

Re-mapping the Americas: Globalization, Regionalization & the FTAA

ABSTRACT

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The Draft Chapter on Competition Policy in the FTAA is largely bracketed and most provisions are still to be negotiated to a firm commitment. Moreover, the negotiations have been at a standstill since September 2003, and prospects for resuming the negotiations seem gloomy at this time. The impasse between the United States and Brazil over export subsidies and domestic support for agricultural products will not be resolved in the FTAA until they are resolved in the WTO because neither party can afford to give concessions in the FTAA that would compromise its position in the WTO. Repeated attempts by the Co-Chairs (the US and Brazil) to meet and find a resolution to the problem have failed, the most recent being in May/June 2005. There is no meeting of the Trade Negotiating Committee scheduled.

Moreover, the decision taken at the Ministerial in November 2003 was that there could be two-tiered negotiations, with countries opting for whatever level of commitments with which they felt comfortable. In respect of competition policy, several countries, including CARICOM, indicated that they were inclined to opt out of negotiations of that chapter. This means that there could be three levels of interface with the existing draft chapter: continued negotiations of the full text with the objective of having as deep a cooperation as is feasible in a plurilateral agreement; a much reduced text with a general commitment to endeavour to have legislation prohibiting anti-competitive agreements and institutional arrangements to enforce the law; and the third option of no commitments on competition policy.

One may therefore deduce from the current situation that not much would have been gained, and a lot of money thrown down the drain, if either the negotiations do not resume, or the level of commitments are much reduced for the majority, with only a deeper commitment amongst a few countries in a plurilateral agreement. This paper will argue that the process of negotiating the chapter in itself achieved a level of cooperation and understanding in the hemisphere that paves the way for deeper cooperation in the area of competition policy. The paper will draw on the discussions that actually took place in the Negotiating Group on Competition Policy (NGCP) to demonstrate the gains that resulted from the very process of negotiation. The depth of discussions that took place in the NGCP greatly enhanced the understanding and awareness of the state of competition policy in the region, served as an educative process for delegates from countries without competition law, given the wealth of the debate on technical points

involving experts from mature competition agencies, and the informal cooperation that resulted from delegates becoming familiar with each other and each other's legal systems. It will be argued that the process of negotiation of the draft Chapter on Competition Policy resulted in very positive gains for the hemisphere in the area of competition policy, even if the worse case scenario happens and negotiations are never resumed.

The paper is intended to be placed in the following section:

2. Hemispheric Trade and Economic Relations

FTAA: Structure, Context and Negotiations