

MULTISTAKEHOLDER CONSULTATION

CANADA AND THE FREE TRADE AREA OF THE AMERICAS (FTAA)

REPORT

Executive Summary

The Government of Canada, through the Department of Foreign Affairs and International Trade (DFAIT), hosted a multi-stakeholder consultation on Canada and the Free Trade Area of the Americas (FTAA), which was held in Ottawa on February 27, 2003. John Godfrey, MP Don Valley West and Member of the Inter-Parliamentary Forum of the Americas Executive Committee, chaired this daylong event. It provided a forum for open and focused discussion on key issues related to the ongoing FTAA negotiations. Over 40 organisations from the business sector, academia, labour unions, environmental groups, and other stakeholders were in attendance (see the [list of participants](#)). The participants received an update on the current status of the negotiations, addressed key issues with Canada's FTAA lead negotiators, and broke into workshops to discuss four themes: Services; Investment; the FTAA and the Summit of the Americas; and Smaller Economies and Development. They presented their views and recommendations to Minister Pettigrew and to senior government officials.

The discussions covered a wide range of issues, including tariff barriers and subsidies; bilateral negotiations; sustainable development; investment protection and investor responsibilities; dispute settlement mechanisms; transparency; and civil society participation.

Update on the FTAA negotiations and exchange with the participants

Claude Carrière and Lead Negotiators

After welcoming remarks from Chair John Godfrey, Canada's Chief FTAA Negotiator, Claude Carrière reviewed what had been accomplished at the Quito Ministerial, and updated participants on the current status of the negotiations.

Canada went into the Quito Ministerial Meeting with several objectives, which it met and/or exceeded. One objective was to have the second version of the draft FTAA agreement released as soon as possible. It was released that day (i.e. November 1st, 2002) in the four official languages of the FTAA negotiations – English, French, Spanish and Portuguese (an improvement over the release of the first version, which was delayed by three months). Another objective was to obtain, from the Ministers of Trade, recognition of the existence of social and environmental issues in the hemispheric integration process (e.g. labour standards and sustainable development). A third objective was to protect Canada's position on agriculture. Noting that parallel and simultaneous negotiations are taking place at the WTO, Mr. Carrière said that the main objective at the WTO negotiations is the reform of agricultural policies and international trade rules in agriculture. For Canada, certain issues in this area (such as domestic subsidies and export credits) are better negotiated in Geneva than in bilateral or regional negotiations because Europe, the biggest subsidiser, is not at the table in the FTAA.

With regard to smaller economies, work was accomplished in developing an outline for the Hemispheric Cooperation Program (HCP), which would help them participate in and benefit from the FTAA negotiations. Canada also wanted to improve the relationship and the communication process with civil society. Several Trade Ministers participated in meetings with civil society groups, and there is an increased recognition of the need for further dialogue.

Canada's offers in the areas of investment, services, and government procurement are posted on the FTAA section of DFAIT's "Trade Negotiations and Agreements" website (<http://www.ftaa.gc.ca>). In addition, a summary of the Canadian market access offers on agriculture and industrial products will be posted on this website shortly. The negotiating process will involve bilateral meetings with a view to improve the offers from various countries. In parallel to this work, the negotiating groups continue to meet in order to refine the FTAA draft negotiating text and reduce the number of brackets, which reflect areas where consensus has yet to be reached. Work continues toward a third version of the text. The FTAA Secretariat is moving to Puebla, Mexico, where the negotiations will take place until their conclusion, scheduled for January 2005. Ministers will meet in Miami in November of this year, and then in Brazil in 2004 at a date and city to be determined.

An exchange with the participants followed. Some participants stated:

- Trade strategies must include specific instruments to ensure development outcomes.
- The lowering of tariff barriers has effects on small communities that depend on agriculture. Even more important than help with negotiations is the need for development aid, and for the negotiation process to slow down.
- The Romanow Commission recommendation (Chapter 11) advocates that clear and immediate steps be taken to protect Canada's health care system from possible challenges under international law and trade agreements.

Further to other statements and questions from the participants, Mr. Carrière and his team provided additional information, including the following:

- The Brazilian delegation made some market access offers by the February deadline, but not in services and investment or government procurement. The new government wishes to consult internally and to make an offer as a group with Mercosur.
- A Fourth Summit of the Americas will be held in 2005 in Argentina. A Canadian proposal for an interim summit to be held this year has not yet generated a consensus.
- Paragraph 9 of the Quito Declaration, states that the FTAA members' respective laws and regulations will observe and promote internationally recognised core labour standards. Labour Ministers of the Americas have agreed to set up a group that will look at the labour dimensions of the Summit process. They will be receiving advice and submissions to coordinate this effort with trade ministers.
- On intellectual property (IP), Canada's position is that delegations should resist "TRIPS plus" obligations and rather agree that the minimum standards found in the WTO TRIPS agreement be implemented throughout the hemisphere. In particular, flexibility must be maintained so that Member countries can implement IP obligations that balance innovation and health priorities.
- On culture, Canada is taking steps to protect cultural diversity through a cultural exemption.
- The second draft FTAA negotiating Chapter on Investment is being modified. The objective is to ensure that the investment protection provisions take into account the lessons learned under NAFTA's Chapter 11. As yet there is no agreement on the elements (substantive or procedural) in an investment chapter. Transparency is an important lesson learned from NAFTA, and Canada will be advocating greater openness and transparency in future agreements. Regarding environmental protection, Canada will be seeking assurances that countries party to an agreement will not lower environmental or labour standards to attract foreign investment. Currently, there are no proposals on the table that address the issue of incentives or subsidies. We also expect that as in other agreements, there will be general exceptions that address, amongst others, environmental considerations. The process of consultation will continue with opportunities to review investment

issues from a Canadian perspective and a broader “across the agreement” perspective. Canada has not put forward a proposal yet on dispute settlement for an investment chapter.

- There is no problem with regard to market access in agriculture. Everyone agrees with the objective. What needs to be negotiated is the level and speed at which that market access can be established.
- Negotiators do consider development but don’t assume that they can talk about everything in one place. Other agencies are proceeding with the various priorities identified in the Millennium Development Goals, which state that trade and development are interrelated.

Workshop Reports

Services (Chair: Anthony VanDuzer, University of Ottawa)

Note: For background information on this section, please refer to the [working documents](#) provided to the participants in advance of the meeting.

The participants expressed concerns regarding the clarity and policy flexibility of the proposed commitments in services under the FTAA; the transparency of the negotiating process; and the lack of clarity regarding the scope of application of services commitments in relation to social and public services, including water services, as well as education and health services. According to some, the language in Article 1.6 of the second draft FTAA Chapter on Services (excluding services in the exercise of governmental authority), which tracks the language used in the WTO GATS, is not sufficiently clear to provide certainty and predictability regarding the scope of Canada’s commitments and to ensure sufficient policy flexibility in these areas. Others commented that the design of services commitments reflected in the Canadian offer may not be the best way to provide adequate predictability and certainty. In particular, rather than the negative list approach, which Canada has proposed, a positive list approach should be used like in the GATS negotiations. Such an approach would work more effectively in the FTAA negotiations that must accommodate the diverse services regimes of the 34 participating countries.

Some participants also expressed concern regarding the relative priority given to market access as opposed to other considerations in the services negotiations. In their view, the overriding goal of the Canadian negotiators should be to serve the Canadian public interest, and market access should be seen as a way of promoting this, rather than promoting market access exclusively. Furthermore, the right to regulate—something recognised in the current draft negotiating text—should be safeguarded while ensuring sufficient domestic flexibility in the design of disciplines on domestic regulation. In this regard, requiring that domestic regulation be justified as “necessary” to promote a particular legitimate public policy objective may be too stringent. As well, it was suggested that consideration be given to creating a special international instrument positively setting out countries’ right to regulate in relation to health care. It was recognised that this suggestion implicated measures beyond services.

Many welcomed the Government’s actions to promote transparency, but argued that the Government should be more active in soliciting the views of civil society and that the process needs to be more open and inclusive. According to them, the current level of transparency does not lead to sufficiently broad-based participation among Canadians. More positive efforts to establish a truly open and inclusive process would result in more concrete recommendations regarding negotiating objectives and provide a better balance between trade policy and other public policy objectives.

The group asked if formal evaluations of trade agreements would contribute to a more informed public debate. For example, have current negotiations been informed by what did and didn’t work under NAFTA? It was also suggested that evaluations be conducted of draft agreements as a way of better informing the trade policy development process. In that context, there may be a role for direct participation by civil society groups that have clear expertise and significant interests at stake. In negotiations relating to labour standards, for example, labour groups could be included in the negotiating team.

Finally, the group identified environmental services as a market access priority. In this regard, there was concern that classifications currently being used in the GATS were not detailed enough to permit the making of specific commitments.

Investment (Chair: Don McRae, University of Ottawa)

Note: For background information on this section, please refer to the [working documents](#) provided to the participants in advance of the meeting.

Participants discussed the value of investment provisions in a trade agreement, the need for rules for greater predictability, and the priority that might be attached to them. Some expressed concern regarding who benefits from them, their impact on developing countries, and whether they provide too much protection for investors.

The group also discussed what could be done in the design of an investment chapter or agreement. Several participants were of the view that NAFTA's Chapter 11 is problematic in its current form (i.e. the definition of "expropriation" is too broad), although others had no problem with the way it was operating. In addition, some felt it does not reflect the appropriate balance between public interest and private rights; that investment provisions should not unduly interfere with the right of governments to legislate; and that an investment chapter should be based on a bottom-up approach, rather than including everything unless it is excluded (i.e. a top-bottom approach).

According to some participants, an investment chapter should reflect a more nuanced view of different types of investment. They suggested that increased investment flows should be in concert with the domestic legislation. Some believed that performance requirements should take social and development objectives into consideration.

Also, some expressed the view that the investment chapter ought to outline the obligations of investors, not just grant them rights. To them, the latter ignores opportunities for the social objectives of the state to be properly fulfilled through rules and principles regarding corporate social responsibility. Certain participants also suggested that investment should take into account human rights and balance the rights of individuals against the rights of investors.

There was a discussion on dispute settlement mechanisms. Some felt that there should be no right of corporate access to such mechanisms directly, and that it should only be a state-to-state process. Others felt that existing dispute settlement mechanisms should be improved to ensure transparency, and specify criteria both for general transparency and for amicus briefs.

Finally, there was concern by some participants about who sits on dispute settlement tribunals/panels: trade lawyers, or other lawyers? Do they have a background in the social, environmental, political, and economic issues that the disputes raise? These participants thought that people with the appropriate background need to be involved.

The FTAA and the Summit of the Americas (Chair: John Godfrey, MP)

Note: For background information on this section, please refer to the [working documents](#) provided to the participants in advance of the meeting.

Renata Wielgosz, Director of the Inter-American Division at DFAIT, debriefed the group on the Summit of the Americas process, noting that the Quebec Summit produced a balanced agenda dealing with governance, prosperity, and social development. In the aftermath of September 11th, the Quebec Plan of Action was both relevant and flexible. The security components of the plan became central, and an Inter-American Convention Against Terrorism was developed, which Canada was the first to ratify. At the same time, the implementation of the Summit agenda has remained on track, addressing the whole spectrum of economic, social, and governance issues. The first deliverable of the Quebec Summit was the Inter-American Democratic Charter, adopted in September 2001. It was invoked for the first time in April 2002

in the case of Venezuela, and continues to serve as a backdrop in that country. To track the Summit process, a chart has been developed as an implementation monitoring mechanism and is available online at <http://www.summit-americas.org>. Modifications are currently being made to make this tool more user-friendly and to fill in the gaps.

After the presentation, the group considered the relationship and the checks and balances between the FTAA and the Summit processes. Some participants stated:

- Social and environmental processes cannot be left outside the FTAA. Moreover, we need to ensure the involvement of civil society.
- It is important to continually assess the experience and impact over time of the FTAA and NAFTA in order to learn from mistakes. There should be an independent evaluation on the social impact of such agreements on developing countries.

The group also noted specific deliverables. First, there is a need for an Americas' Environmental Accord and for a Regional Institution that would address *–inter alia–* the trade and environment linkages, although not necessarily based on the NAFTA model. Secondly, the Inter-American Democratic Charter must be strengthened and its implementation cannot be left to Heads of States alone.

There was great interest in corporate social responsibility, and it was felt that Canada has a special responsibility in this area, not only vis-à-vis Canadian companies operating abroad but also with regard to companies at home. The group debated whether corporate social responsibility should be voluntary or mandatory, and discussed the need for specific legislation in this regard.

Participants reflected on the European experience, and suggested tracking it closely as a positive model of regional integration with a larger political, economic and social vision. The unequal level of development among countries in the Americas, unlike in Europe where social dumping is less of a problem, was identified as a challenge.

Some argued that public awareness and education initiatives need to accompany the trade negotiations in order to broaden and institutionalise civil society participation, and involve more young people in the process.

Finally, there was concern regarding health care and public education, which must be protected.

Smaller Economies and Development (Chair: Keith Hay, Carleton University)

Note: For background information on this section, please refer to the [working documents](#) provided to the participants in advance of the meeting.

Brian McKay, Central America Division, Canadian International Development Agency (CIDA), explained that the Hemispheric Cooperation Program (HCP) is a process to coordinate and finance trade-related technical assistance in the hemisphere. Any assistance must be conceived within national development policies, must be part of an agenda for economic growth and poverty reduction, and must involve civil society and the private sector as much as possible in identifying priorities. Other important objectives of the HCP are to link development requirements with those of trade liberalisation, and to enhance institutional strength and capacity building. The HCP is a work in progress, but the Consultative Group on Smaller Economies (CGSE) will see it defined in greater detail by June 2003.

After the presentation, the group covered a breadth of issues discussed in other workshops because most of the nations involved in the FTAA negotiations might be thought of as small economies. Key points included the need to ensure that the FTAA gives priority to human rights over commercial objectives.

As one of the overarching goals of the FTAA is to achieve sustainable development for the region—

especially in smaller economies and particularly in the small island states—participants asked what the Government of Canada was doing in this regard.

The group also commented that the negotiation process must be inclusive. Are the stories of people in developing countries being heard and their needs conveyed by their own trade negotiators? What sort of special and differential treatment might smaller economies expect, and how would Canada agree to such terms? If Canada is to offer technical assistance to support sustainable development, how should it be offered and to whom? What is Canada's starting position on special and differential treatment?

Concern was expressed that some countries might want to retain some sectors of their economy apart from open trade (e.g. agriculture), and that negotiations on a case-by-case basis could result in a mixed bag of outcomes. The question of U.S. agricultural dumping was seen as contentious and potentially very difficult to resolve.

According to some participants, offering smaller economies better market access may not be enough—the national development policies in these countries may not have the capacity to benefit from increased access. Technical assistance could be geared toward the design and implementation of stronger national development strategies. NGOs and experts with field experience believe that they should be more involved in the dialogue to ensure sustainable development is balanced with trade negotiations. The HCP should touch upon sustainable development in a very clear way.

Exchange with the participants

The Honourable Pierre Pettigrew, Minister for International Trade

Minister Pettigrew thanked the participants for their continued engagement in an open and constructive dialogue on the FTAA negotiations. The Minister expressed his gratitude for the opportunity to hear first-hand their comments and recommendations stemming from the workshop discussions. He reiterated that Canada had achieved its main goals at the Quito Ministerial Meeting, in particular on transparency and civil society participation, which Canada has championed over the years. He added that the Trade Ministers' meeting with a broad range of civil society representatives was a constant reminder that the FTAA must benefit all the citizens of the hemisphere.

After the oral reports by the workshop Chairs, the participants were invited to exchange with the Minister.

Minister Pettigrew responded to the question of why is Canada in the FTAA by noting that Canada has evolved from seeing itself as a "mid-Atlantic country" to having a clearer sense of belonging in the Americas as democracy progressed in the region. "We are the ones who decided to put democracy and good governance at the centre of the hemispheric agenda," he added. He also noted that the countries of Latin America and the Caribbean are seeking free trade agreements with Canada.

On the evaluation of free trade agreements (FTAs), the Minister spoke of his previous experience advising furniture manufacturers during the NAFTA negotiations to illustrate that, since an industry can evolve and adapt steadfastly to competitive pressures and to a changing business environment, it is therefore very difficult to accurately predict the economic effects of FTAs. He added that trade brings about development when carried out correctly.

Regarding the differing views on investment, the Minister remarked that most Canadians are investors (through their savings) who want protection for their capital. At the same time however, there should not be too much protection so that investor rights do not trump a government's ability to regulate in the public interest. "We have a fine balance," he said. Noting that Canada needs a rules-based trading system, he said that the Government is on the right track. The Minister added that there needs to be a more precautionary approach to Chapter 11 and that there are ongoing efforts to clarify and improve certain provisions in it.

Minister Pettigrew stated that Canada is the lead country in demanding regional civil society meetings with the 34 trade ministers of the hemisphere. He added that more and more of his colleagues are in favour of such meetings, which are key to representing civil society concerns effectively.

Mr. Godfrey, the Chair of the session, asked if it would be possible for a more organised representation and dialogue to take place in Miami. The Minister responded that the civil society meeting held in Quebec could be replicated in Miami, and said he would push for it.

A participant said that civil society groups must cooperate with their southern partners and asked how can these contribute to needs assessments? She called for the creation of a binding mechanism to ensure civil society involvement in all aspects of the Summit of the Americas process.

Another participant commented that the underfunding of DFAIT is a serious concern. The Minister agreed that the Department should receive more money for consultation and said that he would continue to work in that direction.

Asked if he had heard the concerns expressed by the leader of the Indigenous Peoples in Ecuador, the Minister responded that he was attentive and sensible to their concerns. He added that governments have to make difficult choices and have to take their responsibilities towards their citizens seriously. Canada is the most open country in the world and its decision to put as much information as possible on the Department's website was not always well received by government officials in other countries. The Minister called the "transparency plus" agenda a work in progress.

Before leaving, the Minister thanked the participants once again and noted that their active involvement in such events has contributed to the credibility of Canada's policies and positions in the FTAA process.

After the Chair's closing remarks, the meeting was adjourned.