

THE BRAZILIAN ECONOMY UNDER THE FTAA AGREEMENT: IS IT POSSIBLE STOP THE NEGOTIATIONS, WITH BASIS ON THE CONSTITUTION?¹

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Today the world economy has suffering several events that changes the local economies in almost democratic countries, where some members governments do a lot of trade agreements.

The principle objective is to find some ways that bring hoppe and make comfortable the population in those countries. For this, we have some organizations that provides the trade between the nations, like the World Trade Organization (*WTO*).

Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO's current work comes from the 1986–94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (*GATT*). The WTO is currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001.

Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease.

At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

The system's overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects. That partly means removing obstacles. It also means ensuring that individuals, companies and

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governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be “transparent” and predictable.

This is a third important side to the WTO’s work. Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property, and much more. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.

Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

This principle is known as most-favoured-nation (*MFN*) treatment. It is so important that it is the first article of the General Agreement on Tariffs and Trade (*GATT*), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (*GATS*) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.

Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.

Imported and locally-produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Since GATT’s creation in 1947–48 there have been eight rounds of trade negotiations. A ninth round, under the Doha Development Agenda, is now underway. At first these focused on lowering tariffs (customs duties) on imported goods. As a result of the negotiations, by the mid-1990s industrial countries’ tariff rates on industrial goods had fallen steadily to less than 4%.

But by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to the new areas such as services and intellectual property.

Opening markets can be beneficial, but it also requires adjustment. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. Developing countries are usually given longer to fulfil their obligations.

Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

In the WTO, when countries agree to open their markets for goods or services, they “bind” their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates

that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

A country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. One of the achievements of the Uruguay Round of multilateral trade talks was to increase the amount of trade under binding commitments. In agriculture, 100% of products now have bound tariffs. The result of all this: a substantially higher degree of market security for traders and investors.

The system tries to improve predictability and stability in other ways as well. One way is to discourage the use of quotas and other measures used to set limits on quantities of imports — administering quotas can lead to more red-tape and accusations of unfair play. Another is to make countries' trade rules as clear and public (“transparent”) as possible. Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the Trade Policy Review Mechanism provides a further means of encouraging transparency both domestically and at the multilateral level.

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example. The agreement on government procurement (a “plurilateral” agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of government entities in many countries.

In other side the effort to unite the economies of the Americas into a single free trade area began at the Summit of the Americas, which was held in December 1994 in Miami, U.S.A. The Heads of State and Government of the 34 democracies in the region agreed to construct a *Free Trade Area of the Americas, or FTAA*, in which barriers to trade and investment will be

progressively eliminated. They agreed to complete negotiations towards this agreement by the year 2005 and to achieve substantial progress toward building the FTAA by 2000. The Heads of State and Government further directed their ministers responsible for trade to take a series of concrete initial steps to achieve the Free Trade Area of the Americas. Their decisions regarding these steps are contained in the Miami Summit's Declaration of Principles and Plan of Action.

During the preparatory phase (1994-1998), the 34 Ministers responsible for trade established twelve working groups to identify and examine existing trade-related measures in each area, with a view to identifying possible approaches to negotiations. The results of the preparatory work of the Groups were made available to the public. Four ministerial meetings took place during this preparatory phase: the first was in June 1995 in Denver, U.S.A., the second in March 1996 in Cartagena, Colombia, the third in May 1997 in Belo Horizonte, Brazil and the fourth in March 1998 in San José, Costa Rica.

In the San José Declaration, the Ministers set out the structure of the negotiations, agreed upon general principles and objectives to guide these negotiations, and recommended that their Heads of State and Government initiate the formal negotiation of the FTAA. The General Principles and Objectives agreed to by the Ministers are listed in Annex I of the Declaration.

The FTAA negotiations were formally launched in April 1998 at the Second Summit of the Americas in Santiago, Chile. The Heads of State and Government participating in the Second Summit of the Americas agreed that the FTAA Agreement will be balanced, comprehensive, WTO-consistent, and will constitute a single undertaking. They also agreed that the negotiating process will be transparent and take into account the differences in the levels of development and size of the economies in the Americas in order to facilitate full participation by all countries. Furthermore, they agreed that the negotiations should proceed in order to contribute to raising living standards, improving working conditions of all people in the Americas, and better protecting the environment. Finally, they agreed upon a structure under which the negotiations would be conducted.

The fifth Ministerial meeting - the first following the formal initiation of negotiations-took place in Toronto in November 1999. At this meeting, Ministers instructed the negotiating groups to prepare a draft text of their respective chapters, to be presented at the sixth Ministerial meeting. The negotiating groups responsible for market access issues were directed to discuss the modalities and procedures for negotiations in their respective areas. Ministers also approved several business facilitation measures, designed to facilitate commercial exchange in the Hemisphere. These measures, included

in the Annexes to the Ministerial Declaration, were concentrated in the areas of customs procedures and enhanced transparency.

At the sixth Ministerial meeting, held in Buenos Aires in April 2001, a number of key decisions were made regarding the FTAA negotiations. Ministers received from the Negotiating Groups draft text of the FTAA Agreement, and, in an unprecedented move designed to increase the transparency of the process, agreed to make this text publicly available. The Technical Committee of Institutional Issues was created to consider the overall architecture of an FTAA Agreement (general and institutional matters). Ministers also highlighted the need to foster dialogue with civil society, and directed the Committee of Government Representatives on the Participation of Civil Society to forward to the Negotiating Groups the Civil Society submissions in response to the open invitation, which refer to their respective issue areas, and those related to the FTAA process in general. Ministers reiterated the importance of the provision of technical assistance to smaller economies in order to facilitate their participation in the FTAA.

The Third Summit of the Americas was held in Quebec City on April 20 - 22, 2001. At this meeting, Heads of State and Government endorsed the decision of the Ministers to make the first draft FTAA agreement available as soon as possible to the public in all four official languages. This agreement was published on the Official FTAA Website on July 3, 2001.

In addition, deadlines were fixed for the conclusion and implementation of the FTAA Agreement. Negotiations are to be concluded no later than January 2005; entry into force will be sought as soon as possible thereafter, no later than December 2005.

As instructed by Ministers Responsible for Trade, recommendations on methods and modalities for negotiations were submitted by April 1, 2002, and market access negotiations were initiated on May 15, 2002. Principles and guidelines for these negotiations are set out in the Document on Methods and Modalities for Negotiations.

At the Seventh FTAA Ministerial Meeting, held November 1, 2002 in Quito, Ecuador, the Ministers took various steps to energize the negotiations. Among other things the Ministers confirmed the schedule for the exchange of initial market access offers, set deadlines by which new drafts of the texts of the FTAA Agreement will need to be produced, provided guidance to some of the FTAA entities on resolving issues in their negotiations, and made public immediately the second draft of the FTAA Agreement on the official FTAA website in the four official languages. Ministers also made public the Trade

Negotiations Committee document on Guidelines or Directives for the Treatment of the Differences in the Levels of Development and Size of Economies.

At Quito, Ministers took an important step to address the needs of less developed and smaller economies in the region by approving a Hemispheric Cooperation Program (*HCP*) to strengthen the capacities of those countries seeking assistance to participate in the negotiations, implement their trade commitments, and address the challenges and maximize the benefits of hemispheric integration. The Trade Negotiations Committee (*TNC*), with the support of the Consultative Group on Smaller Economies (*CGSE*) was mandated to supervise the HCP. In this context, Ministers instructed the TNC, with the support of the Tripartite Committee, to facilitate meetings of the CGSE, inviting appropriate development and financial officials, international financial institutions, international agencies, and interested private entities to discuss financing and implementation of the HCP and to report on this at the next Ministerial meeting.

At Quito, Ministers confirmed the timetable established by the TNC for market access-related negotiations to exchange initial offers between 15 December 2002 and 15 February 2003; review offers and submit requests for improvements to offers between 16 February and 15 June 2003; and initiate the presentation of revised offers and subsequent negotiations on improvements as of 15 July 2003. The Quito Ministerial Declaration also directs the Negotiating Groups to achieve consensus on the greatest possible number of issues in each of the draft chapters of the FTAA Agreement, and submit new versions of the Chapters to the TNC no later than eight weeks before the Ministerial meeting in November 2003.

Ministers also reiterated the need to increase civil society participation in the FTAA process and exhorted all countries in the Hemisphere to strengthen and deepen their consultation processes with civil society at the national level. Moreover, Ministers encouraged the holding of civil society events organized parallel to the Ministerial and Vice Ministerial meetings, as well as the organization of regional and national seminars related to the process of establishing the FTAA. In addition, they instructed the Committee of Government Representatives on the Participation of Civil Society to foster a process of increased and sustained two-way communication with civil society, to identify and foster the use of best practices for outreach and consultation with civil society, and that its Third Report which describes the activities of the Committee as well as the range of contributions received during this phase, be published on the official FTAA Website.

The final phase of FTAA negotiations will be guided by the co-chairmanship of the Brazil and the United States. It was agreed that two

meetings of the Ministers Responsible for Trade would be held, one in November 2003 in Miami, U.S.A., and one in 2004 in Brazil.

At their eighth meeting in Miami on November 20, 2003, Ministers reiterated their commitment to the Free Trade Area of the Americas and set forth a vision of the FTAA as follows:

“We, the Ministers, reaffirm our commitment to the successful conclusion of the *FTAA* negotiations by January 2005, with the ultimate goal of achieving an area of free trade and regional integration. The Ministers reaffirm their commitment to a comprehensive and balanced *FTAA* that will most effectively foster economic growth, the reduction of poverty, development, and integration through trade liberalization. Ministers also recognize the need for flexibility to take into account the needs and sensitivities of all *FTAA* partners.

We are mindful that negotiations must aim at a balanced agreement that addresses the issue of differences in the levels of development and size of economies of the hemisphere, through various provisions and mechanisms.

Taking into account and acknowledging existing mandates, Ministers recognize that countries may assume different levels of commitments. We will seek to develop a common and balanced set of rights and obligations applicable to all countries. In addition, negotiations should allow for countries that so choose, within the *FTAA*, to agree to additional obligations and benefits. One possible course of action would be for these countries to conduct plurilateral negotiations within the *FTAA* to define the obligations in the respective individual areas.

We fully expect that this endeavor will result in an appropriate balance of rights and obligations where countries reap the benefits of their respective commitments”.

Ministers instructed the *TNC* to develop a balanced and common set of rights and obligations applicable to all countries. These negotiations on the common set of rights and obligations will include provisions in each of the following negotiating areas: market access; agriculture; services; investment; government procurement; intellectual property; competition policy; subsidies, antidumping, and countervailing duties; and dispute settlement. On a plurilateral basis, interested parties may choose to develop additional liberalization and disciplines. The *TNC* shall establish procedures for these negotiations that shall, among other things, provide that: countries negotiating additional obligations and benefits within the *FTAA* shall notify the Co-Chairs of their intention to do so before the outset of the negotiations; and any country not choosing to do so may attend as an observer of those additional negotiations. Observers, by notifying the Co-Chairs, may become participants in these negotiations at any time

thereafter. The results of the negotiations must be WTO compliant. These instructions are to be delivered by the TNC to the Negotiating Groups and the Technical Committee on Institutional Issues (*TCI*), no later than the seventeenth meeting of the *TNC*, that will be held in early 2004, to enable the negotiations to proceed simultaneously and to be completed according to the schedule.

Ministers instructed that the negotiations on market access be concluded by September 30, 2004.

They reaffirmed their commitment to take into account, in designing the FTAA, the differences in levels of development and size of economies in the hemisphere to create opportunities for their full participation and increase their level of development. They took note of the TNC Report on the results of the progress achieved in relation to the treatment of differences in the levels of development and the size of economies in each of the Negotiating Groups and reiterated the instruction to the TNC and to all the negotiating groups, in particular those undertaking market access negotiations, to translate this principle into specific measures so that they are reflected in the results of the negotiations.

They also welcomed the efforts of the CGSE, with the assistance of the Tripartite Committee, to implement *the Hemispheric Cooperation Program (HCP)* and cited the important steps that took place at the first meeting with donors. They received the TNC Report on progress in the implementation of the HCP and encouraged the countries, with the help of the Tripartite Committee, to finalize the *TCB* strategies as appropriate and to organize sub-regional meetings with donors to continue discussions on the *TCB* strategies. Ministers reiterated the commitment they made in Quito that the *HCP* will respond to the immediate assistance needs for the purpose of strengthening the participation of countries in the negotiations.

In accordance with their commitment to transparency assumed at the Santiago and Quebec City Summits, Ministers made the third draft of the chapters of the *FTAA* Agreement available to the public on the official *FTAA* website in the four official languages.

The Fourth Report of the SOC, which describes the activities of the SOC as well as the range of contributions received from civil society during this phase, was received. Ministers also welcomed receipt of the report on Best Practices and Illustrative Examples of Consultations with Civil Society at the National/Regional Level that was prepared by the *SOC* and instructed the *SOC* to make recommendations to the *TNC* on the means to broaden the mechanisms for disseminating information on the discussions, drawing upon the experiences of countries for distributing information to their civil societies.

Ministers also recognized the decision to hold meetings with civil society, in conjunction with the regular meetings of the *SOC*, focusing on issues that are topics of discussion in these negotiations and including a broad representation of *FTAA* government officials and civil society including business, labor, agricultural producers, *NGOs*, academics, rural and indigenous groups. They express their satisfaction that at least two such meetings are planned in 2004, one in the Dominican Republic on the topic of intellectual property rights and one in the United States on the topic of market access, including small business issues.

Ministers also expressed interest in creating a civil society consultative committee within the institutional framework of the *FTAA* upon the Agreement's entry into force and requested the TNC to make a proposal on this issue for their future consideration, based on the recommendations made by the *SOC* in coordination with the *TCI*.

The *FTAA* negotiations are carried out under an agreed structure that is member-driven and ensures broad geographical participation. The Chairmanship of the entire process, the site of the negotiations themselves, as well as the Chairs and Vice Chairs of the various negotiating groups and other committees and groups, all rotate among participating countries.

The Chairmanship of the Negotiations rotates approximately every eighteen months, or at the conclusion of each Ministerial meeting. The following countries were designated to serve as Chairs and Vice-chairs of the *FTAA* process for successive periods during the negotiations:

TABELA

<i>Chairmanship of the Negotiations</i>			
		<i>Chair</i>	<i>Vice-Chair</i>
	May 1, 1998 - October 31, 1999	Canada	Argentina
	November 1, 1999 - April 30, 2001	Argentina	Ecuador
	May 1, 2001 - October 31, 2002	Ecuador	Chile
		<i>Co-Chairs</i>	
	November 1, 2002 - conclusion of the negotiations	Brazil and United States of America	

The Ministers Responsible for Trade exercise the ultimate oversight and management of the negotiations. They meet generally every eighteen months and, since the negotiations were launched, do so in the country which is holding the *FTAA* Chairmanship.

The Vice Ministers Responsible for Trade, as the Trade Negotiations Committee (*TNC*), have a central role in managing the *FTAA* negotiations. The *TNC* guides the work of the negotiating groups and other committees and groups and decides on the overall architecture of the agreement and institutional issues. The *TNC* is also responsible for ensuring the full participation of all the countries in the *FTAA* process, ensuring transparency in the negotiations, overseeing the administrative secretariat, and overseeing the identification and implementation of business facilitation measures. The Committee meets as required, no less than twice a year, at rotating sites throughout the hemisphere.

Nine *FTAA* Negotiating Groups were created in the following areas: market access; investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies, antidumping and countervailing duties; and competition policy. These negotiating groups have specific mandates from Ministers and the *TNC* to negotiate text in their subject areas and meet regularly throughout the year.

Three Committees and Groups address horizontal issues related to the negotiations. They are the Consultative Group on Smaller Economies, the Committee of Government Representatives on the Participation of Civil Society, and the Joint Government-Private Sector Committee of Experts on Electronic Commerce.

In addition, a Technical Committee of Institutional Issues was created to consider the overall architecture of an *FTAA* Agreement (general and institutional matters). Finally, an ad hoc group of experts was established to report to the *TNC* on the implementation of the customs-related business facilitation measures agreed upon at Toronto.

Technical and Analytical Support: The Tripartite Committee, which consists of the Inter-American Development Bank (*IADB*), the Organization of American States (*OAS*) and the United Nations Economic Commission for Latin America and the Caribbean (*UNECLAC*).

The Tripartite Committee provides analytical, technical and financial support to the process and maintains the official *FTAA* Website. The individual Tripartite institutions also provide technical assistance related to *FTAA* issues, particularly for the smaller economies of the Hemisphere.

Administrative Support: The *FTAA* Administrative Secretariat, located at the same site as the meetings of the negotiating groups, provides administrative and logistical support to the negotiations. It keeps the official archives of the negotiations, and provides translation and interpretation services.

The Secretariat is funded by a combination of local resources and the Tripartite Committee institutions.

Venue of the Negotiations: has also been established on a rotating basis. Three countries have been designated as hosts of the negotiations, namely: from May 1998 to February 2001: the United States (Miami); Panama (Panama City) from March 2001 to February 2003; and from March 2003 to the conclusion of the negotiations: Mexico (Puebla).

As we have saw the conclusion of the negociatitions are shared by Brazil and the United States of America, so both contries have the power to stop these negotitions, if have some offense in the internal legal system of these contries.

The brazilian constitucion has a chapter that regules the economic order. The 170 article, says that the economic order is based in some principles, one of them means that any economic policy made whitouth soberany has no effect in the internal economy.

So, it is possible to conclude that any agreement that forces the brazilian signature must will invalid in our legal system.