION OF CIVIL SOCIETY**

COVER SHEET

Name (s)	Canadian Foundation For the Americas (FOCAL)
Address	1 Nicholas Street, Suite 720
	Ottawa, Ontario
	Canada, K1N 7B7
	Tel: 613-562-0005 / Fax: 613-562-2525
	E-Mail: focal@focal.ca Web: www.focal.ca
Organization (s) (if applicable)	The Canadian Foundation for the Americas (FOCAL) is an independent, non-governmental organization dedicated to deepening and strengthening Canada's relations with countries in Latin America and the Caribbean through policy discussion and analysis.
Country (ies) / Region (s)	Canada

Number of Pages	6	Language	English
-----------------	---	----------	---------

ISSUES ADDRESSED (Check all that apply)

Agriculture	Subsidies, Antidumping and Countervailing Duties	
Competition Policy	Civil Society	X
Dispute Settlement	Electronic Commerce	
Government Procurement	Smaller Economies	X
Intellectual Property Rights	The FTAA Process	X
Investment	Other: Environment	X
Market Access		
Services		

Executive Summary

The present submission by FOCAL concentrates on two themes: the first being the procedures of the Committee of Government Representatives on the Participation of Civil Society, and the specific civil society concerns about the environmental impact of the FTAA; and the second being on the issue of smaller economies. Recommendations are provided in each case.

Civil Society

- An expanded effort is required on the part of governments to publicize the mechanism by which civil society may provide input to the FTAA process. In particular, each government should undertake to place an advertisement, at least of one-quarter page in size, in the 3 largest circulation newspapers in the country.
- The Committee should extend the deadline for submissions in this, the second, exercise to the end of December 2000 at a minimum and to the end of February 2001 at most. The current deadline established by the Committee is a full seven (7) months before the expected Ministerial Meeting in Buenos Aires. An extension to the end of February 2001 would still provide the Committee with some 6 weeks, at a minimum, time in which to complete its work prior to the 2001 Trade Ministerial.
- The Committee should agree at its seventh meeting to allow an opportunity for Civil Society to directly address the Committee for at least a portion of the time allocated for the eighth meeting. This would address one of the concerns of civil society, which is that the "mailbox" mechanism does not provide any avenue for substantive feedback with respect to the submissions made.
- Members of the Committee, and particularly the sitting Chair, need to make further efforts to participate in a range of FTAA-related forums, such as academic and civil society workshops, seminars and conferences. The Committee remains very much a faceless entity, even to those civil society elements that are attempting to follow the FTAA process closely.
- The Committee has an obligation, at a minimum in keeping with the spirit in which it was created by Ministers, to be on the forefront of transparency. Even its own procedures fail this obligation badly. At a minimum, the Committee should issue a detailed press communiqué after each and every meeting. The Committee should also issue a complete list of participants for each meeting that would necessarily include telephone, postal and electronic points of contact.
- The Committee should commit to recommending to Ministers that it be empowered and indeed encouraged to engage in more active outreach activities. Such activities would include, but not be limited to, the holding of open public sessions and the provision of substantive replies to submissions made constructively.
- Finally, the Committee should amend the procedures regarding submissions so as to allow submitters to indicate their agreement for the making public of specific submissions. If so agreed by the submitting party, the submission should be posted electronically on the section of the Official FTAA Home Page that is dedicated to the work of the Committee. Should a submitter not wish to make their views known to the public then they would retain that privilege. If such a system were currently in place then FOCAL would be agreeable to making the current submission available to the public.

The Environment and the FTAA

- The FTAA should include a strong statement in the objectives that the States will undertake all activities under the agreement in a manner consistent with environmental protection and conservation.
- The FTAA should include a commitment not to lower environmental standards to attract investment.
- The FTAA should include a commitment that trade measures embodied in multilateral environmental agreements take precedence over trade provisions in the FTAA.
- The FTAA should include language that preserves the right of States to establish levels of environmental protection that they deem appropriate. This should include provisions stating that a country challenging an environmental measure should bear the burden of proving the measure is inconsistent with the agreement.
- A mechanism should be created to develop a parallel agreement, linked to the FTAA, which fosters the improvement of national environmental management, including, at a minimum, that effective environmental laws are in place, and that they are effectively enforced.

Smaller Economies

- Guidance is necessary from Ministers and the Trade Negotiations Committee (TNC) that would set out the basic principles by which the issue of smaller economies would be approached by the various negotiating groups. As matters stand, each negotiating group has the issue inscribed on its agenda, but without the guidance that would be provided by a set of agreed principles. Guiding principles have been arrived at for the FTAA negotiations as a whole (i.e., single undertaking, comprehensive, WTO plus, WTO compatible etc.) yet the smaller economies remain without a similar set of guideposts.
- On an urgent basis, the TNC should take on the responsibility of arriving at a concrete definition of what constitutes a smaller economy in the FTAA context. The lack of progress in the crafting of rules is hampered by the absence of an operational definition of to whom such rules would in fact apply. It might be a consequence of the principles suggested in the first recommendation that the operational definition of smaller economies might very well differ from one negotiating group to another. In other words, smaller economies – and the presumed differential treatment that would consequently be accorded – might very well require a lesser degree of special attention in some negotiating groups (i.e., competition policy) than in others (i.e., market access).
- Smaller economies frequently encounter difficulties in complying with transparency or information notification requirements during the negotiations themselves. This is evident from the gaps that exist, for example, in the Hemispheric Trade and Tariff Data Base. While responsibility for the provision of such information will ultimately rest with national governments, individual Negotiating Group Chairs should be charged by the TNC with the responsibility for assisting to a) define the problems; b) suggest solutions; and, c) provide written recommendations to the TNC on such matters.
- Enhanced technical assistance from the Tripartite Committee, in particular, would also be of benefit to the smaller economies in their efforts to meet their transparency and notification obligations. It should be recalled that enhanced capability in this area would also provide benefits in terms of the compliance record of smaller economies with multilateral obligations as well.



FOCAL

Canadian Foundation for the Americas
Fondation canadienne pour les Amériques
Fundación Canadiense para las Américas
Fundação Canadense para as Américas

Submission by the Canadian Foundation for the Americas (FOCAL)

September 2000 to the

FTAA - COMMITTEE OF GOVERNMENT REPRESENTATIVES ON THE PARTICIPATION OF CIVIL SOCIETY

Introduction

The Canadian Foundation for Americas (FOCAL)¹ welcomes this opportunity to make a submission to the FTAA Committee of Government Representatives on the Participation of Civil Society.

The prime objective of FOCAL is one of increasing policy-based dialogue in the Americas, thus leading to increased understanding and cooperation among the peoples and governments of the Hemisphere. FOCAL does not take a national position with respect to technical issues under negotiation in the Free Trade Area of the Americas (FTAA) process, but is deeply attached to, and supportive of, the broad goal espoused by national leaders at their two Summit meetings in Miami (1994) and Santiago (1998) to build an integrated region of the Americas. In this context, FOCAL offers the Committee its views in two distinct areas. The first centres on the views of civil society about the procedures of the Committee and on the substantive issue of the environment; and the

¹ The Canadian Foundation for the Americas (FOCAL) is an independent, non-governmental organization dedicated to deepening and strengthening Canada's relations with countries in Latin America and the Caribbean through policy discussion and analysis. Based in Ottawa, Canada, FOCAL carries out its work with a small professional staff under the guidance of a volunteer Board of Directors. Financing for FOCAL's activities comes from a variety of sources in the public and private sector, as well as from charitable donations. Key organizations which have provided project financing include the Canadian Department of Foreign Affairs and International Trade (DFAIT), the Canadian International Development Agency (CIDA), the Canadian Centre for Foreign Policy Development (CCFPD), the International Development Research Centre (IDRC), the Organization of American States (OAS), and the Ford Foundation. Created in 1989, FOCAL is a registered Canadian charitable organization (No. 89228-5099RR). Further information is available on the web site: www.focal.ca

second features the special challenges surrounding the smaller economies of the Hemisphere.

Civil Society²

Civil society organizations from countries of this Hemisphere have a variety of concerns relating to both the process of the FTAA negotiations and to the content of the negotiations. FOCAL supports many of these concerns, and we list below the principal areas of concern at this stage in the negotiations.

Civil Society Inclusion and Access in the FTAA Negotiations: Procedural Concerns

FOCAL supports the intention behind the objectives and the work program of the FTAA Committee of Government Representatives on the Participation of Civil Society, namely that of increasing openness and transparency in the FTAA negotiations process. However, we believe that a further intensification of effort will be required in the very near future. The creation of the Committee represented a small first step on the part of FTAA participating countries to receive the views of civil society, and was in many ways unique to a trade negotiation in progress. However, the one-way mechanism has proved to be highly inadequate, largely because it has undermined access, transparency and inclusion.

The first exercise prior to the Toronto Trade Ministerial in 1999, while modest in terms of the number of submissions, should be seen as a positive beginning. A number of countries did make efforts to inform their publics about the mechanism and encouraged a range of civil society actors to make known their views. While not strong on the analytical side, the Committee did manage to present a report to Trade Ministers that, at a minimum, did outline the range of views received by the Committee. The Committee's work was also supported by the Tripartite Committee and particularly by the United Nations Economic Commission on Latin America and the Caribbean (ECLAC).

The second exercise, however, is failing by all indications to meet even the modest success achieved in the first exercise. In the three meetings held by the

² FOCAL's work on civil society inclusion may be found in "Adapting to a New Playing Field: Civil Society Inclusion in the Hemisphere's Multilateral Processes" which can be accessed at www.focal.ca

Committee in 2000, a press communiqué has only been issued once.³ While FOCAL and others will be eagerly awaiting the second Report of the Committee when it is issued at the time of the April 2001 Buenos Aires Ministerial, it is understood that the number of submissions has dropped considerably from the modest number recorded in the first exercise, that is to say, less than 10. Should this prove to be the case, the mere existence of the Committee could become an embarrassment to the FTAA process. The low rate of submissions this time around is also an indicator of the lack of confidence on the part of the Hemisphere's civil society that their views are/will be taken seriously.

Recent intensive research⁴ shows that civil society organizations remain highly suspicious of the FTAA mechanism. The research, co-sponsored by FOCAL, shows that the "one way mailbox" established by the Open Invitation is set at a level below most expectations. Even more difficult to understand, is the apparent failure to make adjustments to the mechanism between the first and second exercises. In its report to Ministers, the Committee stated:

Organizations or individuals from only 16 countries of the FTAA sent contributions. The Committee noted that, although the views contained in the submissions reflected a broad spectrum of opinions, concern was expressed that the submissions were not representative of civil society throughout the Hemisphere.⁵

Having agreed itself that the material provided to the Committee was insufficient, the Committee then failed to make any adjustments to the mechanism by which this "non-representative" material reaches the FTAA deliberations. Thus, the Committee correctly identified one of the major problems and yet failed to either recommend or initiate corrective measures.

Furthermore, given the close relationship which has been established between the Hemisphere's private sector and the formal FTAA negotiations through the Americas Business Forum, which for the past five years has met at the same location as the Trade Ministers, thereby enjoying direct access to the Trade

³ Since the Committee started meeting, it has issued a list of participants after the second meeting and a single press communiqué after the fifth meeting. No public record of the Committee's work followed the first, third, fourth, or sixth meetings. See: www.ftaa-alca.org/spcomm/commcs_e.asp

⁴ Shamsie, Yasmine. "Engaging with Civil Society: Lessons from the OAS, FTAA and Summits of the Americas", The North South Institute, January 2000. Note this research was partially funded with the support of FOCAL.

⁵ FTAA.soc/03 of November 4, 1999 at www.ftaa-alca.org/spcomm/derdoc/cs3e.doc

Ministers, the FTAA “mailbox” stands in woefully inadequate and stark contrast. Failure to fully engage other sectors of civil society (beyond the private sector) on input for the FTAA negotiations will likely result in further demonstrations of civil society opposition on the streets. This in turn, will engender an anti-integration movement that could strike at the very broader public interest which governments believe the FTAA will address.

FOCAL therefore makes the following recommendations with respect to the functioning and operation of the Committee and the mechanism by which public participation in the process has been invited, by the Trade Ministers themselves.

- An expanded effort is required on the part of governments to publicize the mechanism by which civil society may provide input to the FTAA process. In particular, each government should undertake to place an advertisement, at least of one-quarter page in size, in the 3 largest circulation newspapers in the country.
- The Committee should extend the deadline for submissions in this, the second, exercise to the end of December 2000 at minimum and to the end of February 2001 at most. The current deadline established by the Committee is a full seven (7) months before the expected Ministerial Meeting in Buenos Aires. An extension to the end of February 2001 would still provide the Committee with some 6 weeks, at minimum, time in which to complete its work prior to the 2001 Trade Ministerial.
- The Committee should agree at its seventh meeting to allow an opportunity for Civil Society to directly address the Committee for at least a portion of the time allocated for the eighth meeting. This would address one of the concerns of civil society, which is that the “mailbox” mechanism does not provide any avenue for substantive feedback with respect to the submissions made.
- Members of the Committee, and particularly the sitting Chair, need to make further efforts to participate in a range of FTAA-related forums, such as academic and civil society workshops, seminars and conferences. The Committee remains very much a faceless entity even to those civil society elements that are attempting to follow the FTAA process closely.
- The Committee has an obligation, at a minimum in keeping with the spirit in which it was created by Ministers, to be on the forefront of

transparency. Even its own procedures fail this obligation badly. At minimum, the Committee should issue a detailed press communiqué after each and every meeting. The Committee should also issue a complete list of participants for each meeting that would necessarily include telephone, postal and electronic points of contact.

- The Committee should commit to recommending to Ministers that it be empowered and indeed encouraged to engage in more active outreach activities. Such activities would include, but not be limited to, the holding of open public sessions and the provision of substantive replies to submissions made constructively.
- Finally, the Committee should amend the procedures regarding submissions so as to allow submitters to indicate their agreement for the making public of specific submissions. If so agreed by the submitting party, the submission should be posted electronically on the section of the Official FTAA Home Page that is dedicated to the work of the Committee. Should a submitter not wish to make their views known to the public then they would retain that privilege. If such a system were currently in place then FOCAL would be agreeable to making the current submission available to the public.

The Environment and the FTAA

Civil society groups have also raised key concerns relating to substantive matters in the FTAA negotiations, specifically in areas such as the environment. In this context, a major weakness of the FTAA process is the failure to acknowledge, let alone create, a mechanism to consider environmental issues in the negotiations. Economic activity has environmental consequences that must be effectively managed, and of course, the purpose of the FTAA is to increase economic activity. While we agree that economic growth is a fundamental need for the Hemisphere, it is also critical that countries ensure that effective environmental management systems are in place to cope with economic growth. This environmental management capability varies a great deal across the countries of the region, and we believe that Hemispheric cooperation on environmental management should form a part of the Hemispheric integration process.

This is not to say that the FTAA negotiations are solely responsible for environmental issues. Rather, a two track approach is necessary, one which ensures that the FTAA itself takes environmental issues into consideration; the other which establishes a means whereby environmental management systems

throughout the Hemisphere can be made effective enough to deal with the increased economic activity and the accelerated resource extraction that the FTAA will stimulate.

Therefore, FOCAL submits the following recommendations for clauses that should be incorporated within the text of the FTAA final document itself:

- The FTAA should include a strong statement in the objectives section that the States will undertake all activities under the agreement in a manner consistent with environmental protection and conservation.
- The FTAA should include a commitment not to lower environmental standards to attract investment.
- A commitment should be included that trade measures embodied in multilateral environmental agreements take precedence over trade provisions in the FTAA.
- The FTAA should include language that preserves the right of States to establish levels of environmental protection that they deem appropriate. This should include provisions stating that a country challenging an environmental measure should bear the burden of proving the measure is inconsistent with the agreement.
- A mechanism should be created to develop a parallel agreement, linked to the FTAA, which fosters the improvement of national environmental management, including, at a minimum, that effective environmental laws are in place, and that they are effectively enforced.

While this agreement need not be negotiated by FTAA negotiators, it should be explicitly linked to the FTAA, as one of the platforms of the broader Hemispheric integration process.

Smaller Economies

FOCAL is deeply aware of the tremendous diversity that exists in the Americas. Diversity itself can be tremendously enriching when found in cultural, educational and literary endeavours to name a few. Nevertheless, economic diversity in the Americas presents a more troubling picture. Thirty-three of the thirty-five countries in the Americas are either developing or less developed countries. Leaders and Ministers recognized that within this context there existed

another category of countries whose situation merited special attention, this being the smaller economies. FOCAL has devoted considerable attention to the issue of the appropriate treatment for the smaller states and economies of the Hemisphere.⁶

The smaller economies of the Hemisphere have clearly articulated their objective to further integrate themselves in sub-regional, regional and international economic structures. Regional and global trends have not gone unnoticed by political and commercial leaders in the smaller economies and as a result tremendous efforts have been made within a number of economic groupings to better prepare themselves for the challenges ahead.⁷

The CARICOM countries have reorganized their inter-governmental structures so as to capture efficiencies and to be able to bring focused experience and talent to bear in the area of trade negotiations. The Central American Republics, after numerous failed laboratory experiments, have discovered a new way of working collectively and in collaboration with one another. These efforts have been supported by a number of extra-regional actors, including the provision of direct support by a number of countries in the region as well as a number of multilateral intergovernmental institutions.

Such efforts, particularly in the combination of aid and differential treatment, have allowed smaller economies to adapt to changing conditions, often at a pace somewhat different from their larger neighbours. In a context in which trade negotiations involved largely the give and take of tariff negotiations, this was perhaps necessary. In a context of rapidly evolving technology, massive foreign investment flows, and the broadening of the basis of production, this approach is perhaps not sufficient. Reliance on timeworn approaches by the larger economies is having a tiring effect on both the general public and public policy makers in the smaller economies. Having been successful in firmly planting the issue on the Hemispheric agenda, many are dismayed at the lack of concrete progress since. A number may argue that the efforts required to retain the issue of smaller economies on the agenda are such that few resources, physical or intellectual, are available to actually address the issue in

⁶ FOCAL's work on smaller economies may be found in "The Smaller Economies of the Americas: Making a Case for Hemispheric Integration" which can be accessed at www.focal.ca

⁷ While a technical definition for smaller economies has yet to be reached within the FTAA process, in this submission it is understood to apply mainly to the countries of the Caribbean and Central American regions. This usage does not proscribe any concept that might take a wider geographic approach and thus include a limited number of countries on the South American continent.

specific ways. These developments may pose a greater threat to the FTAA process, at large, than many are willing to acknowledge.

In this context, FOCAL respectfully puts forward the following recommendations:

- Guidance is necessary from Ministers and the Trade Negotiations Committee (TNC) that would set out the basic principles by which the issue of smaller economies would be approached by the various negotiating groups. As matters stand, each negotiating group has the issue inscribed on its agenda, but without the guidance that would be provided by a set of agreed principles. Guiding principles have been arrived at for the FTAA negotiations as a whole (i.e., single undertaking, comprehensive, WTO plus, WTO compatible etc. etc.) yet the smaller economies remain without a similar set of guideposts.
- On an urgent basis, the TNC should take on the responsibility of arriving at a concrete definition of what constitutes a smaller economy in the FTAA context. The lack of progress in the crafting of rules is hampered by the absence of an operational definition of to whom such rules would in fact apply. It might be a consequence of the principles suggested in the first recommendation that the operational definition of smaller economies might very well differ from one negotiating group to another. In other words, smaller economies – and the presumed differential treatment that would consequently be accorded – might very well require a lesser degree of special attention in some negotiating groups (i.e., competition policy) than in others (i.e., market access).
- Smaller economies frequently encounter difficulties in complying with transparency or information notification requirements during the negotiations themselves. This is evident from the gaps that exist, for example, in the Hemispheric Trade and Tariff Data Base. While responsibility for the provision of such information will ultimately rest with national governments, individual Negotiating Group Chairs should be charged by the TNC with the responsibility for assisting to a) define the problems; b) suggest solutions; and, c) provide written recommendations to the TNC on such matters.
- Enhanced technical assistance from the Tripartite Committee, in particular, would also be of benefit to the smaller economies in their efforts to meet their transparency and notification obligations. It should be recalled that enhanced capability in this area would also provide

benefits in terms of the compliance record of smaller economies with multilateral obligations as well.

FOCAL will continue to monitor developments in the FTAA negotiations, both from the point of view of promoting improved and balanced economic integration in the Americas, and from the position that broad-based public consultations are the only guarantee of consensus among citizens of the Americas.