
THE FREE TRADE AREA OF THE AMERICAS (FTAA) AND THE BRAZILIAN PERSPECTIVE

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I - Introduction

The First Summit of the Americas held in December 1994 in Miami was successful to establish a very first standpoint. In such meeting, the presidents of the 34 democratic countries of the Americas¹ agreed to start the promotion and establishment of a free trade area which would comprise the entire continent and favor the progressive elimination of trade and investment barriers in the region, the Free Trade Area of the Americas (FTAA). The FTAA's purpose is the achievement of a greater well-being and progress for all citizens of the Americas, as part of an integral vision of the political, economic and social future of the continent.²

The Ministers responsible for trade on behalf of each country set out the structure of the negotiations and divided the work in nine groups³ to identify and examine existing trade-related measures in each area, with a view to identifying possible approaches to negotiations. They also agreed upon general principles and objectives to guide these negotiations, as follows:

¹ See FTAA's official website (www.ftaa-alca.org) to the complete list of the 34 countries.

² Declaration of Miami – Summit of the Americas, December 1994.

³ Market access; investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies, antidumping and countervailing duties; and competition policy.

- Preservation and strengthening of the democratic community of the Americas;
- Promotion of well-being through economic integration and free trade;
- Eradication of poverty and discrimination in the hemisphere; and
- Guarantee of sustainable development and preservation of the environment for future generations.

The presidents of the countries agreed that the FTAA Agreement will be balanced, comprehensive, WTO⁴-consistent, and will constitute a single undertaking. They also agreed that the FTAA would be established by the year 2005 at the latest.

The Free Trade Agreement of the Americas (FTAA) defines the future of free-trade in the Western Hemisphere. This free trade agreement is a dedication to eradicate restrictions on trade, investment and the flow of capital from the northern peak of Alaska to the southern tip of South America at Tierra del Fuego.⁵

However, as the last Ministerial Trade Meeting at Miami (November 2003) demonstrated, there are still a lot of differences to successfully cross the upcoming 2005 negotiations into a final and effective free-trade agreement for all the countries involved. Among other things, on the Brazilian requests standpoint there are the US agriculture subsidies and antidumping measures, while on the US side there are investments, intellectual property and government procurement issues.

How to balance those differences is the key issue for the success of the FTAA. This paper takes a look at the main Brazilian concerns, areas of concern that it needs to adjust and consider, and its perspective to the success of the negotiations.

The first part of this note will briefly remind the history of the meetings and main development of the negotiations. A brief look at the discussions of last meetings could orient the correct understanding of the

⁴ World Trade Organization

⁵ M. Kay Yorty, *The Free Trade Area of the Americas*, 1998 *Colo. J. Int'l Envtl. L. & Policy* 56, 56 (1998).

scenario. The second part of the note will address some general issues between US and Brazil regarding the FTAA. In this section, the note will delineate some Brazilian and US concerns on the FTAA negotiations and future, and comment some issues that have been leading Brazil to a conservative approach to the negotiations.

The third part will take a look at the Brazilian domestic economic situation and how it could negatively affect the discussions and negotiations. The fourth part of this note will examine Brazilian political current scenario and its government position in relation to the FTAA. A look at the Brazilian internal situation might help to understand how to reconcile the differences between US and Brazil. As the meetings have been showing, it is crucial for the negotiators to understand the reasons behind Brazilian concerns. Finally, the last part of this note will try to comment the main concerns and address some suggestions for the future.

II - History

In order to better understand the current scenario of the negotiations, it is important to briefly mention the FTAA related meetings since its very beginning.

A. First Summit of the Americas – December 1994

The FTAA process began in December 1994 during the First Summit of the Americas, when the leaders of the 34 countries of the Western Hemisphere gathered in Miami decided to “start constituting the FTAA immediately, whereby barriers to trade and investment would be gradually eliminated”⁶. FTAA was one of the summit’s twenty-three initiatives.

B. First Ministerial Trade Meeting – June 1995

The first Ministerial Trade Meeting after the Miami Summit was held in Denver in June 1995. Working groups were set up in the areas of Market Access, Customs Procedures and Origin Regulations, Investments;

⁶ See supra note 2.

Technical Norms and Barriers to Trade, Sanitary and Phytosanitary Measures, Subsidies, Anti-dumping and Countervailing Duties. The Working Group for Smaller Economies was also set up.

C. Second Ministerial Trade Meeting – March 1996

During the Second Ministerial Meeting held in Cartagena, Colombia, the Ministers proceeded with the preparatory work. They ratified their commitment to completing the process by 2005 and making progress by the end of the century⁷. Four Working Groups were set up in the areas of Public Sector, Purchases, Intellectual Property Rights, Services, and Competition Policy. Ministers ratified their commitment to actively creating opportunities to facilitate the integration of small economies and increase their level of development. All Working Groups were called upon to assume this commitment, as well as to consider specific suggestions from the Working Groups of smaller economies.

D. Third Ministerial Trade Meeting – May 1997

In the Third Ministerial Trade Meeting held in Belo Horizonte, Brazil, a Preparatory Committee formed of the 34 Vice-ministers in charge Trade was created. This Committee aimed at “strengthening efforts to seek consensus and make recommendations on pending issues, which will be subject to decisions made in the meeting to be held in San José”⁸. It also considered the way of changing Working Groups into Negotiating Groups. The twelfth Working Group was created for the Settlement of Differences.

Ministers pointed out the need to create a Provisional Administrative Secretariat to support FTAA negotiations. To that effect, the Tripartite Committee (OAS, IADB and ECLAC)⁹ was asked for a feasibility study. The Ministerial Meeting of Belo Horizonte also agreed to create a website to publish all public documents of the FTAA process. The official FTAA

⁷ Second Ministerial Meeting Joint Declaration, Cartagena, March 21, 1996.

⁸ Third Ministerial Meeting Joint Declaration, Belo Horizonte, May 16, 1997.

⁹ Respectively Organization of American States, Inter-American Development Bank and United Nations Economic Commission for Latin America and the Caribbean.

Website, managed by the Tripartite Committee, provides a clear view of the process and makes FTAA information available to the public in general.¹⁰

E. Fourth Ministerial Trade Meeting – March 1998

The last meeting of the preparatory phase was held in San José, Costa Rica in March 1998. In this meeting the Ministers recommended launching negotiations during the Second Summit of the Americas, held in Santiago, Chile in May 1998. They ratified the FTAA's commitment to considering the economic and social agenda, agreed upon in the Miami Summit. The commitment to achieving specific progress by the year 2000 was ratified and nine Negotiating Groups¹¹ were formed and a Provisional Administrative Secretariat, whose headquarters will rotate among three countries, was created.

Twelve principles and six general objectives agreed upon in the Ministerial Declaration of San José. The Ministers also agreed on the initial structure of negotiations based on FTAA principles.

The Ministers defined that negotiations would take place in the Provisional Administrative Secretariat, whose headquarters will rotate among three countries. During the first phase of negotiations the meetings will be held in Miami. The Secretariat will be moved to Panama in the spring of 2001 and negotiations will be completed in the city of Mexico.

F. Second Summit of the Americas – April 1998

Negotiations for the establishment of a Free Trade Area of the Americas were launched in the Second Summit of the Americas, held in Chile on April 19, 1998. "Today, we request our Ministers of Trade to start negotiations for the FTAA, pursuant to the Ministerial Declaration of San José of March 1998. We ratify our decision to complete FTAA negotiations by the year 2005 at the latest, and make major progress by the end of century. The agreement will be balanced, comprehensive, congruent with the WTO, and will constitute a single undertaking".¹²

¹⁰ See supra note 1

¹¹ See supra note 3

¹² Declaration of Santiago – Second Summit of the Americas, April 1998.

G. Fifth Ministerial Trade Meeting – November 1999

The Fifth Ministerial Trade Meeting was held in Toronto, Canada and it focused on the specific progress to be achieved by the year 2000. To that end, the Working Groups sent the plans from their respective divisions to the Ministers. The Negotiating Groups were asked to prepare a draft plan from their sub-groups before the next ministerial meeting, to be held in April 2001.

The Ministers agreed on a series of measures to facilitate business. In the Ministerial Declaration of Toronto, FTAA countries assumed a joint position with respect to multilateral negotiations on agriculture. They agreed to work towards the elimination of subsidies on agricultural exports and the fulfillment of all commitments assumed under the Agricultural Agreement of the Uruguay Round, as well as to work towards establishing disciplines regarding practices and measures which distort trade, at the next Multilateral Negotiations on Agriculture of the WTO. They also decided to disclose the content of these agreements to the WTO's General Council.

H. Third Summit of the Americas – April 2001

Presidents ratified the completion of negotiations for the FTAA agreement by January 2005 at the Third Summit of the Americas. The FTAA agreement will be made effective as soon as possible but not later than December 2005. They highlighted the importance of ensuring the total participation of all countries “in order to create opportunities for full participation by small economies and for improving their level of development”.¹³

I. Sixth Ministerial Trade Meeting – April 2001

In the Sixth Ministerial Trade Meeting held in Buenos Aires, Argentina in April 2001, the Ministers ratified their commitment to creating a Free Trade Area of the Americas as well as maintaining FTAA principles and objectives, declared in the First Summit of the Americas. In Buenos Aires, the Ministers made a series of key decisions for the FTAA negotiation process. The first official draft of the FTAA agreement was delivered.

¹³ Declaration of Quebec City – Third Summit of the Americas, April 2001.

J. Seventh Ministerial Trade Meeting – November 2002

At the Ministerial meeting in Quito in November, there remained open disagreement on the U.S. proposal to negotiate differentiated access to the U.S. market depending on a country's level of development¹⁴. Brazil has voiced opposition to a differentiated approach. The precarious political situation in Venezuela and the election of populist Luiz Inacio "Lula" da Silva to the Brazilian presidency raised fears that the already drawn-out FTAA talks would be further delayed. Following his election, Mr. Lula vowed to assert Brazil's role as a regional leader and declared that relations within the Mercosur trading bloc would be his top foreign relations priority.

K. Eighth Ministerial Trade Meeting – November 2003

At the meeting in Miami in November, the Ministers agreed to develop a common and balanced set of rights and obligations applicable to all countries. They also addressed that, on a plurilateral basis, interested parties may choose to develop additional liberalization and disciplines, provide that: countries negotiating additional obligations and benefits within the FTAA shall notify the members 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. Also, they agreed that the results of the negotiations must be WTO compliant.

III - General Issues between US and Brazil

A. The Brazilian Proposal

The Brazilian proposal for the FTAA deals with a complete coverage of all products and goods, including agriculture, which means that no excluded products shall remain. The defense of some particular sectors that each government would be interested in protect shall rely on the term: the more sensible sectors might have reductions on the tariffs 15 years after

¹⁴ Trade Ministers Set to Endorse FTAA Schedule, Struggle with AID, INSIDE U.S. TRADE, Nov. 1, 2002.

the signature of the agreement or for an indefinite term. The main concept of the proposal is that the FTAA goes in a similar way that the WTO already established for the trade rules.

In the agriculture sector, for instance, the Brazilian proposal not only aims for the reduction on the tariffs but also finish of the export subsidies and organization of the trade rules. The credits to export that the US government grant and that have the same effect of a subsidy are among those issues.

Another example is the service sector, in which respect the Brazilian proposal follows the international rules by using GATS¹⁵ rules. In addition to that, the Brazilian proposal includes a provision stating a “positive list” to open the service sector, which means that each government shall prepare a list of sectors that it offers to free-trade, by excluding those not listed. Obviously, the “negative list” concept is the opposite, i.e. every sector not listed is offered to free-trade. In the negative concept, the government would not be able to easily protect any eventual new sector that appears after the issuance of the list.

B. Main Issues

After several rounds of negotiation, the main issues that have been taking place are: market access, intellectual property, labor, investment, competition policy and government procurement.

1. Market Access

The elimination of tariffs and non-tariff barriers to trade is one of the most important issues of the FTAA. The discussions follow the calendar agreed and approved during the Quito Ministerial last year and countries have already sent in their initial offers and are currently revising and improving those offers, which are conditioned to the global result of the negotiations. There are four tariff elimination categories in the FTAA process: (A) immediate; (B) no more than five years; (C) no more than ten years; and (D) a category for sensitive products that is still pending a definition.¹⁶ It is

¹⁵ WTO's General Agreement on Trade in Services.

¹⁶ Bridges, Miami Daily Update, International Centre for Trade and Sustainable Development (www.ictsd.org), November 18, 2003.

the Brazilian understanding that in a process that would address the elimination of tariffs, the negotiation of the elimination schedule is essential.

It is important to note that until very recently, liberalization of trade was understood to mean reducing financial measures such as tariffs that are alleged to discourage competitive trade from foreign producers. These tariffs essentially add a tax to foreign goods or services, making them more expensive than domestic products. They are intended to protect domestic industries, and encourage the sale of domestically produced products, by artificially imposing higher prices for imported goods. Tariffs have thus been viewed as barriers to international trade, and limits to competition. Economists have varying views on the whether these protectionist policies ultimately benefit domestic and international economic growth.¹⁷

There is a distinction between the tariffs negotiations conducted on the context of WTO and those under a free-trade area. The purpose of WTO is to reduce tariffs progressively and then consolidate them, i.e. establish a limit, a ceiling to the tariffs. In a free-trade zone, there are no limits to the tariffs, but no tariffs to the members. In this kind of negotiation, the WTO consolidated tariff is a valuable instrument.

It is possible to illustrate such a difference, with an example: in general, industrial products tariffs were consolidated by Brazil at 35% in WTO. For a product with an applicable tariff of 14% and elimination term of 5 years, by using the consolidated tariffs as starting point, there would have reductions of 2.8% as from the very first year. If the consolidated tariff was the basis, the same product would not have a reduction in the first three years, but would have 7% reductions at the fourth and fifth years. The final result would be the same, but with a more abrupt transition.¹⁸

This Brazilian understanding is confirmed as effective due to the fact that there is no knowledge of any free-trade zone or area based on consolidated tariffs. Among the more than 200 regional agreements notified to WTO, not a single one used the consolidated tariffs as the basis to the elimination of tariffs. According to the Brazilian understanding, the use of a tariff close to the actual one is a logical consequence that must result from the negotiations.

¹⁷ CPATH FTAA Testimony: trade & threats to health - Ellen R. Shaffer, PhD, Joseph E. Brenner, MA, Alicia Yamin, JD, August 21, 2002.

¹⁸ Suspicious, Interests and Negotiations of FTAA, Celso Lafer, Folha de São Paulo (a Brazilian major newspaper), June 30, 2002, free translation.

Attached to the reduction of tariffs, the US subsidies to certain products have been impeding the settlement. In US, the subsidies raise when the prices drop down, acting as a safety instrument to the manufacturers. In the words of Jagdish Bhagwati, Economist and Professor at Columbia University, “the removal of agricultural protection does not raise the same ethical problems; production and export subsidies in the United States and the European Union go mainly to large farmers. That should make it easier to dismantle farm protection on the grounds of helping the poor. At the same time, however, agricultural protectionism is energetically defended as necessary for preserving greenery and the environment. With the greens in play, protectionism becomes more difficult to remove. But, just as income support can be de-linked from increasing production and exports, so measures to support greenery can be de-linked too. Such new measures, and other environmental protections added as sweeteners, must be part of the strategic assault on agricultural protection.”¹⁹

2. Intellectual Property

Intellectual Property is also an issue. The Brazilian proposal refers to some WTO’s rules instead of just mentioning the TRIPS²⁰, the basic rule in the field. By doing this, it includes a declaration concerning the “TRIPS and Public Health”²¹, approved in Doha WTO’s meeting (2001), that favors the right of health over patent rights. Two main aspects have been the focus of intellectual property discussion in the FTAA:²²

1) The US presented a proposal to include a chapter on intellectual property rights in the FTAA, inspired in its own legislation. In this sense, the US is attempting to “export” its domestic policies to the rest of the region and demand that the countries of the hemisphere adopt legislation congruent to its law. The position of the US delegation pushes for the creation of an hemispheric data base, effort that hasn’t had an eco domestically.

2) On the other hand, the Brazilian delegation opposes to the inclusion of a

¹⁹ In “The Poor’s Best Hope”, *The Economist*, Washington, DC, June 29, 2002.

²⁰ WTO’s Trade-Related Aspects of Intellectual Property Rights.

²¹ For more detailed information see WTO’s official website on the issue at http://www.wto.org/english/tratop_e/trips_e/pharmpatent_e.htm

²² See supra note 16.

chapter on intellectual property rights. This position is supported by the rest of the Mercosur countries. Brazil alleges that there already exist specific agreements on intellectual property rights in the WTO and other international forums like the World Intellectual Property Rights Organization (WIPO). It sustains that the discussion should be addressed in established forums and that any inclusion of this subject in the FTAA will only result in increasing standards.

The rest of the countries are divided between these two positions. Countries like Canada, Mexico and Chile that already have trade agreements with the US that incorporate the subject, have not opposed to discussing it in the FTAA. The second draft on the chapter related to intellectual property rights shows that no agreements have been reached on the content of this chapter. Thus, discussions have been focused on more general aspects.

There are several US based companies with huge interests in the intellectual property issue. Microsoft is one of them. According to its Latin America Director for Corporate and Legal Affairs, Mr. Luiz Sette, the major interest of Microsoft is that Brazil implements TRIPS rules. “It is important to demonstrate its commitment in the piracy and smuggling combat, investigating more cases and punishing”, he says.²³ Microsoft estimates that 50% of software in Brazil is a piracy product. The origin of the software piracy in Brazil partially relies on the smuggling of hardware, since personal computers without brands, assembled with smuggled components have been sold with a pirated operational system. Another source of the piracy is the copying of licensed software.

“It is hard to attract investment to a computer chips plant without the effective combat to the smuggling, for instance. Legally import a chip means high tariffs and compete in a market where 75% of the chips are smuggled and don’t pay a cent”, said Mr. Sette. According to his understanding, if the Brazilian government stimulates the local development of software, it needs to better protect patents.²⁴

The same concerns occur to the CD²⁵ and DVD²⁶ markets. The record industry and movie studios are facing a lot of competition from the piracy. For

²³ In an interview to *Valor Econômico*, a major Brazilian newspaper, November 21, 2003, free translation.

²⁴ See *supra* note 23.

²⁵ Compact Disk.

²⁶ Digital Video Disk.

instance, it is easy to find a CD of almost any singer along the streets of downtown of São Paulo, a major economic Brazilian center, with sale price as low as US\$2.00. And it is not hard to find a DVD of a movie just launched in the US theaters with prices not even compared to the licensed copies.

Another industry that suffers a lot with such problem is the pharmaceutical one, which happens to be the most polemical. In this case, the industry requires more efficient and hard patent rules, in order to difficult the manufacturing of important generic medicines.

3. Labor issues

As with environment, the FTAA's actual draft does not have any specific chapter about labor. However, there are clear signals of increasing pressure to include this issue in the negotiations. One example is the US Congress adoption of the 2002 Trade Law which gives the power to the Executive to negotiate trade agreements and to obtain expedite approval from the legislative power. The document establishes as a requirement that all treaties shall include an adequate level of provisions on labor and environment.²⁷

Chile has been one of the main supporters to include labor in the FTAA's text. In fact, along with other Latin American countries, it is proposing the creation of a consulting committee to explore the different alternatives to approach the subject in the negotiations. The US hopes that labor will be part of the Agreement, while countries like Mexico, Brazil and Argentina are worried.²⁸

There are some reasons for their worries. The need of several changes in their laws and the long and hard process to change them; real social differences and claims, internally and compared to other countries; structure of their industries; are only some of them.

The efforts of the United States to accomplish their inclusion have been a source of intense controversy. The negotiations themselves have been organized without a separate working group on labor and environment.²⁹ Complaints are rampant that efforts to incorporate "civil society," for the

²⁷ See supra note 16.

²⁸ See supra note 16.

²⁹ See supra note 3.

most part, have been limited to inclusion of input from business interests in the talks. Therefore, there have been an indeterminate number of steps backward, although the process is far from complete.³⁰

4. Investment, Competition Policy, and Government Procurement

Investment, competition policy and government procurement present similar dynamics to those of intellectual property. On the one hand, there is the proposal to include ambitious chapters that go beyond what has been proposed at the WTO; on the other hand, there is Brazil's position to exclude these topics from the negotiations. The Ministerial Declaration seeks a solution on this divergence, due to the failure in the attempts in achieving consensus on both parts.

The countries that have trade agreements with the US are - in principle - not opposed to the inclusion of these topics, since their respective treaties already include specific clauses on investment, competition policy and government procurement. Some countries have presented their initial offers, while, the rest of the countries are encouraged to do so as soon as possible.

US demonstrated its interest in helping the negotiations, when President George W. Bush eliminated the US over-tariffs to import steel. However, the revocation of Section 201 of US Trade Statutes just solves part of the problem for the Brazilian steel industry. As an example, from the ten garrote's products, seven still have over-tariffs though anti-dumping and compensation right measures. In view of such measures, Brazil keeps losing at least US\$135 millions per year in export, according to calculations of IBS (Brazilian Steel Industry Institute). Such products, used in the automobile industry, still have heavy over-tariffs between 41.27% and 43.4% due to antidumping measures, not counting the compensation right measures that add from 6.35% to 9.67%.³¹

Brazil became a primary target for foreign capital investment during the 1990's. Companies domiciled in many countries decided to enter Brazil

³⁰ "Two steps forward, one step back - or vice versa: labor rights under free trade agreements from NAFTA, through Jordan, via Chile, to Latin America, and beyond", Marley S. Weiss, University of San Francisco Law Review, Spring 2003.

³¹ "Major Part of Brazilian Steel Still Has Over-Tariffs", Sandra Balbi, Folha de São Paulo (a major Brazilian newspaper), December 6, 2003, free translation.

investing in growth sectors with North America and Europe clearly taking the lead. US based companies participated in 400 acquisitions during the period from 1995 to 2002. France came in second with 104 deals, with other investing countries including Argentina (56), Spain (53), Germany (51), Portugal (50), United Kingdom (46), Italy (33), Canada (28), Netherlands (25) and Sweden (21). US investments were concentrated in the electric energy, internet and telecommunications sectors.³² For this reason, US aims to have a clause in the agreement covering investment protections.

The Brazilian government refuses to include clauses regarding these topics based on it's believes that these new commitments would limit its capacity to protect local companies and local labor force. For instance, with respect to government procurement, the Brazilian proposal discusses only the transparency and not the foreigners' right to participate in a government bidding process.

IV - Brazilian Economic Scenario

A. Overview of Brazil

1. Key Figures

Brazil has a population of 175 million (2002) distributed in 26 states and 1 federal district. Its GDP³³ in 2002 was US\$450 billion. The Brazilian currency is "Real"³⁴ since July 1, 1994, which was established under the government of Mr. Itamar Franco, being Mr. Fernando Henrique Cardoso the Minister of Economy. The official language is Portuguese.

2. Basic Political Information

Brazil is a republic officially named Federative Republic of Brazil. The latest Presidential elections were held in October 2002, when Mr. Luiz

³² Doing Deals in Brazil, PricewaterhouseCoopers, September 2003.

³³ Gross Domestic Product.

³⁴ Exchange rate to US\$ in December 30, 2003 was R\$2.97.

Inácio “Lula” da Silva was elected President, representing the leftist Labor Party for a four (4) years mandate.

3. Economic Overview

Brazil is the second largest economy in Latin America and the tenth in the world. Its primary economic sectors are: agriculture, automobile, utilities, transport, industry, mining and energy. The main economic regions are: São Paulo, Rio de Janeiro, Minas Gerais and Paraná, in the southeast part of the country.

4. Population data

As mentioned before, Brazil’s population is 175 million (2002). Its GDP per capita amounts to R\$5,210 (average in Reais)³⁵. Around 70% of the people are concentrated in the Southeast and Northeast regions and around 20% of the population is rural dwellers and 80% is urban. The average life expectancy is 66 years and around 42% of the population is under 20 years of age and less than 8% is over 66 years.

The population of the states of São Paulo and Rio de Janeiro are, respectively, 34 million and 14 million people. São Paulo is one of the fastest-growing cities in the world and 20 other metropolitan areas of Brazil have populations of more than 1 million, being 30% of the population lives in the ten main cities. Brazil represents the largest population in Latin America and the sixth largest in the world.³⁶

B. The Scenario

With large and well-developed agricultural, mining, manufacturing and services sectors, Brazil’s economy outweighs that of all other South American countries and is quickly expanding its presence in world markets. The main industries are: chemicals, cement, lumber, iron ore, tin, steel,

³⁵ Arounds US\$1,755.00, based on the exchange rate of R\$2.97.

³⁶ See supra note 32.

aircraft, motor vehicles, auto parts and other machinery and equipment. The industrial production growth rate was of 1.0% in 2001 and 2.0% in 2002.³⁷

The main natural resources are: bauxite, gold, iron ore, manganese, nickel, phosphates, platinum, tin, uranium, petroleum, hydropower and timber. The main agricultural products are: coffee, soybeans, wheat, rice, corn, sugarcane, cocoa and citrus.

The main export commodities are: manufactured, iron ore, soybeans, footwear, coffee. The main export partners in 2001 were: USA 24%, Argentina 8.5%, Netherlands 5%, Germany 4.3% and Japan 3.4%.

The main import commodities are: machinery and equipment, chemical products, oil and electricity. The main import partners in 2001 were: USA 23%, Argentina 11%, Germany 8.7%, Japan 5.5% and Italy 3.9%. Brazil has important ports and harbors in some important cities: Belem, Fortaleza, Ilheus, Imbituba, Manaus, Paranaguá, Porto Alegre, Recife, Rio de Janeiro, Rio Grande, Salvador, Santos and Vitoria.

With all these figures, Brazil is the most important country in Latin America, and it is important for the successful of FTAA that Brazil takes real part of it. However, Brazil still has a lot of economic and social adjustments and improvements to take care of in order to achieve a competitive level to effectively open its market in a free-trade agreement.

In several sectors, Brazilian companies must implement improvements and generate effective efficiencies to reach a competitive position in a free-trade market. In view of that, Brazilian government is obviously reticent to frankly open its market to companies in the neighborhood without protection to local companies.

The year 2003 began with the inauguration of the new president elected at the end of 2002. Mr. Luiz Inácio “Lula” da Silva was the leader of the leftist opposition party (Workers Party – Partido dos Trabalhadores – PT) that most openly opposed the previous government.

The uncertainties of the electoral process obviously impacted on the Brazilian economic indicators in 2002, primarily due to the fact that the market was concerned that the new government would not continue the policies to control inflation and other reforms that were introduced by the

³⁷ See supra note 32.

government of then-President Fernando Henrique Cardoso.³⁸

President Lula's main task as he took office in January 2003 was to build credibility and to reverse the economic damage which had emerged from the crisis of confidence ignited by the 2002 Presidential election campaign, especially in the second half of that year. For that reason, macroeconomic policy dominated the agenda in the first year of the new government. The two cornerstones of the economic policy were the endorsement of the IMF³⁹ program agreed by the Cardoso government in August 2002 and the announcement of the inflation targets for 2003 (8.5%) and 2004 (5.5%).⁴⁰

These initiatives were followed by an increase in the goal for the primary surplus of the public sector to 4.25% of GDP (from 3.75% in the IMF program) and a sharp increase in interest rates by the Brazilian Central Bank. In both cases the Lula administration made clear as commitment to reduce the burden of the domestic public debt (perhaps the main driver for the high Brazil sovereign risk premium) and to reverse inflationary expectations.⁴¹

The rewards from persisting with this adjustment policy can be measured by the remarkable improvement in almost all of the macroeconomic indicators during the year. Comparing the first and the last quarter of 2003, the annualized rate of inflation fell from 23% to 3%, and inflationary expectations for 2004 are now at 6%, very close to the government target of 5.5%. In the same period, the Brazilian sovereign risk premium fell from 1,300 to below 500 basis points (having peaked at 2,400 bp in 2002), the local currency appreciated by almost 20% against the US dollar, record levels of export and of trade surpluses were achieved and a small current account surplus in the balance of payments was recorded for the first time since 1995. In October 2003, the government announced an extension of the IMF program for a further year (through September 2004) indicating its intention to maintain the course set by current economic policies. Although a recovery in foreign direct investment is expected to start only as from 2004, the increase of over 80% in the price of Brazilian stocks in 2003 as measured by the Bovespa (São Paulo

³⁸ "M&A in Brazil", Fernando Loeser and Rodney Almeida Alves, Euromoney's 2003-2004 M&A Review, June 2003.

³⁹ International Monetary Fund.

⁴⁰ Highlights of Brazil 2003-2004 Edition, PricewaterhouseCoopers, December 2003.

⁴¹ See supra note 41.

Stock Exchange) index is noteworthy; this increase in market capitalization is partially due to the inflow of foreign portfolio investments.⁴²

On the flip side, the tight monetary and fiscal policies brought about the reduction of economic activity, a decrease of some 15% in real household income and an increase in the rate of unemployment. The fall in consumption and investment spending was barely compensated by a 20% increase in exports, resulting in GDP growth of a meager 0.3% in 2003. Except for agriculture, which has experienced explosive growth in productivity, especially since the adoption of the floating exchange rate system in 1999, the other sectors of the economy have remained stagnant or even retracted.

However, the new government's economic team has provided unmistakable signals that it is committed to controlling inflation and maintaining the stability of the Brazilian economy, considering this approach to be the only way to guarantee growth in Brazil and improve the economic and social conditions. The new government has also shown that it is committed to controlling the public deficit and is promising to introduce various constitutional reforms that will be sent to the Congress. These reforms, which are considered absolutely necessary by the government and Brazilian society, include social security, tax, and political party reforms.⁴³

The Lula administration took two major initiatives: a reform of the pension system for public employees and a general tax reform. The pension reform, which is virtually approved by Congress at the moment, is a real positive contribution to the resolution of the chronic deficit in the government-sponsored pension system. Although the financial impact of this reform in the short term is not significant (an anticipated reduction of the current deficit from 4% to 3.2% of GDP), a sustainable system is being built which should guarantee equilibrium in the long term. The same, however, cannot be said of the proposed tax reform which, for different reasons, produced intense discontent among state governors and city mayors, as well as among the business community. Although the proposal had many positive aspects (the unification of legislation for the state value added taxes and the gradual elimination of cascading taxes), there were justifiable fears that the proposed changes could increase the already extraordinarily high tax burden in Brazil. After months of discussion in

⁴² See supra note 41.

⁴³ See supra note 38.

Congress, it was decided to proceed on a step-by-step basis, as a result of which this subject is expected to be on the political agenda for years to come.⁴⁴

It is expected that, with these reforms, the Brazilian economy will return to a stronger growth trend. Moreover, current economic indicators indicate that the economy may have already begun to grow again, even if only at a modest rate. As a result of this new environment, some companies have reinitiated expansion/acquisition plans, after having suspended them to reconsider their positioning in the Brazilian market.⁴⁵

The Lula administration is also currently in the process of revising the regulatory models for public utilities and infrastructure which the previous government had adopted following the privatization of these sectors. The uncertainty surrounding the new rules, coupled with the long-term nature of the return on the investments and relative exchange rate instability, has brought private investment in these areas to a halt, retarding the much-needed expansion of infrastructure in Brazil for one or more years. Finally, the government launched several new programs in order to fight poverty, but perhaps the best initiative in this area was the announcement of the intention to unify the dozens of social programs currently existing in the country in order to improve the focus and targeting of such programs.

In other areas of the administration, the hesitant attitude of the Brazilian government in negotiations to establish the FTAA should be noted. Currently, the scope and outcome of the negotiations are still uncertain, as it seems that neither Brazil nor the United States is willing to make significant concessions in their respective areas of interest.

V - Conclusion

There is growing consensus among economists that while markets are very important for a successful economy, there is also an important role for the State. For example, Nobel-winning economist Joseph Stiglitz recently cited Brazil's strong regulatory policies as a reason for that country's successful handling of its electricity crisis, "while the US let market forces (and companies like Enron) handle the matter."⁴⁶

⁴⁴ See supra note 41.

⁴⁵ See supra note 38.

⁴⁶ See supra note 17.

The FTAA would change the equation. FTAA equates government regulations and public services with barriers to trade such as tariffs. While proposing to eliminate governments' ability to protect the prices of domestic goods, the FTAA would also require governments to publish annually every "measure" relating to services at the national, regional or local level. The FTAA defines a "measure" in paragraph 4 of the Services chapter as: all laws, regulations and administrative directives, decisions, resolutions, rulings, and/or measures of general application that affect the operation of the provisions of [Services] enacted by federal, central and state governments or by non-governmental regulatory agencies. International agreements referring to or affecting trade in services to which one party is a signatory should also be published.⁴⁷

The new vision for FTAA proposed at the last Ministerial meeting at Miami assumes the development of a joint and balanced set of rights and liabilities applicable to all countries members, in which each of them may accept different levels of commitment. This achievement means almost nothing for the negotiations process. It was a diplomatic outcome.

The possibility to accept different levels of commitment already exists independently of the FTAA, simply because it is always possible to a country execute a bi-partite agreement with another at anytime. The problem is to establish a joint and balance set of rights and liabilities. Thus, there might not have happened progress enough.

The US ambassador in Brazil, Donna J. Hrinak, understands that there is space to discuss topics as agriculture, subsidies and antidumping at FTAA negotiations. Ms. Hrinak says that US wants an extended, multilateral and ambitious FTAA. In the concept of extended, multilateral and ambitious it is possible to include "negotiations on trade of goods, agriculture, antidumping and domestic subsidies", topics of Brazilian interest, as well as topics proposed by US, such as government procurement, services and intellectual property.⁴⁸

According to Ms. Hrinak, US are favorable to eliminate the subsidies, but will only make it happen when the European Union and Japan demonstrate their interests in the same way. "We want a world without subsidies, but we live in a real world. The problem of the subsidies is global" said Ms. Hrinak in Seminar about FTAA in Porto Alegre, last October,

⁴⁷ See supra note 17.

⁴⁸ "There is Space to Discuss Subsidies and Antidumping", *Gazeta Mercantil*, a major Brazilian newspaper, October 20, 2003.

promoted by American Chamber of Commerce - Amcham.⁴⁹

The decision for a “light” FTAA, i.e., a more flexible and less extended agreement than the original idealized one, is obviously against US interests. Despite of the speech of US Minister Robert Zoellick, US are clearly unsatisfied with the result. However, US acceptance of this option is merely tactic and temporarily. It is noticed that US government was trying to avoid a second failing in a row, especially in Florida (a state governed by US President’s brother) and in Miami, the serious candidate to FTAA’s headquarter.

Canada, Chile and Mexico still insist that Brazil and Argentina shall accept the US proposal to include clauses regarding topics as services, intellectual property, investments, and government procurement. According to their understanding, these clauses are indispensable in “last generation” trade agreements. Actually, they have nothing to loose, because their free-trade agreements with US already contain such clauses. They are in the same position of that fox in the La Fontaine’s fable, in which as it lost its tail in a trap tried to convince the other foxes that a tail cut is the fashion.⁵⁰

One of the main issues, investments, might be solved with the concept of a “positive list”. In such a concept each government shall prepare a list of items that it accepts to negotiate, by excluding those not listed. However, it is necessary to keep in mind that Brazil is not willing to discuss any possibility to include a clause allowing investors to sue the State, as it is stated in NAFTA⁵¹.

With respect to the market access, which includes the agriculture and antidumping issues, it might be a better solution to negotiate first in the context of Mercosur and US, and starts negotiation within the first semester of 2004. According to Brazilian Minister, Celso Amorim, the discussions of an agreement between Mercosur and US will positively contribute to the FTAA.⁵²

In the opinion of the President of ICONE⁵³, Mr. Marcos Jank, it is

⁴⁹ See supra note 48.

⁵⁰ “FTAA and the La Fontaine’s Fox”, Paulo Nogueira Batista Jr., Folha de São Paulo, a major Brazilian newspaper, November 20, 2003.

⁵¹ North America Free-Trade Agreement.

⁵² In interview to Gazeta Mercantil, a major Brazilian newspaper, November 21, 2003, free translation.

⁵³ Brazilian International Trade and Negotiations Studies Institute (Instituto de Estudos de Comércio e Negociações Internacionais).

also possible to create a “Behavior Code” for the steel industry, for example, in order to solve some deadlocks in the negotiations. He also understands that in the market access issue, the key point is the extension of the terms for the elimination of tariffs.⁵⁴

According to Brazilian ambassador, Mr. Luiz Felipe de Seixas Corrêa, “Brazil is prepared to move and to sign an agreement in any topic, provided that we are able to achieve significant progress in agriculture.”⁵⁵ In the hypothesis of a more extended FTAA, Brazil and Mercosur would naturally become very attractive areas for investments and, of course, with positive effects for their export and development.

⁵⁴ In interview to Valor Econômico, a major Brazilian newspaper, November 19, 2003, free translation.

⁵⁵ In interview to Valor Econômico, a major Brazilian newspaper, December 16, 2003, free translation.