

GAO

Report to the Chairman, Committee on
Finance, U.S. Senate, and to the
Chairman, Committee on Ways and
Means, House of Representatives

March 2005

FREE TRADE AREA OF THE AMERICAS

Missed Deadline Prompts Efforts to Restart Stalled Hemispheric Trade Negotiations



G A O

Accountability * Integrity * Reliability

GAO
Accountability • Integrity • Reliability
Highlights

Highlights of [GAO-05-166](#), a report to Chairman, Senate Committee on Finance and House Committee on Ways and Means

Why GAO Did This Study

If completed, the Free Trade Area of the Americas (FTAA) agreement would encompass an area of 800 million people and about \$13 trillion in production of goods and services, making it the most significant regional trade initiative presently being pursued by the United States. The 34 democratic nations of the Western Hemisphere formally launched negotiations towards a FTAA in 1998, and set a January 2005 deadline for concluding a FTAA agreement. GAO was asked to analyze (1) progress made in FTAA negotiations since GAO's last (April 2003) report (2) factors that have been influencing the FTAA's progress; and (3) future prospects for the FTAA.

USTR disagreed with our report, stating it was a poorly framed portrayal of progress and problems in the negotiations, overemphasized the role of the United States and Brazil in the current impasse, and did not give sufficient weight to U.S. efforts to make progress. GAO made several changes in response, but disagreed with USTR's assessment. The Departments of State, Commerce, and Agriculture provided technical comments, which we incorporated.

www.gao.gov/cgi-bin/getrpt?GAO-05-166.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or YagerLj@gao.gov.

FREE TRADE AREA OF THE AMERICAS

Missed Deadline Prompts Efforts to Restart Stalled Hemispheric Trade Negotiations

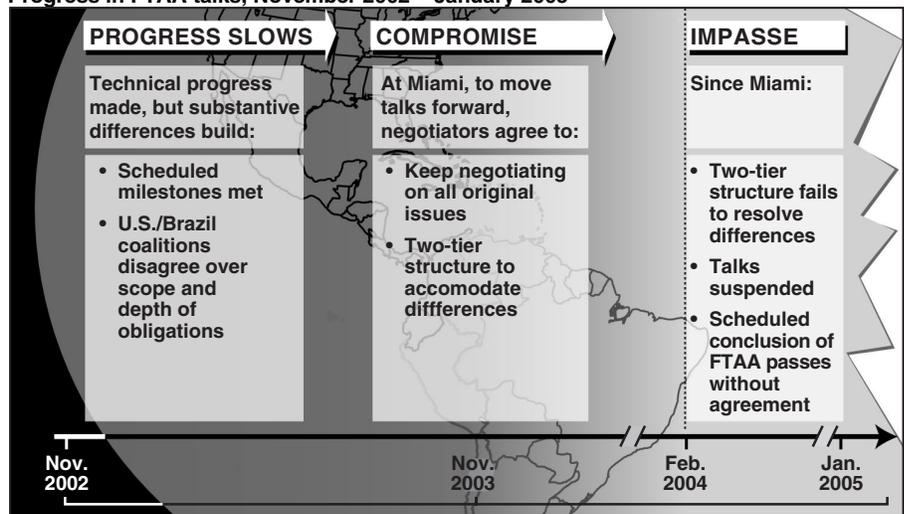
What GAO Found

Since our April 2003 report, FTAA negotiations reached an impasse that remains unbroken. Prior to the November 2003 FTAA Ministerial in Miami, negotiators made technical advances, but differences over the scope and depth of obligations in the FTAA slowed substantive progress. Despite adopting a new structure at Miami, negotiations have been suspended since early 2004, and the scheduled conclusion of the FTAA in January 2005 expired without agreement. This spurred recent efforts to re-start the talks.

Three factors have been impeding progress in the FTAA negotiations: (1) the United States and Brazil have made little progress in resolving basic differences on key negotiation issues, (2) member governments have shifted energy and engagement from the FTAA to bilateral and multilateral trade agreements, and (3) two mechanisms intended to facilitate progress—a new negotiating structure and the co-chairmanship by the U.S. and Brazil—have so far failed to do so.

Although in the Fall of 2004 participants and experts were pessimistic about near-term prospects, many believe that integrating the hemisphere is still worth pursuing and hope that FTAA talks can be revived in 2005. Some believe that progress on agriculture at the World Trade Organization and the upcoming 2005 Summit of the Americas could spur movement on the FTAA. However, many still see finally concluding the FTAA as linked to further WTO progress and to renewal of U.S. Trade Promotion Authority, which facilitates U.S. Congressional approval in mid-2005. Nevertheless, officials from many of the nations and regional groups we contacted indicate continued commitment to establishing a mutually beneficial FTAA.

Progress in FTAA talks, November 2002 – January 2005



Source: GAO.

Contents

Letter		1
	Results in Brief	2
	Background	4
	Negotiations Remain at an Impasse, Despite Adoption of a New FTAA Structure	8
	Three Factors Have Inhibited Progress in FTAA Talks	18
	Though Pessimistic on Near-term Prospects, Many Believe Hemispheric Integration Worth Pursuing and Hope for Resumption of Talks in 2005	26
	Concluding Remarks	31
	Agency Comments	31

Appendixes

Appendix I: Scope and Methodology	33
Appendix II: Comments from the U.S. Trade Representative	35
GAO's Comments	40
Appendix III: Agency Comments from the U.S. Department of Commerce	45
GAO Comment	46
Appendix IV: GAO Contacts and Staff Acknowledgment	47
GAO Contacts	47
Acknowledgments	47

Related GAO Products

Table	Table 1: Description of the New Framework Agreed to at Miami Ministerial	14
--------------	--	----

Figures	Figure 1: Organization and Objectives of the FTAA Negotiations	6
	Figure 2: FTAA Milestones, 2002-2003	9
	Figure 3: Depiction of Key Issues to Remain in the FTAA under Mercosur's "Three-Track" Proposal	11
	Figure 4: FTAA Milestones and Other Events, 2004-2005	18

Abbreviations

CAFTA	U.S.-Central American Free Trade Agreement
CARICOM	Caribbean Community
EU	European Union
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GSP	Generalized System of Preferences
IPR	Intellectual Property Rights
Mercosur	Common Market of the South
TNC	Trade Negotiations Committee
TPA	Trade Promotion Authority
TRIPS	Trade-Related Intellectual Property Rights
USTR	Office of the U.S. Trade Representative
WTO	World Trade Organization

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, D.C. 20548

March 18, 2005

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate

The Honorable William H. Thomas
Chairman
Committee on Ways and Means
House of Representatives

If completed, the Free Trade Area of the Americas (FTAA) agreement would reduce trade barriers and foster economic integration in a region of 800 million people and about \$13 trillion in production of goods and services. As such, it is the most significant regional trade initiative presently being pursued by the United States. Negotiations towards an FTAA among the 34 democratic nations of the Western Hemisphere were officially embraced in 1994 and formally launched in 1998. Heads of State and government of the 34 nations set a January 2005 deadline for concluding FTAA negotiations, and a substantial number of meetings at both the political and technical level were held in an effort to develop terms of a comprehensive agreement covering nine areas—market access; agriculture; services; investment; government procurement; intellectual property; competition policy; subsidies, antidumping, and countervailing duties (trade remedies); and dispute settlement. Subsequently, a major round of global trade negotiations was launched at the World Trade Organization (WTO) in 2001 involving some of the same issues. Progress on the FTAA has slowed since mid-2003, and came to a standstill in 2004, during a time when negotiations were expected to intensify in order to conclude in January 2005, as scheduled.

Given U.S. and other leaders' expressed belief in the desirability of continued hemispheric economic integration and the now-missed January 2005 deadline for conclusion, you asked us to provide a report updating our previous work on the current status of the negotiations. In this report, we analyze: (1) progress made in FTAA negotiations since our last (April 2003)

report,¹ (2) factors that have been influencing the FTAA's progress, and (3) future prospects for the FTAA.

To address these objectives, we met with and obtained documents from a wide variety of sources, including U.S. and foreign government officials participating in the FTAA talks, officials from the three institutions supporting the FTAA negotiations (the Inter-American Development Bank, the Organization of American States, and the United Nations Economic Commission for Latin America and the Caribbean), experts on U.S.-Latin America trade relations, and private sector groups such as business associations. We also attended events associated with the FTAA ministerial meeting in Miami. Our analysis is based on past and ongoing work on the FTAA, and was conducted in accordance with generally accepted government auditing standards. A full description of our scope and methodology can be found in appendix II.

Results in Brief

Since our April 2003 report, FTAA negotiations reached an impasse, despite the adoption of a new negotiating structure intended to enable progress. Prior to the November 2003 FTAA ministerial in Miami, negotiators made technical advances, but mounting differences between U.S.- and Brazil-led coalitions over the scope and depth of obligations in the FTAA slowed substantive progress. To resolve these differences, ministers in Miami agreed to shift the FTAA negotiating framework from pursuing a “one size fits all” agreement to a more flexible agreement consisting of (1) a single set of trade rights and obligations for all nine areas that would apply to all 34 member countries and (2) additional rights and commitments for those countries that wish to adopt them. However, the agreement reached in Miami has not resolved the impasse and negotiations among the 34 nations have been suspended since early 2004. As a result, key milestones for progress have been missed, and the scheduled conclusion of the FTAA negotiations in January 2005 passed without an agreement.

Three factors have been impeding progress in the FTAA negotiations, according to participants and experts on trade negotiations. First, the United States and Brazil have made little progress in resolving basic differences on key negotiation issues. Notably, Brazil insists it must be

¹U.S. General Accounting Office, *Free Trade Area of the Americas: Negotiations Progress, but Successful Ministerial Hinges on Intensified U.S. Preparations*, [GAO-03-560](#) (Washington, D.C.: Apr. 11, 2003).

assured that its concerns over agricultural subsidies and trade remedies will be addressed and that an FTAA will result in meaningful new market access, especially for its highly competitive agricultural goods. However, the United States is seeking more stringent enforcement of intellectual property rights (IPR), greater opportunities for U.S. services providers, and new rules on government procurement and investment protection before it will commit to fully liberalize access to its markets. FTAA talks were halted in the absence of satisfactory responses to these and other demands. Second, participants turned to bilateral and multilateral trade agreements where progress appeared more immediate. Notably, until August 2004, FTAA countries had expended considerable effort seeking to break the deadlock in negotiations at the WTO on agriculture, a key concern of all FTAA nations. Third, mechanisms intended to facilitate progress — such as the new negotiating structure and co-chairmanship by U.S. and Brazil of FTAA talks — have thus far failed to do so.

Although participants and experts were pessimistic about near-term prospects, many believe that integrating the hemisphere—by lowering barriers to goods, services, and investment and strengthening trade rules — is still worth pursuing, and they remain hopeful about reviving the FTAA in 2005. Responsible U.S. and Brazilian officials recently met in an effort to break the impasse, but face skepticism over the FTAA's likely commercial benefit and their commitment to a mutually beneficial deal. Some perceive that progress on agriculture at the WTO in 2004 could provide a better basis for moving forward in the FTAA in 2005. However, many still see finally concluding the FTAA as linked to further WTO progress and to renewal of U.S. Trade Promotion Authority, which facilitates congressional approval of trade agreements. Nevertheless, officials from many of the nations and regional groups we contacted indicated a continued commitment to establishing a mutually beneficial FTAA. On the eve of issuing this report, new efforts began toward rekindling the FTAA negotiations.

In agency comments, USTR disagreed with our report, stating that they felt that our report was inaccurate and poorly framed and mischaracterized progress. USTR also took issue with key findings about factors contributing to the impasse in negotiations. We have carefully considered their comments and made some changes to the report, in particular, by adding certain details that were previously omitted. However, we find most of their objections without merit and are confident the findings are presented accurately and fairly reflect the extensive research we conducted on behalf of our congressional requesters. The Departments of

State, Commerce, and Agriculture provided only technical comments on our report, which we incorporated as appropriate.

Background

Building on a decade of expanding trade and investment ties and increasing economic integration in the region, the leaders of 34 democratic countries in the Western Hemisphere pledged in December 1994 to establish an FTAA no later than 2005. The agreement would progressively eliminate barriers to trade and investment. The 34 FTAA participants include a diverse set of countries, from some of the wealthiest (the United States and Canada) to some of the poorest (Haiti) and from some of the largest (Brazil) to some of the smallest in the world (St. Kitts and Nevis).² The large disparities in size and economic development in the hemisphere mean that countries come to the negotiating table with different defensive³ and offensive⁴ interests that in some instances coincide and in other cases diverge. In addition, smaller economies lack technical capacity and seek assurances that the FTAA will include provisions to assist them in managing the adjustment to more open markets. Many nations are participating in the negotiations as subregional groupings such as the Caribbean Community (CARICOM)⁵ and the Common Market of the South (Mercosur)⁶ to facilitate their participation in the FTAA talks. Given the size of its economy, Brazil plays a leading role in Mercosur.

²The 34 countries participating in FTAA negotiations are Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Colombia, Chile, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

³Defensive interests are those aimed at preserving the status quo and are generally associated with protecting domestic markets.

⁴Offensive interests aim at liberalization or imposing disciplines on other member countries' markets.

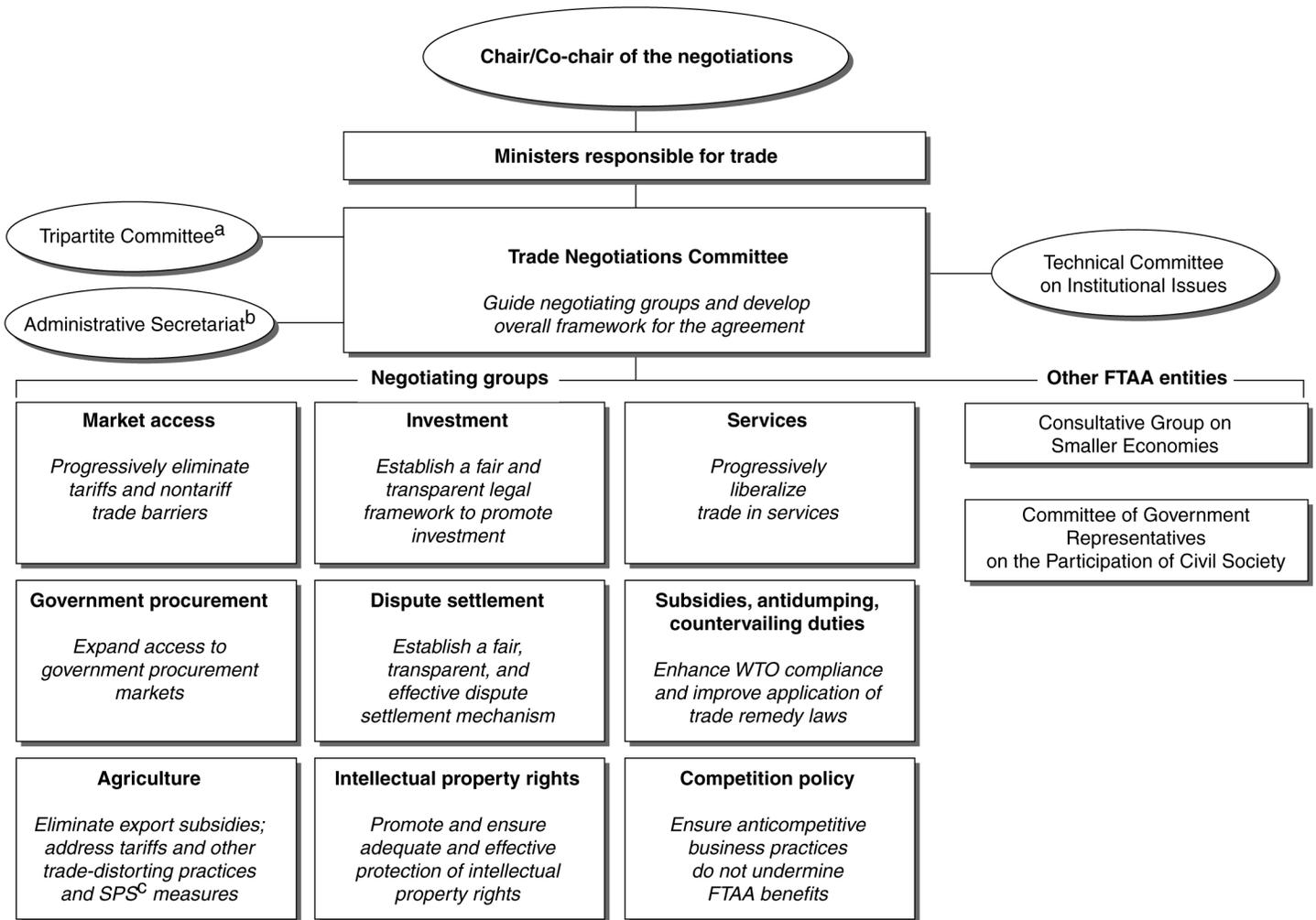
⁵CARICOM is a regional bloc whose members are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat (overseas territory of the United Kingdom), St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

⁶Mercosur includes Argentina, Brazil, Paraguay, and Uruguay.

Between December 1994 and through negotiations' formal launch in April 1998, FTAA negotiators agreed on several principles to guide them, notably that all decisions would be reached by consensus and that the eventual FTAA agreement would be implemented as a single undertaking. A single undertaking implies that the FTAA is a package deal to be accepted in its entirety by each of the 34 prospective signatory countries in order to benefit from the agreement's provisions. Additionally, the negotiators agreed to the overall structure, scope, and organization of the negotiations, including the establishment of a Vice-ministerial-level Trade Negotiations Committee (TNC) to oversee negotiations in between ministerial meetings and of nine negotiating groups on particular issues, along with mandated objectives for these groups. (See fig. 1.) They also agreed that a completed FTAA agreement would include trade rules, which each of the nine negotiating groups are to establish, market access schedules in five of these nine areas, and a general text to cover overarching and institutional issues.

In April 2001, the first draft FTAA agreement was made public and more precise deadlines were set for the conclusion and entry into force of the FTAA agreement (January and December 2005, respectively). The 435-page text contained a compilation and consolidation of proposals tabled by FTAA participants. Producing the text marked important progress, but also highlighted the considerable work remaining before the FTAA could be finalized. Notably, much of the text remained in brackets, denoting lack of agreement among participants. Subsequent revisions narrowed but did not eliminate these substantive disagreements. Our prior GAO reports have noted that resolving these disagreements would require considerable hard bargaining.

Figure 1: Organization and Objectives of the FTAA Negotiations



Source: GAO.

Note: The general objectives of each negotiating group and the Trade Negotiations Committee appear in italics and are GAO's summary of the objectives for these entities established by the 1998 San Jose Ministerial Declaration. Decisions taken at the November 2003 Miami ministerial may result in changes for various groups.

^aThe Tripartite Committee, which provides technical support to the negotiations, is comprised of the Organization of American States, the Inter-American Development Bank, and the United Nations Economic Commission for Latin America and the Caribbean.

^bThe Administrative Secretariat supports the FTAA ministers, the Trade Negotiations Committee, negotiating groups, and other FTAA entities.

^cSPS stands for sanitary and phytosanitary measures. These measures are taken to protect human, animal, or plant life or health.

In November 2001, in Doha, Qatar, members of the WTO agreed to launch a new round of multilateral trade negotiations called the Doha Development Agenda (commonly referred to as the Doha Round), which was also to conclude by January 1, 2005. The WTO negotiating agenda includes negotiations on issues of great importance to FTAA countries, including some of the same issues as the FTAA such as agriculture and trade remedies such as antidumping. As we noted in our April 2003 report, the inclusion of agriculture in the Doha Round was especially important for the FTAA negotiations because resolution of issues such as domestic support (subsidies)⁷ and export subsidies⁸ for agricultural goods has been linked to the ongoing WTO Doha Round. Specifically, the United States has consistently argued that the WTO, rather than the FTAA, is the appropriate forum to negotiate domestic support because two primary users of domestic support in agriculture, the European Union (EU) and Japan, are not FTAA participants. Thus, the United States says, domestic support reform must take place in the WTO, where the EU and Japan are present, to avoid putting it and other FTAA countries that subsidize farmers at a disadvantage in world markets. The United States has taken a similar stance on trade remedies.

Several events that are significant to the FTAA occurred in 2002. In August 2002, Congress passed the Bipartisan Trade Promotion Authority Act of 2002 (TPA).⁹ The United States Trade Representative (USTR) characterized the passage of the TPA as instrumental to completing the FTAA negotiations on the same aggressive time frame as the WTO talks (both negotiations were to be completed by January 2005). TPA sets a number of U.S. trade negotiating objectives relevant to the FTAA, and outlines procedural requirements for the executive branch to fulfill as conditions for expedited congressional consideration of legislation to implement trade agreements. In November 2002, FTAA ministers launched a Hemispheric

⁷Domestic supports are payments made to farmers that raise prices or guarantee income. They include such measures as government buying at guaranteed prices, commodity loan programs, and direct payments to farmers.

⁸Export subsidies are subsidies contingent on export performance. They include cost reduction measures, such as subsidies to lower the cost of marketing goods for export, and internal subsidies applying to exports only.

⁹P.L. 107-210. Under this law, Congress agreed to consider legislation to implement a trade agreement under special legislative procedures that limit debate and allow no amendment. The President is required to consult with congressional committees during negotiation and notify Congress at major negotiating junctures.

Cooperation Program (HCP), a special trade capacity building program intended to provide technical assistance to smaller economies for negotiating, implementing, and benefiting from the FTAA. The HCP gives interested countries and donors a mechanism to work together and with other partners to integrate trade into development strategies. Past GAO reports have highlighted the importance of strengthening smaller nations' trade capacity to FTAA's ultimate success. Also in November 2002, Brazil and the United States assumed the co-chairmanship of the FTAA process and are expected to remain in that role until the FTAA negotiations conclude.

Negotiations Remain at an Impasse, Despite Adoption of a New FTAA Structure

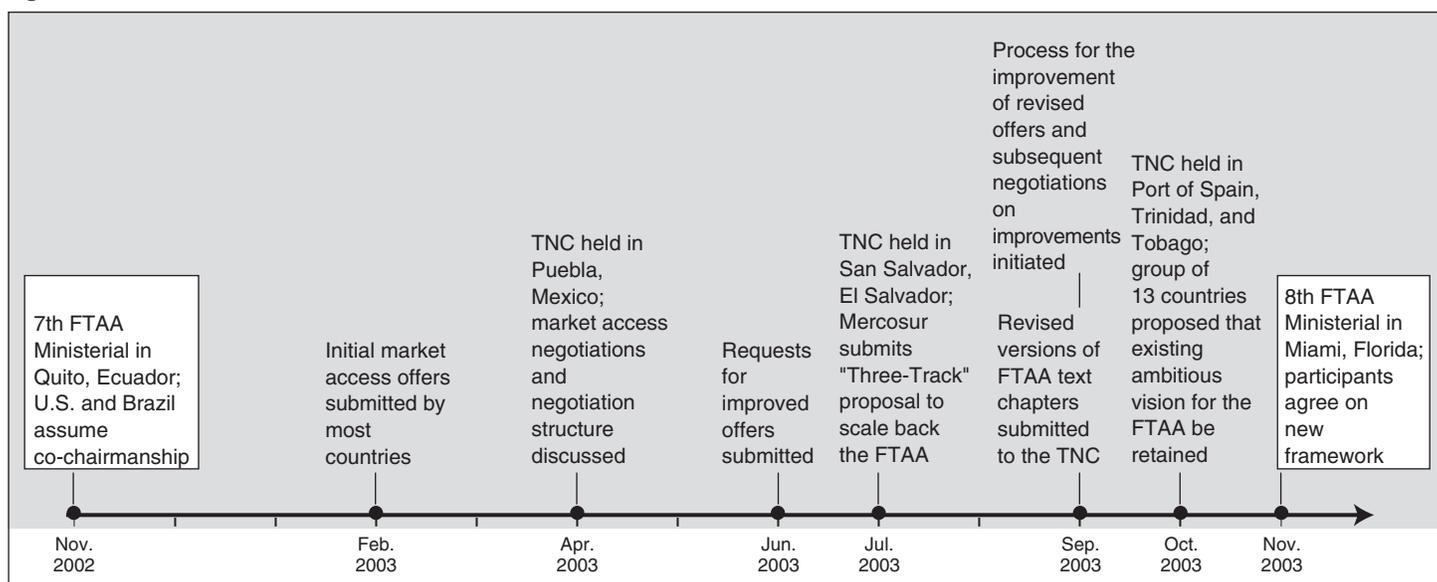
From the November 2002 Quito ministerial to the November 2003 Miami ministerial, negotiators made progress on the technical aspects of the FTAA, including the exchange of market access offers and some requests for improvement of these offers. However, growing differences between the United States, Brazil, and many other countries over the scope and depth of obligations in the FTAA slowed down progress. Leading up to the Miami ministerial, FTAA ministers recognized the need for flexibility and for political guidance to avoid a breakdown in the negotiations. At Miami, countries agreed on a new negotiating structure, but subsequent talks failed to define the new structure. Formal FTAA talks have yet to resume since an inconclusive February 2004 meeting. As a result, the scheduled conclusion of the FTAA in January 2005 passed without an agreement.

Before Miami, Negotiators Made Technical Progress, but Mounting U.S.-Brazil Differences Over Scope and Depth of Obligations Prevented Further Progress

From the November 2002 Quito ministerial to the November 2003 Miami ministerial, FTAA negotiators made technical progress. For example, the TNC held the three meetings called for in the Quito ministerial declaration. Participating governments also made progress on civil society issues by holding two open public meetings in 2003 on particular issues under discussion. Moreover, each negotiating group submitted revised versions of the FTAA text chapters by the September 2003 deadline. The chapters were substantially reorganized from those presented to ministers at the Quito Ministerial in 2002. The chapters also included proposals the United States tabled during the first half of 2003 that reflected the negotiating objectives set forth in Trade Promotion Authority. On investment, the U.S. proposals were designed to improve the efficiency and transparency of investor-state arbitration and provide guidance to the tribunals that arbitrate such claims. The United States also tabled text on environmental and labor obligations reflecting TPA guidance in the FTAA Technical Committee on Institutional

Issues. In addition, all 34 countries exchanged tariff offers, and many countries exchanged services, investment, and government procurement offers by the agreed deadline of February 15, 2003. Fourteen countries prepared and submitted national or subregional trade capacity building strategies as part of the Hemispheric Cooperation Program. These and other key milestones for the FTAA during 2003 are depicted in figure 2.

Figure 2: FTAA Milestones, 2002-2003



Source: GAO.

However, during this time—November 2002 to November 2003—mounting differences between the United States and Brazil and their respective allies over the scope and depth of obligations in the proposed agreement slowed substantive progress in the FTAA. In our last report,¹⁰ we noted that Brazilian officials had admitted that Brazil was holding back in FTAA negotiations because they believed the United States was not ready to negotiate on issues of greatest interest to Brazil, such as high tariffs on key Brazilian exports and trade remedies. With the November 2002 election as President of Brazil of Luiz Inacio Lula da Silva, Brazilian participation in the FTAA process further slowed down. Within the FTAA talks, Brazil and

¹⁰GAO-03-560.

Argentina were among the few countries that failed to submit initial market access offers by the established February 2003 deadline for three topics on which they were hesitant to assume obligations—services, investment, and government procurement. Moreover, although the 1998 San Jose ministerial declaration explicitly named the nine issue areas to be negotiated in the FTAA, questions over the substance of the final agreement continued to surface. For example, the United States came under continued pressure to change its long-standing insistence that negotiations on certain agricultural subsidies and trade remedies be conducted within the WTO, not the FTAA. Among other things, passage of the 2002 Farm Bill¹¹ and the WTO's failure to meet scheduled milestones heightened concerns by some FTAA nations about prospects for addressing these two key issues.

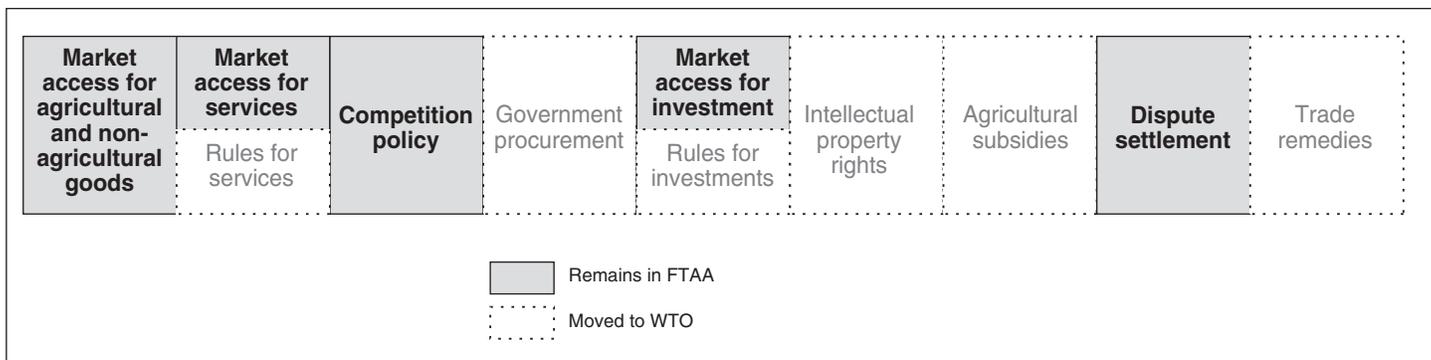
The February 2003 exchange of initial market access offers also highlighted U.S.-Brazil differences in approach to the FTAA. The United States made four different goods market access offers that were calculated to give smaller, less developed economies faster duty-free access to the United States. The United States said that its differentiated offer allowed it to accord smaller economies better treatment, a principle agreed to by other FTAA nations, as well as provided greater leverage to negotiate market-opening concessions in large, lucrative markets. However, Brazil complained that the U.S. market access offer provided Brazil and its Mercosur partners with the least favorable market liberalization for consumer and industrial goods and agricultural products, as well as placing its most competitive products in the category with the longest phase-out period for tariff elimination. However, U.S. officials believe the initial U.S. offer to Brazil and its Mercosur partners was forthcoming because it provided for immediate duty-free treatment to 58 percent of Mercosur's industrial goods and 50 percent of its agricultural goods.

In response to a slowing of progress within FTAA negotiating groups, Ambassador Zoellick visited Brazil's Foreign Minister Amorim in May 2003 and convened an informal ministerial meeting at Wye, Maryland, in June 2003, to discuss possible ways to move the talks forward. Nevertheless, in July 2003, Mercosur, led by Brazil, formalized its vision of a scaled-back and "rebalanced" FTAA by formally tabling its "Three Track" proposal in FTAA talks. According to press and other accounts, the proposal called for (1) bilateral FTAA negotiations to focus primarily on market access for

¹¹The Farm Security and Rural Investment Act of 2002 (P.L. 107-171, May 13, 2002).

goods and services; (2) regional FTAA negotiations on rules for several issues not covered by the WTO, including competition policy and dispute settlement, and (3) leaving six of the original nine issues out of the FTAA altogether and moving them to the WTO Doha Round negotiations (i.e., Brazil’s defensive interests of services, investment, government procurement, and IPR, along with the United States’ defensive interests of agricultural subsidies and trade remedies). Figure 3 shows the key issues Mercosur proposed moving to the WTO versus those it wanted to keep in the FTAA.

Figure 3: Depiction of Key Issues to Remain in the FTAA under Mercosur’s “Three-Track” Proposal



Source: GAO based on analysis of Mercosur’s “Three-Track” proposal.

Note: This figure does not show all elements of Mercosur’s proposal.

In public remarks the United States rejected the proposal, which some have labeled “FTAA-lite.” The lead U.S. negotiator explained that a broader agenda, including services, investment, government procurement, and intellectual property, is extremely important to fostering real integration in the hemisphere. He stressed that a market access-only agreement would be insufficient to promote economic growth and development, and expressed reservations about providing a high level of access to the U.S. market in the absence of broader commitments on rules and disciplines of interest to the U.S. and others in the region. As we noted in our September 2001 report, the United States is the world’s leading exporter of services (\$253 billion in 1999), holds significant investments in FTAA countries (\$661 billion in portfolio and direct U.S. investment in 1999), is interested in government procurement opportunities in the Western Hemisphere valued at approximately \$250 billion, and enjoys a decisive competitive advantage in terms of high-tech, knowledge-based industries that depend on strong IPR

protection. In addition, unlike agriculture and antidumping, the mandate for the WTO Doha Round does not include negotiations on investment or government procurement, nor a major update of IPR protections. As a result, those issues—which are of significant commercial interest to the United States—might not have been addressed in either the FTAA or WTO.¹²

The failure of the September 2003 WTO ministerial at Cancun further complicated FTAA talks. As we detail in a separate report, trade ministers at the WTO Cancun ministerial in September 2003 failed to adopt decisions on any of the key issues before them, including a framework for subsequent work on agriculture.¹³ Because both the FTAA and the WTO agreements are to be concluded as single undertakings, and their deadlines for conclusion were the same, failure of the WTO to progress at Cancun imperiled timely completion of both the WTO Doha Round and FTAA talks. Moreover, the Cancun failure spawned recriminations among FTAA participants. For example, Latin American nations such as Brazil, Argentina, Chile, Ecuador, and Mexico were prominent in the Group of 20 developing nations that pressed vigorously at the WTO for cuts in developed country agriculture subsidies. The United States complained at the time that the group was engaged in confrontational tactics that were more directed at making a point than making a deal. After Cancun, USTR Zoellick traveled to the Caribbean to discuss the FTAA and other matters.

At the first FTAA meeting after the Cancun failure, an October 2003 TNC meeting, a group of 13 FTAA countries¹⁴—supported by the United States—called for the original, comprehensive vision of the FTAA to be retained. These countries, along with the United States, further urged that the FTAA's market liberalization commitments be highly ambitious in a number of areas, including intellectual property, investment, services, and

¹²For an in-depth treatment of the U.S. commercial interest in these issues, see U.S. Government Accountability Office, *Free Trade Area of the Americas: Negotiators Move Toward Agreement That Will Have Benefits, Costs to U.S. Economy*, [GAO-01-1027](#), (Washington, D.C.: Sept. 7, 2001).

¹³For a discussion of the factors contributing to the WTO breakdown, see U.S. Government Accountability Office, *World Trade Organization: Cancun Ministerial Fails to Move Global Trade Negotiations Forward; Next Steps Uncertain*, [GAO-04-250](#) (Washington, D.C.: Jan. 15, 2004).

¹⁴Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Canada, Mexico, Chile, Dominican Republic, Panama, Colombia, Peru, and Bolivia.

government procurement. Although nearly all other FTAA countries expressed willingness to continue negotiating in all nine issue areas and continued commitment to meet the January 2005 deadline for concluding the FTAA, Brazil indicated a limited willingness to undertake new rules in these areas, citing a need to maintain its negotiating leverage in the WTO Doha Round and to preserve flexibility in these issues. Certain other countries also had reservations. Participants in FTAA negotiations thus effectively broke into two “camps,” articulating their competing visions of an FTAA agreement under the separate banners of U.S. and Brazilian leadership.

Hoping to Avoid a Breakdown at Miami, FTAA Ministers Recognized Need for Flexibility and Political Guidance

In view of the sharp differences in vision for the FTAA, trade ministers recognized the need to provide political guidance for negotiators. FTAA countries wanted to avoid an outcome similar to the failed September 2003 WTO ministerial in Cancun, Mexico. Participants recognized that keeping all 34 FTAA countries engaged in the negotiations was critical and that flexibility would be required to do so. In particular, a number of participants feared that failure to accommodate Brazil’s demands would prompt it to abandon the negotiations, dashing their hopes of improved trade terms with South America’s largest market. As host of the Miami ministerial, the United States was particularly invested in a successful outcome. USTR and certain other U.S. officials had been working hard all year to bring about a successful ministerial by working closely with officials from the state of Florida and with representatives of Broward County and the city of Miami, which organized the event. In early November, USTR Zoellick hosted an early mini-ministerial meeting among key FTAA nations in Lansdowne, in preparation for the Miami ministerial later that month.

Miami Ministerial Changed FTAA’s Structure, but Includes All Nine Original Areas

At the Miami ministerial, after obtaining informal input from some members the early November mini-ministerial meeting organized by the United States, co-chairs the United States and Brazil proposed a new framework for the FTAA agreement as a means to move forward. Ministers in Miami discussed and approved the proposed new structure, which gives each country the flexibility to decide, according to its needs, sensitivities, objectives, and capabilities, whether to assume commitments beyond the

common set which will be applicable to all 34 countries.¹⁵ Specifically, ministers instructed the TNC to: (1) develop a “Common and Balanced Set of Rights and Obligations” applicable to all 34 countries that would include provisions in the nine areas under negotiation since 1998 and (2) establish procedures for negotiations, possibly on a plurilateral¹⁶ basis, for countries interested in negotiating additional disciplines and benefits. FTAA participants, trade experts, and other analysts have commonly referred to these two components using a variety of terms (e.g., tiers, tracks, etc.). For the purposes of this report, we will use lower tier when discussing the baseline or “Common Set of Rights and Obligations” that will apply to all countries, and upper tier when referring to the plurilateral component of additional obligations that will be entered into by individual countries on a voluntary basis.

The Miami instructions represented a substantive shift from the previous vision of the FTAA as a single undertaking, applying equally to all 34 nations, to that of a two-tiered or two-track agreement with varying degrees of national commitments to cut trade barriers and abide by trade rules. The two tiers combined would constitute the FTAA. Table 1 provides a brief description of the two-tiered structure.

Table 1: Description of the New Framework Agreed to at Miami Ministerial

Tier	Scope	Extent of rights and obligations	Participation
Upper	Undefined	Undefined, but expected to be greater than the lower tier	Voluntary for any FTAA country
Lower	All 9 issues	Undefined	Mandatory for all FTAA countries

Source: GAO.

For the common set, or lower tier, ministers agreed that all nine areas previously under negotiation would be covered. They also agreed to the principle that the same rules would apply to all 34 participants. However,

¹⁵The Miami Ministerial Declaration is available at [-alca.www.ftaa.org/Ministerials/Miami/Miami_e.asp](http://alca.www.ftaa.org/Ministerials/Miami/Miami_e.asp).

¹⁶“Plurilateral” means subsets of the 34 participants.

the specific obligations under each issue were not determined and were left to the TNC to negotiate in the future. For the upper tier, country participation, issue coverage, and specific obligations were to be worked out by the participating countries. However, the TNC was to develop procedures governing these negotiations as a component of the overall FTAA.

Thus, the Miami ministerial declaration left unanswered questions of how ambitious the FTAA as a whole would be and what members could expect to gain in key issues and markets of interest. However, ministers stated that they expect that this new framework would “result in an appropriate balance of rights and obligations where countries reap the benefits of their respective commitments.” U.S. officials stress this means countries will “get what they pay for” in the negotiations. Some experts have said that the Miami compromise was a pragmatic political decision to avoid a collapse of the Miami ministerial meeting and a breakdown in the FTAA talks, even if it lacked details on how the new structure should be instituted by the TNC.

Although ultimately accepted as a way to salvage the talks, the new two-tier structure disappointed some member countries. At the ministerial, several countries expressed disappointment that this new structure for the FTAA would reduce their potential gains through the agreement and urged that any two-tier arrangement be temporary in character. For example, at the closing press conference for the Miami ministerial, Mexico’s Foreign Minister noted that Mexico had “had the expectation of achieving greater progress, greater integration, and greater definition of what we want in the hemisphere for free trade.” Chile’s trade minister, while acknowledging the need to make headway in the face of economic and political sensitivities, noted that when it committed to pursuing an FTAA, Chile had been “looking for a comprehensive and ambitious agreement that would cover all the disciplines.” In general, such countries felt the new structure cast doubt on whether the FTAA agreement would ever attain the promise of trade liberalization and hemispheric-wide integration that had been collectively envisioned for nearly a decade. As a result, they urged intensive efforts to find common ground in the months ahead.

After Miami Formal and Informal Negotiations Ceased, Key Dates and the Scheduled Conclusion of FTAA Were Missed

Ministers at Miami set goals for concluding market access negotiations by September 2004 and the entire FTAA by January 2005 (see fig. 4). However, FTAA countries made little progress to institute the new two-tier structure in 2004 and thus did not meet these negotiation deadlines. The February 2004 TNC meeting was recessed after failing to complete the two tasks given them by ministers at Miami: (1) to define the lower tier of rights and obligations that would apply to all 34 nations and (2) to develop procedures for plurilateral negotiations, resulting in the indefinite suspension of formal talks among all FTAA members. At the close of the February 2004 TNC, the U.S.-Brazil co-chairs cited the complexity of the task and shortness of time as being their primary consideration in recessing the meeting without agreement. Hopes for reconvening the TNC later faded as ongoing efforts by the U.S. and Brazilian co-chairs to bridge outstanding differences reached a halt in mid-2004.

Sharply different visions for the FTAA's common rights and obligations were articulated at the February meeting. Ahead of the February meeting, the United States worked with four other countries (Canada, Chile, Costa Rica, and Mexico) to develop a common strategy. The United States was unsuccessful in reaching agreement with Brazil on the format and participants for a more inclusive preparatory meeting, and thus it was never held. At the February TNC meeting, the United States joined with a group of 13 nations (including the 4 it worked with ahead of the meeting) in making a proposal for the common set.¹⁷ Brazil and its Mercosur partners also presented a proposal. The U.S.-coalition's proposal went beyond Mercosur's in certain respects, whereas the Mercosur proposal went beyond the U.S. coalition's proposal in others.¹⁸ The two main camps that emerged at the February TNC were roughly similar to the two main camps that emerged in the pre-Miami debate over the FTAA's scope and depth.

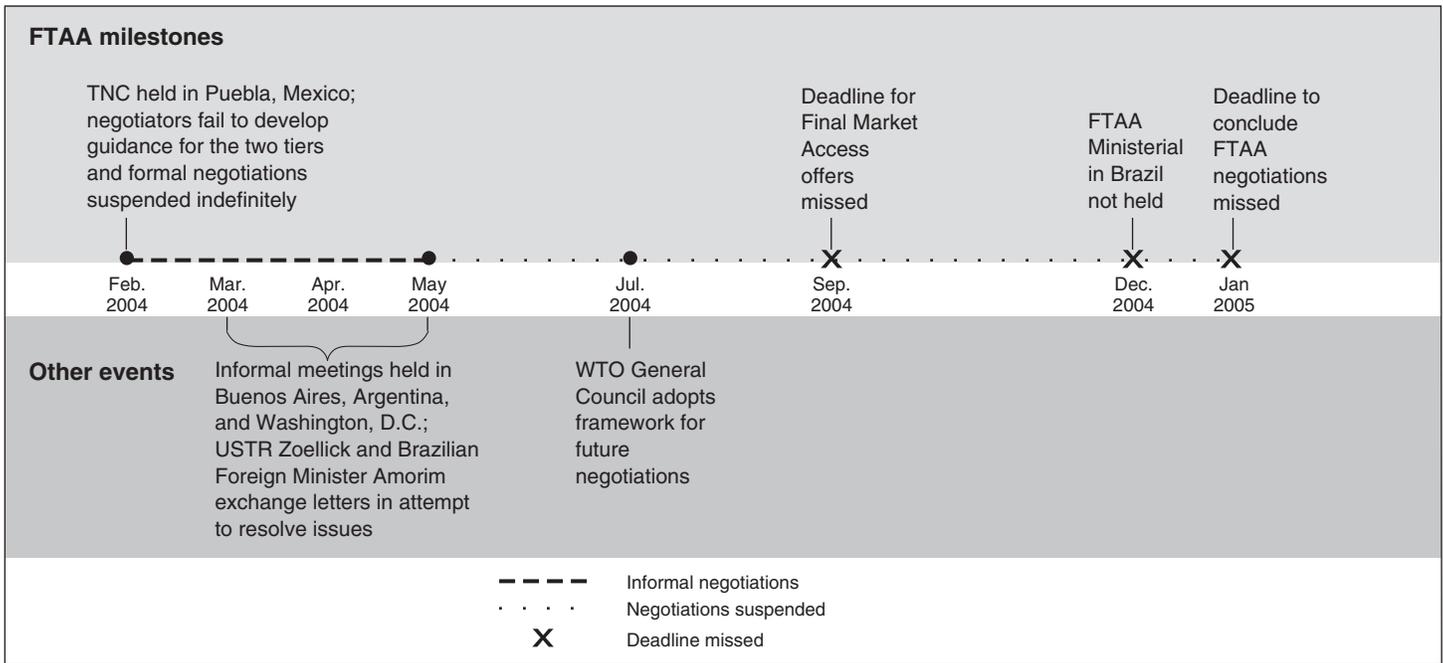
¹⁷Namely, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, and the United States.

¹⁸According to publicly available versions of the proposals, for example, the U.S.-led coalition called for the FTAA common set to include a framework of rules on services based on, but not limited to, the WTO General Agreement on Trade in Services (GATS), whereas the Brazil-led coalition called for tariffs on the entire tariff universe to be eliminated; for defining hemispheric mechanisms to neutralize the distorting effects of domestic agricultural support payments and for disciplines on practices with similar effects of export subsidies, such as export credits and food aid; for investment, to have negotiations on market access, in addition to transparency provisions; on trade remedies, for nonbinding consultations prior to and after initiating antidumping and countervailing duty investigations.

After the meeting, both the United States and Brazil complained that their partners were denying them benefits that they deemed were essential to attaining an acceptable balance of rights and obligations in the FTAA. Specifically, a U.S. trade official was quoted as saying that the proposal it presented in concert with 13 other countries reflected a scaling back of its objectives in areas of importance to it, namely, services, IPR, investment, and procurement, in light of the Miami framework. The fact that Mercosur's proposals did not reflect a scale back in their own ambitions for market access for goods and in agriculture was cited by the U.S. official as the primary reason negotiators were not able to strike an acceptable balance at the February meeting. In contrast, in public remarks, Brazil's then-ambassador complained that Brazil is being unfairly labeled as a spoiler in FTAA talks, claimed that even with the Miami compromise the FTAA could still be comprehensive, and expressed concern about the United States and its allies' stance on market access at the February meeting. The Brazilian Ambassador stressed that Brazil needs to ensure that its concerns in the areas of domestic support for agriculture and trade remedies are adequately dealt with and that it will obtain improved access to the U.S. market, particularly for agricultural goods, in order to consider the FTAA a balanced agreement. In effect, according to a senior U.S. official involved in the talks, both sides accused the other of walking away from the Miami compromise.

Subsequent informal efforts to work out remaining differences continued until June 2004. While these formal and informal efforts resulted in some progress in defining the rights and obligations for the lower tier, collectively, our analysis suggests that they further reduced the scope of the FTAA's eventual substance in terms of market access and rules on key topics. That is, to the extent common ground was reached, it was often the result of movement in the direction of the proposal with the least ambition on a given issue. No further meetings on the FTAA took place in 2004, and a ministerial meeting slated for that year was never scheduled by Brazil as host. As a result, the scheduled deadline for concluding the FTAA negotiations in January 2005 was missed without agreement.

Figure 4: FTAA Milestones and Other Events, 2004-2005



Source: GAO.

Three Factors Have Inhibited Progress in FTAA Talks

Our analysis suggests that three main factors have inhibited progress on the FTAA. First and foremost, underlying differences between the United States and Brazil and their respective allies on the depth of rights and obligations on key issues continue. Second, negotiations in other forums were given priority over the FTAA, in part because the United States and Brazil deemed that progress there was more possible and could eventually enhance prospects for a mutually advantageous FTAA. Third, two mechanisms intended to facilitate compromise, the U.S.-Brazil co-chairmanship and the two-tier structure, have thus far failed to do so.

U.S.-Brazil Impasse Has Not Been Resolved

The U.S. and Brazil's inability to accommodate each other's different negotiating priorities continues to be the basis for the ongoing impasse that halted FTAA negotiations for much of 2004. According to U.S. officials, serious and significant rule-making obligations on such topics as services, IPR, investment, and procurement, are essential if the FTAA is to move the hemisphere towards meaningful regional integration. Specifically, the

United States seeks greater enforcement of IPR, and new commitments that go beyond existing WTO requirements in investment, government procurement, and other issues. The United States is a world leader in these sectors, yet has few multilateral and bilateral agreements with FTAA countries to protect its interests. For example, only 2 of the 34 nations participating in FTAA talks (the United States and Canada) are signatories to the WTO agreement that sets out predictable rules enabling foreign suppliers to compete on an equal footing with domestic suppliers for government contracts. However, Brazil maintains that there is domestic resistance to such reforms, and that agreeing to disciplines in these areas could be costly and limit its ability to influence its economy. Brazil is a major world producer of commodities such as coffee, oilseeds, sugar, soy, and beef, and, along with Argentina, has been among the most vocal of Mercosur members in insisting that the FTAA involve significant new market access, especially for agricultural products. Domestic sensitivities in many countries regarding these products were always going to complicate the FTAA, and are no less challenging in the new Miami framework involving generally lower ambition.

As highlighted below, in the most recent negotiations co-chaired by the United States and Brazil, the 34 governments remained far apart, and agreement has not yet been reached on the extent of rights and obligations on numerous issues. The key sticking points remained market access, agriculture, and IPR.

Market Access

Brazil and its Mercosur partners have argued for up-front commitments that all tariffs will be phased out in the FTAA. However, the United States is not prepared to commit to an outcome to fully liberalize tariffs on all products at this stage of the FTAA negotiations—before tariff negotiations have really begun and before the overall level of ambition of the common set is known. Nevertheless, Brazil says it wants all products to be on the table – agricultural and nonagricultural – and it does not want product exclusions. Previously agreed FTAA guidance states that tariffs on all products will be subject to negotiations. It also established 4 time periods for phasing out tariffs. Both before and after Miami, Brazil unsuccessfully sought language to the effect that the goal of market access negotiations is elimination of tariffs on the entire tariff universe. Brazil's Ambassador explained that, even since the Miami compromise, Brazil's goal remains to ensure that the FTAA benefits all of its key export products. However, he expressed concern that the United States and its allies want key Brazilian export market products to be excluded from FTAA tariff elimination. U.S. officials acknowledge that the United States left some Mercosur products

off the table at the point at which FTAA negotiations stalled. However, they explain that all of the products excluded from U.S. tariff elimination were agricultural products and that the percentage of agricultural products excluded was not high.

U.S. officials had told us that countries making fewer commitments should expect fewer benefits from the FTAA. Most recently, in February 2005, a U.S. official underlined that the degree of market access the United States will offer in the FTAA will depend on what commitments it secures from other FTAA nations. Since the FTAA common set involves fewer market access and rule-making commitments than the United States has received from its bilateral and subregional FTA partners, the FTAA will likely involve fewer U.S. market access benefits, the official said.

Agriculture

The United States and Brazil have also been unable to resolve several agricultural issues, including the handling of agricultural domestic supports. As previously noted, the United States has argued that negotiations on domestic supports should be exclusively conducted in the WTO Doha Round because it is not possible to reduce domestic supports solely on a regional basis and without all major subsidizers present. Brazil and its Mercosur partners have called for the elimination of agricultural subsidies, including domestic supports. Although in November 2004 Brazil's foreign minister recognized that the only way to reach their goal of eliminating subsidies is through the WTO, Brazil, and its Mercosur partners have still sought ways to address agricultural supports in the FTAA. For example, according to a tripartite organization official, Mercosur made a request at the February 2004 TNC to create a hemispheric mechanism "to neutralize the effect of all distorting measures and practices that affect trade of agricultural products within the region." A U.S. trade official confirmed that Mercosur is hoping to secure some concessions on domestic supports—such as compensation in terms of better market access—in the FTAA, but said that the United States has rejected any attempt to negotiate this issue in the FTAA. In fact, several U.S. officials expressed consternation that this issue had resurfaced after the Miami ministerial.

Another outstanding issue is whether to provide for the possibility of a special agricultural safeguard—a concept the United States and numerous non-Mercosur nations have also endorsed. A USTR official said that this mechanism would allow countries to address sudden drops in prices for specified goods. A Brazilian official expressed concern that this would "impair real market access" and might be used for protectionist reasons.

On export subsidies, the U.S. and Mercosur agree that export subsidies should be eliminated in the hemisphere, but no agreement has been reached on the definition of agricultural export subsidies or how to handle subsidized imports from countries outside the hemisphere.

IPR

Brazil's unwillingness to commit to binding IPR enforcement obligations is a major source of disagreement between the United States and Brazil. In May 2004, the Brazilian co-chair publicly noted that Brazil does not believe trade sanctions in retaliation for failure to enforce IPR are consistent with the FTAA's goal of lowering barriers to trade. However, he noted that other FTAA countries do not believe voluntary consultations are sufficient for enforcement of IPR. As Foreign Minister Amorim has expressed Brazil's position, the problem is not with enforcement per se, but with the fact that technical assistance and financing are needed to improve Brazil's ability to comply. In a September 2004 speech, Deputy USTR Allgeier stated that the United States wants to focus on implementation and enforcement of countries' existing WTO TRIPs commitments, that the United States has serious, unresolved concerns about Brazil's IPR enforcement, and that the FTAA must ensure that IPR enforcement is being strengthened. In November 2004, USTR Robert Zoellick said that although the United States recognizes it cannot attain in the FTAA the high standards of IPR protection that have been achieved in bilateral FTAs, countries' refusal to commit to enforce IPR obligations in the FTAA was unacceptable to the United States. Reports from the latest (February 2005) meeting indicate IPR remains a key sticking point.

Other important differences exist on such issues as services, investment, government procurement, and trade remedies. On services, for example, the extent of and approach to FTAA liberalization and rules are at issue. However, participants have made some progress in narrowing their differences on these issues, notably government procurement and investment.

Negotiations in Other Forums Given Priority over FTAA Negotiations

In response to these and other substantive problems that slowed FTAA talks, participants turned to negotiations in other forums, such as the multilateral WTO talks and subregional and bilateral efforts, where progress looked more immediate. Coupled with the absence during most of 2004 of formal negotiations on the FTAA, this further diminished the momentum behind the regionwide effort. (See app. I.) In particular, the United States and Brazil have focused their energies on the WTO Doha Round and on regional negotiations, such as those among the United States

and several Andean nations and between Mercosur and the European Union (EU). In part, this reflected their judgment that progress in these forums was more possible and would ultimately enable greater advances in the FTAA. Other trade experts, however, are not sure that the FTAs and other agreements have worked to advance the FTAA.

In 2004, the United States continued to press an aggressive “competitive liberalization strategy,” which is to move its trade agenda on three fronts: multilaterally at the WTO, regionally at the FTAA, and bilaterally with a series of prospective FTA partners. The USTR has noted in its 2004 annual report that since passage of TPA, the United States has already negotiated FTAs with 12 countries including several in the Western Hemisphere—Chile, the Central American countries (CAFTA), and the Dominican Republic—and is in the process of negotiating with 12 more. Senior U.S. officials have stated that the U.S. pursuit of bilateral and multilateral FTAs would advance the FTAA and further its goal of expanded trade in the hemisphere, even if in a step-by-step fashion. For its part, Brazil’s foreign minister has indicated that the WTO talks are more important than the FTAA talks, since the WTO is the “only way to reach [the] goal of eliminating subsidies and other trade distortions.” Brazilian officials also focused on an EU-Mercosur FTA that some believe could strengthen its hand in FTAA negotiations. The EU-Mercosur talks reportedly slowed in the fall of 2004 over many of the same issues that arose in the FTAA, but are expected to restart soon.

There are mixed views about whether these bilateral and regional FTAs are having a positive impact on the FTAA. Some trade experts say that FTAs help the FTAA by facilitating free trade among countries, setting common rules, and providing a better understanding of the benefits of free trade. Moreover, these FTAs are achieving the kind of market access and updated trade rules the United States had hoped to secure in the FTAA prior to Miami. In part for this reason, several U.S. business community representatives we spoke with told us they have shifted their focus to other agreements. For example, a representative from the International Intellectual Property Alliance credited recent U.S. FTAs with Morocco, Singapore, and Australia, as setting new standards for IPR protection that are higher than the WTO, and expressed doubt that a 34-nation FTAA will include such high standards. Similarly, a trade group representative from the services community told us he believes that U.S. industries are likely to receive more market access from present and future FTA partners in the hemisphere than they would through the new two-tier FTAA structure. Trade group representatives from the U.S. agricultural community told us

that they believe the sector has gained most of the market access it seeks through bilateral FTAs. Some of them now see the FTAA as more of a threat than an opportunity. This loss of interest has led other trade experts to argue that FTAs detract attention from the FTAA, create a confusing system of trade arrangements, and raise the bar—possibly beyond others’ reach—for new trade rules on issues, including services, government procurement, and IPR.

On the multilateral front, lack of progress in global trade talks at the WTO also impeded progress in the FTAA negotiations in 2003 and the first half of 2004. As a result, officials told us that during a part of 2004 the United States and Brazilian focus shifted from the FTAA toward reaching agreement on a WTO framework. In fact, the United States and Brazil, among others, played leadership roles in intensive negotiations at the WTO and successfully reached agreement on a framework on August 1. The framework in agriculture—a guideline for the next phase of negotiations—represents progress. Among other things, it includes a commitment to eliminate all export subsidies on agriculture by a date certain and specifies that countries with higher levels of trade-distorting domestic supports will be subject to deeper cuts in these supports. However, it falls short of the “modalities” (numerical targets, timetables, formulas, and guidelines) required to actually make tariff and subsidy cuts that members had been targeted to attain by March 2003. In fact, given their success in adopting a package and recent efforts to accelerate progress, WTO nations are now hoping that they will have modalities in place by their December 2005 ministerial, but recognize this as an ambitious goal. WTO negotiations are thus about 2 years behind their originally scheduled date for conclusion.

Two-tier Structure and Co-chairmanship Have Not Facilitated Compromise

A third factor hindering progress on the FTAA is that two mechanisms intended to facilitate U.S.-Brazil compromise—the new two-tier structure and the co-chairmanship—have thus far failed to do so.

Two-tier Structure

At Miami, the United States and Brazil billed the two-tier structure as a way to bridge their differences and enable both their visions of an FTAA to co-exist. However, our analyses suggest that in practice, the new negotiating framework added new complications to the negotiations without resolving the U.S.-Brazil centered dispute over the FTAA’s ambition.

First, since Miami, FTAA negotiators have faced a conceptual problem because they abandoned the original vision in favor of a scaled-back FTAA,

the substantive content of which was left largely undefined. Since details on the level of trade liberalization that was envisaged in the common set were not decided at Miami, FTAA participants have interpreted the goals and the nature of the new FTAA architecture differently.

Second, interdependence between the two tiers has also complicated net benefit calculations. Member countries will have to trade-off offensive and defensive interests in the two-tier framework. This is inherently more complicated to do until the content and obligations of each tier is defined.

Third, the United States and Brazil have divergent strategies for instituting the two-tier structure. U.S. officials admit that the U.S. long-term goal is an FTAA modeled on the more ambitious upper tier. The United States' basic premise is that if a country is not willing to undertake higher obligations and new rules for issues of importance to it—services, investment, government procurement, and IPR—then it should not expect as much market access for its goods and services. Brazilian officials, on the other hand, explain that Brazil is trying to achieve balance within the lower tier, including market access for goods and services, and some limited new rules for investment and government procurement. However, Brazil is otherwise generally not willing to accept an FTAA with rules that go beyond those in the WTO.

In discussions with us, U.S. and Brazilian officials expressed continued belief that the two-tier structure represents the best way forward for FTAA negotiations. Certain officials from other countries and experts, however, are skeptical. Several officials said the two-tier structure is a symptom of continued U.S.-Brazil failure to agree on an FTAA that provides mutual benefits. They suggest that the two-tier structure needs to be rethought, given the difficulties experienced in instituting it and the potential it creates for moving aspects of issues essential for balance off the negotiating table. Now fearing the prospect that participating exclusively in the lower tier could result in permanent “second class” membership, an FTAA country official who supported the idea suggested to us that a single agreement applicable to all member nations with negotiated exemptions for sensitive products or capacity constraints might be preferable.

Co-chairmanship

In our view, the arrangement with the United States and Brazil as co-chairs of the negotiations has complicated the process of moving the FTAA negotiations forward. When negotiations were formally launched in 1998, selecting two of the largest economies in the hemisphere with vastly different interests to share the responsibility of leading the talks seemed

logical to some experts, as success in the talks depended upon those two countries working together toward a common goal. Most experts and participants still believe such cooperation is a necessary, if not sufficient, condition for concluding an FTAA. U.S. and Brazilian officials believe that the co-chairmanship reflects the importance of the United States and Brazil in bringing the negotiations to a successful conclusion and keeping countries engaged at senior levels toward that end. However, some participants have questioned whether as co-chairs the United States and Brazil have in practice been able to successfully keep separate their roles of (1) negotiating in their countries' interest, while (2) impartially leading and finding solutions to move the negotiations forward. As a result, one of the lead FTAA negotiators commented that it may have been preferable to have a neutral chair.

Moreover, as co-chairs, the United States and Brazil have the power to set the pace of negotiations by setting schedules and convening meetings. As noted earlier, the co-chairs were unable to agree to hold a preparatory meeting with a cross-section of members ahead of the inconclusive February 2004 TNC. The co-chairs have not reconvened the 34 nation TNC since the February 2004 TNC, and no negotiating group meetings were held in 2004. While for most of 2004 the other member countries gave the United States and Brazil time and space to work out their differences, the co-chair talks came to a halt in June 2004. One lead negotiator suggested to us that since that time neither Brazil nor the United States is effectively leading the negotiations. Yet beginning in August 2004, after the WTO framework was agreed to, certain participating countries began coming forward, urging the co-chairs to update them on progress, including prospects for a relaunch and a schedule for re-engaging the entire membership. Until late February 2005, the co-chairs had yet to do so. In comments to us, an official from another country that has pressed for a comprehensive and ambitious FTAA urged the United States and Brazil, as co-chairs, to disavow self-serving stances and to adopt a more flexible approach, rather than using the FTAA to settle bilateral disputes and blocking, rather than advancing, hemispheric negotiations. On the other hand, Brazilian officials were not alone in commenting favorably on the U.S. co-chairs' personal commitment to the FTAA's success.

Though Pessimistic on Near-term Prospects, Many Believe Hemispheric Integration Worth Pursuing and Hope for Resumption of Talks in 2005

Although many participants and experts were pessimistic when we spoke with them in the fall of 2004, they generally believe that integrating the hemisphere is still worth pursuing and remain hopeful about prospects for reviving the FTAA in 2005.

Will to Break Impasse Required

Many FTAA experts and country officials we spoke with were pessimistic about the FTAA's near-term prospects because the FTAA cannot advance until the U.S.-Brazil impasse is broken. Through mid-November 2004, neither the United States nor Brazil had decided to take the first move to break their 6-month stand-off. However, in late November, USTR Zoellick wrote to Brazil's Foreign Minister Amorim proposing a fresh effort on the FTAA and called for the two sides to meet soon towards that end. Brazil responded positively. On the eve of issuing this report, new efforts began toward rekindling the FTAA negotiations. On January 30, 2005, Ambassador Zoellick and Brazilian Foreign Minister Amorim met to discuss the possibility of renewing FTAA talks. Following that meeting the co-chairs met in Washington, D.C., on February 23 and 24, 2005, and at the end of the meeting reported that some progress had been made in bridging their differences concerning the scope of the FTAA's common set of obligations. Another meeting has been scheduled for late March to continue those discussions. If the co-chairs reach agreement, they plan to convene a TNC meeting in late April or early May of this year, with the goal of reaching consensus among the 34 participating countries on the instructions for the common set negotiations and on procedures for the plurilateral negotiations. A statement from the co-chairs said that they are hopeful that based on that agreement they would be able to resume FTAA negotiations in June.

Nevertheless, it may be instructive to examine the reasons U.S. and Brazilian officials gave to us for their prior reticence to re-engage, based on our fall 2004 interviews--all three of them related to political will.

First, several U.S. trade officials suggested the United States has little room to maneuver, especially to ensure that the final FTAA sufficiently meets the objectives of TPA. A U.S. official explained that the United States has already made considerable concessions to Brazil in agreeing to a two-tiered FTAA at Miami. The United States' subsequent February 2004 proposals on the lower tier also reflected a scale-back from its earlier demands. The U.S. officials we spoke with are still hopeful that the FTAA will eventually deliver meaningful commercial benefits. However, they acknowledged that any benefits are likely to fall short of what it had hoped to secure prior to Miami—or what the U.S. business community has come to expect as a result of recent bilateral agreements. This diminished business support has weakened the pressure on U.S. negotiators to seek an accommodation with Brazil.

Second, in discussions with us, U.S. and Brazilian officials both expressed a sense that they have made considerable effort to find common ground and showed some skepticism about their partner's commitment. For their part, U.S. officials point to a series of meetings initiated by the USTR, both before and after Miami, as emblematic of U.S. commitment to advance the talks, but say Brazil has seemed to want to hold the FTAA back. According to a U.S. official, the United States had been interested in a substantive FTAA and the administration remains committed to the FTAA because it will be good for the United States and for the region. However, discussions since Miami have helped bring differences in U.S.-Brazil conceptions out in the open, and suggest that Brazil has not reconciled itself to an FTAA that looks anything like what the United States would like to see. U.S. officials also believe they have shown willingness to compromise and express disappointment that Brazil and its Mercosur partners have been unwilling to reciprocate. For example, the USTR told reporters in mid-November 2004 that Mercosur needs to show additional flexibility and be more willing to "give" on issues of importance to the United States in order to "get" what it wants out of the FTAA. On the other hand, Brazilian officials expressed concern to us that its positions are being mischaracterized or misunderstood. For example, Brazil counters that the kind of opening of industrial and services markets it is prepared to offer would present considerable new opportunities to the United States and other FTAA nations. Brazil has also been willing to go beyond its WTO obligations in some areas, notably investment and government procurement, where the WTO presently has no comprehensive multilateral agreements. Thus, Brazilian officials say, efforts by U.S. officials to label it as "unambitious" are both unfair and unproductive.

Third, based on our conversations with U.S. and Brazilian officials, each country also appeared to feel it has a “strong hand” in the negotiations and could afford to wait. Brazil believes better access to its large and growing economy is valued by the United States and has shown its influence on the world stage by playing a central role in WTO negotiations and winning WTO disputes against the U.S. cotton and EU sugar agricultural subsidy programs. U.S. officials argue the United States has had considerable success with an aggressive “competitive liberalization strategy,” stating that, taking into account FTAs in effect, completed, or that are in ongoing negotiations, U.S. bilateral and subregional free trade efforts involve two-thirds of the hemisphere’s non-U.S. population and income. The United States also retains certain leverage associated with its trade laws and preference programs. For example, though not formally linked to its FTAA stance, Brazil’s General System of Preferences (GSP)¹⁹ benefits from the United States have been recently placed in jeopardy for alleged failure to adequately protect U.S. intellectual property rights.

WTO Framework Agreement and 2005 Summit of Americas May Provide Better Basis for Restarting FTAA Talks

Some country officials and experts believe that conditions may be more ripe for restarting talks now that the long-standing deadlock in WTO talks has been broken and the U.S. electoral cycle is complete. (Even after the U.S. elections, Brazil had indicated it was waiting for a new USTR to be named before seriously engaging in FTAA talks.) On the substance, the WTO framework adopted in July 2004 resulted in somewhat clearer commitments regarding further disciplining agricultural subsidies and other issues. Breaking the WTO impasse also could improve the FTAA negotiating atmosphere, given the U.S.-Brazil cooperation it required. Thus, to the extent that it provides reassurance about the direction and thrust of partners’ policies, the WTO progress builds confidence that could provide impetus for restarting FTAA talks. However, several experts we spoke with felt that the WTO framework, while welcome, is not concrete enough to forestall the ongoing insistence by some parties that agriculture subsidy and trade remedy reform accompany an FTAA. Indeed, in January 2005, Brazil’s Foreign Minister stressed that Brazil’s capacity to agree to new rules in the FTAA on IPR and investment depends on securing such reform. One Andean country’s lead negotiator echoed this sentiment, saying the FTAA will remain secondary in priority to other negotiations until the

¹⁹GSP provides developing countries a margin of preference in the tariff rates their goods face upon entering the United States and, in this way, increases their competitiveness in the U.S. market.

outcome of the WTO Doha Round is clear. Brazilian officials told us that the WTO framework sends a “positive message” for the FTAA, but stressed that what the WTO concretely produces on agriculture remains essential to FTAA progress.

Several officials and experts said the lead-up to the November 2005 Summit of the Americas in Argentina could generate forward momentum for the FTAA, although others were less sanguine. Yet, even the optimists feel concluding an agreement will only be possible if FTAA ministers halt the downward spiral in the FTAA’s ambitions and renew their efforts to negotiate a meaningful agreement. Certain nations and U.S. business associations we met with stressed that they stand ready to support a two-tier FTAA, as long as it promises sufficiently large economic gains. Several officials also suggested that building forward momentum will not be a minor undertaking, given the considerable length of time FTAA negotiations have languished. As a result, certain FTAA country officials, Tripartite Committee, and trade experts see taking action by mid-2005 such as extending TPA as critical to finishing the FTAA.²⁰ Other experts suggest FTAA countries will closely watch Congress’ stance in 2005 on whether to approve the CAFTA as a bellwether for support for broader hemispheric integration. Even so, a number of experts felt the deadline for WTO and FTAA talks would remain linked with final bargaining likely to be made in 2006-07, when a new U.S. Farm Bill may be under consideration (the present U.S. Farm Bill expires in late 2006).

Underlying Motivation Remains Strong among Many Participants

Despite concern over the short-term prospects, many experts and officials believe that the FTAA is an idea that is still worth pursuing and are hopeful for re-engagement later in 2005.

First, experts argue that the ideals that originally motivated pursuit of an FTAA remain valid. These include the desire to deepen economic integration and improve living standards throughout the hemisphere; the shared goal of fostering political cooperation and strengthening democratic, market-oriented institutions; and the imperative to increase the region’s growth and competitiveness in an ever-more-globalized

²⁰TPA is set to expire in mid-2005, unless renewed. If the President so requests by March 1, 2005, and if neither entity of Congress adopts an extension disapproval resolution before June 1, 2005, the authority will be automatically extended for 2 years (until mid-2007).

economy. In this regard, China's emergence as a global trader has lent further importance to attaining the FTAA, some suggested.

Second, officials from many of the nations we contacted continue to anticipate gains from concluding an FTAA. Senior U.S. officials have repeatedly and publicly expressed continued commitment to an eventual FTAA. In an October 2004 statement signaling an improved chance of resuming talks after the U.S. election, Brazil's Foreign Minister stated, "Integration will occur, for better or worse. It will come about through contraband, drug traffic, and guerilla warfare. Or it will be through trade, technology, and investment. Better for it to be the second way." Nevertheless, various other public remarks by Brazil's Foreign Minister suggest that the FTAA's priority is not paramount and that Brazil's principal interest is in a negotiation with the United States that will yield improved access to the U.S. market. An official from another Mercosur member noted its interest in an FTAA is based on a desire to increase and diversify its exports, a theme echoed by an official from another regional grouping. An official from an existing U.S. FTA partner highlighted its desire to further integrate hemispheric markets and sees the FTAA as integral for promoting hemispheric development. An official from another U.S. FTA partner stressed its strong commitment to the FTAA because it would bring political and economic gains over the medium- and long-term. Officials in another nation pointed out that the FTAA is critical for improving access to Latin American markets, particularly in the Mercosur region.

Many could not conceive of the FTAA being officially abandoned given these stakes, and the considerable time, effort, and political capital already invested. A Central American nation representative stressed that it would be foolhardy to abandon the FTAA because it symbolizes the region's commitment to economic and political progress. Another country representative indicated that the FTAA is a forum in which hemispheric officials at all levels share a vision of where the region aspires to move—which he considers a worthwhile endeavor—even if realizing that vision is "a complex challenge." A representative of a CARICOM nation expressed hope that the question is not "whether we will have an FTAA, but when."

However, a consistent premise for countries' commitment to the FTAA is that the final agreement be mutually advantageous and flexibly respond to differing capacities. A Mercosur member, for example, noted that "time frames are important, but in the end, it is more important that countries realize the economic growth, job creation, and narrowing of income disparities that could be achieved by signing an agreement that truly

reflects, in the best possible way, the interests of the FTAA's diverse membership."

Concluding Remarks

After making steady technical progress, FTAA talks slowed in mid-2003 and were essentially at a standstill for over a year. Some U.S., Brazilian, and other FTAA officials think the pause in FTAA talks is an inherent part of achieving an acceptable balance of rights and obligations among the 34 nations participating. However, a number of the participants and experts we spoke with now believe that greater political commitment and decisive involvement is necessary to break the impasse and restore vitality to the flagging negotiations. The missed January 2005 deadline for concluding the FTAA coincided with renewed U.S.-Brazil efforts to find common ground. After their February 23-24, 2005 meeting, the U.S.-Brazil co-chairs issued a joint statement expressing optimism about the progress they had made. A U.S. spokesperson expressed hope that a late March meeting would prove successful in closing gaps on remaining issues and enable the co-chairs to restart FTAA talks by reconvening all 34 FTAA nations in early May. Whether there is decisive action, 2005 will determine if the decade-long effort on the FTAA and long-sought vision of hemispheric economic integration will finally come to fruition.

Agency Comments

We provided draft copies of this report to the Office of the U.S. Trade Representative, the Departments of State, Commerce, and Agriculture on January 4, 2005, and received formal comments from USTR and the Department of Commerce.

USTR disagreed with our report, stating that it is an inaccurate and poorly framed portrayal of progress and problems in the negotiations, overemphasized the role of the United States and Brazil in the current impasse, and did not give sufficient weight to U.S. efforts to make progress in the talks. We disagree with USTR's assessment. As detailed in our scope and methodology, we conducted more than 58 interviews, most of them with officials directly engaged in the FTAA negotiations, including with representatives from 17 of the 34 countries and each of the major regional groupings participating in the FTAA talks, tripartite officials and other experts, U.S. officials including USTR officials, and private sector representatives over the period leading up to and after the Miami FTAA ministerial. We also reviewed numerous U.S. and foreign government official documents and private sector submissions related to the

negotiations. Moreover, we relied on the expertise developed over the course of our three prior reports and two testimonies on the FTAA issued in the past 4 years.

The Chairmen of the Senate Finance Committee and the House Ways and Means Committee asked us to provide an independent perspective on the issues and challenges facing FTAA negotiators and the United States, in its capacity of co-chairman of the negotiations. Our objectives were to assess the progress that was made since our April 2003 report, the factors that have affected progress, and future prospects for the FTAA. We stand by our report's conclusion that FTAA negotiations have not progressed since mid-2003, in large part due to unresolved U.S.-Brazil disagreements, higher priorities, and negotiating structures that have, to date, tended to compound difficulties, rather than facilitate progress. As the USTR letter points out, the FTAA has been a centerpiece for U.S. policy towards Latin America for more than a decade, and as of yet, no way has been found to move the negotiations toward a successful conclusion. We provide additional detail in appendix II on our response to USTR's comments, including those areas where we have made modifications to our report.

As agreed with your offices, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days after the date of this report. At that time we will provide copies to interested congressional committees, the U.S. Trade Representative, the Secretary of State, the Secretary of Commerce, and the Secretary of Agriculture. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4347. Additional GAO contacts and staff acknowledgements are listed in appendix IV.



Loren Yager
Director, International Affairs and Trade

Scope and Methodology

To conduct our analysis of the progress made in FTAA negotiations since our last report (April 2003), the factors influencing the FTAA's progress, and the FTAA's future prospects, we reviewed public foreign government and official FTAA and executive branch documents. We also reviewed academic and economic literature related to the negotiations and participated in a number of discussions and panels on the FTAA sponsored by institutions such as the Inter-American Dialogue and the Woodrow Wilson Center. We conducted a total of 58 interviews both before and after the November 2003 Miami ministerial, including 21 interviews with U.S. officials from the Office of the United States Trade Representative and the Departments of State, Agriculture, and Commerce. We also interviewed foreign government officials from five FTAA participant countries¹ and one group of countries participating in the FTAA. In addition, we sent a letter soliciting views from the Lead Negotiators of the 34 FTAA participant countries and received 15 oral and/or written responses.² In total, we obtained information from 16 of the 34 nations participating in the FTAA talks, and each of the major groupings³ within the hemisphere. We also interviewed trade and U.S.-Latin American affairs experts at the Council of the Americas, the Inter-American Dialogue, the Center for Strategic and International Studies, the Institute for International Economics, as well as and officials from the National Association of Manufacturers, Coalition of Services Industries, United States Chamber of Commerce, and Caterpillar. We also reviewed written private sector input provided to USTR by numerous business associations and private sector advisory committee members. We held several discussions with each of the multilateral institutions that provide technical assistance to the FTAA negotiations: the Organization of American States, the Inter-American Development Bank, and the Economic Commission for Latin America and the Caribbean. In November 2003, we attended meetings associated with the FTAA trade ministerial, including the Americas Business Forum and the Americas Trade and Sustainable Development Forum. This report is also based on our past work on the FTAA negotiations in the Western Hemisphere, such

¹We interviewed foreign officials from the following FTAA participant countries: Brazil, Canada, CARICOM, Chile, and Costa Rica.

²We received oral or written responses to our open-ended questions from the following FTAA participant countries: Argentina, Brazil, Canada, Chile, Colombia, Dominican Republic, Ecuador, Honduras, Jamaica, Mexico, Paraguay, Peru, St. Vincent and the Grenadines, the United States, and Uruguay.

³For example, Mercosur, CARICOM, NAFTA, and the Andean Community.

Appendix I
Scope and Methodology

as pre- and post-Miami briefings for requesters and previous public reports and testimonies (see related GAO products).

We conducted our work from April through December 2004 in accordance with generally accepted government auditing standards.

Comments from the U.S. Trade Representative

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

February 10, 2005

Mr. Loren Yager
Director
International Affairs and Trade Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Yager:

Thank you for the opportunity to submit comments from the Office of the United States Trade Representative (USTR) on the draft Government Accountability Office (GAO) report *Free Trade Area of the Americas: Negotiations Stalled; Differences between Key Participants Persist as Deadline Passes*. GAO's report aims to provide an update on the Free Trade Area of the Americas (FTAA) negotiations in the period since its previous report was released in April 2003.

In our view, the GAO report is an inaccurate and poorly framed portrayal of progress and problems in the negotiations over the past twenty months. This is unfortunate given the GAO's important role in helping inform the Congress and the general public on matters of public policy. The report characterizes the negotiating dynamics as mainly involving the United States and Brazil, blames their co-chairmanship for the talks' slowdown, and asserts erroneously that we (and others) deliberately shifted away from the FTAA and thus added to its problems. It implicitly lays a major part of the blame for problems in the negotiations on the United States, especially our positions on agricultural subsidies, agricultural market access, and intellectual property; it lacks a description of the context in which these issues played out; and it omits or downplays key initiatives the United States took in 2003 and 2004 to move the negotiations forward. It also omits mention of developments that have positive long-term implications for the FTAA and hemispheric integration, including an increasingly substantive dialogue with civil society, the establishment of a Hemispheric Cooperation Program to help smaller economies participate in the benefits of trade liberalization, and our broader efforts in the region to promote free trade that supports the FTAA.

Dilemma in 2003: The central conundrum that countries faced in mid-2003 was the call by Mercosur, in particular Brazil and Argentina, to change the terms of reference agreed upon by all countries as the basis for the negotiations since 1998. The effect of Mercosur's position, eventually clarified in its "three-track" proposal of July 2003, would have been to limit the FTAA to the liberalization of tariffs and perhaps some services trade, along with cuts in U.S. agricultural subsidies. For many countries, leaving out full services liberalization, investment, government procurement, intellectual property rights and other issues would reduce the FTAA's potential for igniting growth, fostering job creation and prosperity and bringing about real economic integration in the Americas.

See comment 1.

See comment 2.

See comment 3.

See comment 4.

See comment 5.

Appendix II
Comments from the U.S. Trade
Representative

2

For us and others, a tariffs-only agreement would ignore extremely important areas of our economies. Mercosur's proposed framework would have skewed the results in a way disadvantageous to U.S. interests.

See comment 6.

As countries groped during 2003 to clarify Mercosur's position and sought ways to keep the negotiations moving forward, Mercosur backed up its challenge to the negotiating agenda by, among other things, declining to participate in the comprehensive exchanges of initial market access offers in all the areas to which all countries had committed. In contrast, the United States put forward – on schedule – initial offers to FTAA partners in all five agreed market access areas – industrial goods, agricultural goods, services, investment, and government procurement. The U.S. market access proposals in these areas were comprehensive and bold, and they demonstrated a strong commitment to the FTAA. They were differentiated among four groups of countries in a way calculated to give less developed and smaller economies faster duty free access to the U.S. market. This recognized the principle, to which all parties had agreed, that the negotiations should take into account differences in the levels of development and size of the economies in order to create opportunities for their full participation and development. We find it ironic that the draft GAO report mentions this only in the context of complaints by Brazil and its Mercosur partners used to justify their efforts to reorient the negotiations as a whole.

See comment 7.

U.S. Leadership: In 2003 and looking toward the November ministerial in Miami, the United States and Brazil as co-chairs of the negotiations, and especially the United States as ministerial host, had an obligation to lead. We exercised that leadership, and the lack of discussion of that work in the GAO report is difficult to understand. Ambassador Zoellick's consultations in Brazil with Brazilian Foreign Minister Celso Amorim in May 2003, his hosting of an exploratory mini-ministerial at Wye, Maryland, in June, and his convening of another mini-ministerial at Lansdowne, Virginia, in early-November on the eve of the Miami ministerial were U.S. initiatives to work with our negotiating partners to find a way to address differences and bridge gaps. Out of this emerged recognition of the need to recalibrate the FTAA to accommodate divergences of views on the issues raised by Mercosur, as well as other issues of concern to many other countries, including the United States. This set the stage for a successful U.S.-hosted ministerial where a failure to progress, especially against the backdrop of the Seattle WTO ministerial, the unsuccessful WTO meeting in Cancun, and anti-globalization campaign activities, could have set back global work on trade significantly.

See comment 8.

Results of Miami Ministerial: As described in the ministerial declaration, the Miami framework provides that (1) there would be a "common and balanced set of rights and obligations applicable to all" – one set of commitments that every country would undertake; (2) this common set would include provisions in all of the previously-agreed areas of negotiation; (3) additional provisions could be agreed, perhaps on a plurilateral basis, among countries that so choose; and (4) both the common set and the additional provisions would together constitute the FTAA. Contrary to what the GAO report indicates, nothing in the Miami Declaration refers to "upper" or "lower" tiers of the FTAA, and we were careful in Miami to avoid those terms – though the clear

Appendix II
Comments from the U.S. Trade
Representative

3

understanding at Miami was that the common set would be less ambitious than what most, or perhaps any, of the participating countries had at one time sought. For the United States, the Miami framework was a way to make progress with all 33 hemispheric partners together; the common set's core obligations, the plurilateral results, and the FTAA as an institution would together be bases from which more work could be done in future years.

Fleshing Out the Miami Framework: The FTAA Trade Negotiations Committee (TNC) inconclusively discussed how to flesh out guidance for the "common set" negotiations in February 2004, and a number of informal consultations both preceded and followed that meeting. We joined thirteen others in tabling at the TNC a proposal that reflected the discussions in Miami the previous November. Besides the United States, this group included Chile, three countries in the Andean region (Colombia, Ecuador and Peru), all five of the Central American countries, Panama, the Dominican Republic, Mexico and Canada, which collectively account for approximately 90 percent of hemispheric trade. At the TNC and subsequently, Mercosur continued to push for additional commitments on market access and agriculture beyond what had been agreed to during the 1998 to 2003 period and at the Miami ministerial, and it advocated for further cuts in the agenda in other areas of interest to many countries, including the United States, that, in the view of many, ran counter to Miami's agreement on achieving a balanced outcome. Other parties to the negotiations put forth other proposals. As co-chairs, the United States and Brazil, tried through June 2004 to see if we could bridge the gaps, and we achieved some results. This past November, Ambassador Zoellick proposed to Brazilian Foreign Minister Amorim that the United States and Brazil resume our work to develop a package that could help build consensus among all 34 countries and lead to a resumption of formal negotiations. Ambassador Zoellick and Foreign Minister Amorim met for this purpose on January 30, and further U.S.-Brazil meetings are planned.

U.S.-Brazil Co-Chair Role and Negotiating Dynamic: It is important to note the roles of the United States and Brazil, which the GAO report mischaracterizes. Being co-chairs means that our two countries manage the overall negotiating process and chair senior-level meetings. Where there are problems in the talks, the co-chairs must try to come up with proposals to bridge gaps and facilitate consensus. This is exactly what we did at the Miami ministerial and before, and it is the approach we have pursued at the February 2004 TNC and in informal talks since. While it is true that the United States and Brazil are far from disinterested arbiters in the negotiations, it is disingenuous and misleading to characterize the problems in the FTAA negotiations as mainly U.S.-Brazil problems; on some issues, the United States and Brazil find themselves taking opposite positions, but this cannot mean that all the difficulties in the FTAA boil down to U.S.-Brazil ones or support what appears to be a bottom line of the GAO report that the FTAA is largely a U.S.-Brazil negotiation. Nor is it really accurate to refer to "Brazil- and U.S.-led coalitions," since that understates the diversity of views and negotiating dynamic. We disagree that the U.S.-Brazil co-chairmanship "complicated" the negotiations and that both it and the Miami framework failed. In fact, the issues are complicated, and the co-chairmanship reflects the importance of the U.S. and Brazilian roles in bringing the negotiations to successful conclusion despite those complications. In our view, the

See comment 9.

See comment 10.

See comment 11.

See comment 12.

Appendix II
Comments from the U.S. Trade
Representative

4

Miami framework is the right mechanism to resolve issues in our diverse hemisphere in ways that will produce meaningful results for all our peoples. Just as it took time to develop detailed guidelines following the launch of negotiations in 1998, so is it perhaps inevitably taking time to turn ministers' general guidance in Miami into specifics – but that does not equate to failure. Nevertheless, it is regrettable that Brazil did not exercise its responsibility to host the FTAA trade ministerial in 2004 to which it had agreed, thereby losing an important opportunity to move the negotiations forward.

See comment 13.

“Shifting” Resources: The GAO also claims that countries, especially the United States, shifted attention and resources away from the FTAA. At least insofar as it concerns the United States, this is also incorrect. The United States devoted senior-level attention to the WTO in mid-2004, reflecting the urgency of progress in the Doha Round and the opportunities for achieving it. At the same time, we have vigorously negotiated bilateral FTAs in the Americas and elsewhere, but these have not been a result or a reflection of a shift away from the FTAA. Our actions are entirely consistent with the competitive liberalization strategy that this Administration has executed since 2001.

See comment 14.

Key Issues: The GAO report identifies agricultural subsidies, market access for sensitive agricultural products and intellectual property rights as the focus of disagreement. To be sure, these are significant issues, but it is biased and incomplete to single these issues out. Issues exist in the areas of services, investment, government procurement, AD/CVD and dispute settlement, and specific, unresolved topics include traditional knowledge and folklore, what flexibilities and special arrangements should be available for the region's least developed countries, proposed safeguard mechanisms, and the treatment of labor and the environment – the last being among many objectives that Trade Promotion Authority legislation calls on the Administration to seek in trade accords. The balance achieved among all of these and other issues, and the implications of how they are handled, are important for every country participating in the FTAA. For each, as the November 2003 Miami ministerial declaration states, benefits and obligations will need to be balanced; how will be a function of the balances struck in the common set (for all countries) and in the plurilateral negotiation track (for participating countries). The report incorrectly states that the United States plans to reduce its market access offers for Brazil and Mercosur. Instead, we and many other countries have made clear that, when negotiations resume, our revised initial market access offers will be commensurate with the balances struck in the common set instructions. This is not to prejudice the outcome of the negotiations on all fronts where, within the context of the common set, we can and should push for the most ambitious – and appropriately balanced – results possible.

See comment 15.

See comment 16.

Toward Hemispheric Free Trade: Finally, we wish to note the overall regional trade context, on which the GAO report is silent, except to criticize as a problem. Trade liberalization in the Americas – through the FTAA, as a result of agreements in the WTO, and bilaterally – is a priority for the United States because we believe it will be good for U.S. political, commercial, and economic interests and for prosperity, freedom and stability in an important region literally on our borders. We have pursued our trade interests in all three of these channels and in a manner consistent with the Administration's overall competitive liberalization strategy. Among other things, the

Appendix II
Comments from the U.S. Trade
Representative

5

Doha round is important as a way to address, in an appropriate multilateral context where all the key actors are present, issues of agricultural subsidies that are important to the United States and most Latin Americans, alike. We believe that the progress achieved on the Doha Development Agenda in 2004 augurs well for the FTAA. Our bilateral free trade agreements in the Americas are bringing important benefits to U.S. farmers, workers, consumers and businesses. Through these accords, we are building – with two-thirds of the region’s non-U.S. gross domestic product and population – far-reaching integration and more effective trade strategies that are vitally needed in the Americas. Far from being a ‘distraction,’ as the report suggests, these FTAs are stepping stones toward realizing the vision laid out by hemispheric leaders at the first Summit of the Americas.

Thank you once again for this opportunity to provide our perspectives on your report.

Sincerely,



Peter F. Allgeier
Deputy United States Trade Representative

The following are GAO's comments on the U.S. Trade Representatives's letter dated February 10, 2005.

GAO's Comments

1. Our report does not attempt to assign blame for the slowdown of the talks. We conducted extensive research, including in-depth interviews with numerous participants both before and after the Miami ministerial, to identify key developments and factors that were affecting the FTAA's progress. In general, those with whom we spoke were concerned about the lack of progress in the FTAA. However, the tenor of remarks was generally constructive, in recognition of the complexity of the task faced by the United States and Brazil as co-chairs seeking to finalize an FTAA by bridging substantive differences among the 34 diverse nations of the Western Hemisphere.

In terms of our characterization of the role of the U.S. and Brazil, the evidence we collected clearly indicates that the U.S. and Brazil did play the key roles in the negotiating dynamics both as co-chairs and as proponents of different visions of the FTAA. Moreover outstanding U.S.-Brazil disagreements over key issues were identified as the most important cause of the present impasse by the FTAA participants and trade experts from whom we obtained input.

Regarding the co-chairmanship see comment 11.

2. Our report describes the chronology of events that occurred since the Miami Ministerial and the level of activity in the various ongoing negotiations. The United States and Brazil are actively involved in negotiations at three levels: regionally in the FTAA, subregionally such as through bilateral FTAs, and globally at the WTO. In some cases, the same personnel are working on multiple negotiations. Officials from both countries indicated that, consistent with their respective "competitive liberalization" strategies, they were channeling their attention and efforts to those negotiations showing the most immediate promise, which for most of 2004, were not on the FTAA. The report reflects this, and also notes that officials from both countries expressed the view that progress in other negotiations would eventually contribute to progress on the FTAA. GAO is not questioning these judgments.
3. We did not assign blame for the slowdown in the negotiations to any of the parties. The report's objectives were to describe progress in the

negotiations and to identify factors affecting the FTAA's progress. It is undisputed that there are outstanding U.S.-Brazil disagreements over key issues. These disagreements were identified by those officials and experts we contacted as the most important cause of the present impasse. The report does not "choose sides" on the issues but rather explains the basic differences between the parties' positions. It then notes that an unwillingness or inability to accommodate each others' priorities is at root of the present impasse. Our report presents these issues in the context of a post-Miami, two-tier FTAA that would likely involve less ambition than prior to Miami, but which remains undefined.

4. We have modified our report to elaborate upon U.S. initiatives to spur progress and on hemispheric efforts to improve dialogue with civil society and implement the Hemispheric Cooperation Program. However, our understanding is that these initiatives have only progressed since Miami with respect to countries with whom the United States is negotiating bilateral or subregional FTAs.
5. Our report already identifies the question of whether to change the FTAA's originally-envisioned scope and depth as the central dilemma facing negotiators prior to Miami and includes all of the information USTR describes. It also includes the alternate perspective held by Brazil and its Mercosur partners, namely that, in their view, the United States also effectively called into question the FTAA's original terms of reference by refusing to discuss the topics of domestic supports for agriculture and trade remedies within the FTAA, due to their systemic nature and ongoing WTO negotiations. In our view the presentation of both positions, in the context of the WTO Doha round's launch in November 2001 and its ensuing delays, yields a balanced and accurate report.
6. Our report notes that the U.S. offer differentiated among nations was in keeping with the shared goal of providing smaller economies better treatment. The report also notes that some Mercosur members did not submit their market access offers on several rule-making topics on schedule. However, this section of the GAO report is intended to explain the slowdown in FTAA talks and the developments that led to the change in the FTAA's structure at the Miami ministerial. Brazil reacted publicly and negatively to the differentiated U.S. market access offer, and cited it as one reason for its proposed scale-back, and we describe this development.

7. GAO acknowledges the extensive efforts made by U.S. government and Miami officials to make the Miami ministerial successful, and, in response to USTR's comments, have added specific language to that effect, as well as references to the three meetings Ambassador Zoellick organized in an effort to provide direction and identify ways to move the talks forward.
8. The GAO report provides a detailed description of the Miami ministerial declaration as issued by ministers. In that section, the report makes a clear distinction between the exact words used by ministers and our own use of "lower" and "upper" tiers to describe the new, two-tier FTAA structure. We believe the terms lower and upper tiers are a concise and intuitive way of describing the notion of a baseline of commitments common to all 34 members and another set of supplementary, deeper commitments undertaken on a voluntary basis. Because of the need to refer repeatedly to these concepts throughout the rest of the report, we disagree with USTR's comment and have not modified our report.
9. GAO modified its report to include the detailed developments described by USTR, including its efforts to work with other countries, in connection with the inconclusive February TNC meeting. The GAO report now also notes that Brazil and its Mercosur partners presented a proposal at the February meeting and that the U.S. and its partners' proposal goes beyond Mercosur's in certain respects, whereas the Mercosur proposal goes beyond the U.S. coalition's proposal in others. We note that the two main "camps" at the February TNC are roughly similar to the two main "camps" that emerged in the pre-Miami debate over the FTAA's scope and depth of obligations. The report also notes that after the February TNC meeting, both sides complained that the other side's proposal denied them commercial benefits that they deemed were essential to attaining an acceptable balance of rights and obligations in the FTAA agreement.
10. We believe the report accurately characterizes the role of the co-chairmanship as involving management of the overall negotiating process, scheduling and chairing of senior-level meetings, and facilitating consensus. However, the report also notes that those we spoke with were concerned that thus far the U.S.-Brazil co-chairmanship has had limited success in these areas and in moving the negotiations forward generally. Moreover, we note that even U.S. and Brazilian officials told GAO that the co-chairmanship has complicated

progress. For example, a senior U.S. official who is directly involved in the negotiations told us the United States and Brazil could not agree on the format and attendees for a U.S. proposed meeting to coordinate positions ahead of the February 2004 TNC, and as a result, the meeting never occurred. A Brazilian official with intimate knowledge of the co-chairmanship told us that in practice, the co-chairmanship means the U.S. and Brazil must agree on each document before it can be distributed, slowing progress. GAO notes that USTR's agency comments indicate that the co-chairs still do not agree on the pace and direction for the FTAA. GAO believes, and its interviews suggest, that this lack of agreement has complicated the co-chairmanship's capacity to spur FTAA progress.

11. See comment 1.
12. Although they often acknowledged that the two-tier structure was agreed to by all 34 participants at Miami, those we spoke with generally expressed disappointment that the two-tiered structure has not, as hoped, propelled the process forward, nor provided members with a workable roadmap for resuming pursuit of an FTAA. In particular, the two tiered structure has not resolved differences in vision over the FTAA's ambition, and some experts felt it has complicated the task of striking an acceptable balance of rights and obligations among FTAA nations.
13. See comment 2.
14. GAO disagrees. As USTR is aware, GAO extensively reviewed official FTAA and U.S. government documents and had several meetings with U.S. and Brazilian officials to discuss and analyze the outstanding issues. We highlight in the report those issues that emerged as the key sticking points as of when the talks broke down, according to our interviews with officials directly familiar with the talks. We acknowledge that there are more unresolved issues and have made a minor wording changes in the report to make that more clear.
15. GAO disagrees. The report as submitted to USTR for comment states that Brazil's ambassador expressed concern that key Brazilian products would be excluded from FTAA tariff elimination—not that the U.S. plans to reduce its market access offer.

-
16. USTR mischaracterizes the treatment of this issue in the report. The report describes the competitive liberalization policy of the United States and the priority given by the United States to pursuit of the WTO Doha round and sub-regional initiatives. In addition, the report notes U.S. officials' belief that progress in these forums have already yielded important progress and may ultimately be helpful to the FTAA. In addition, the report states that those we spoke with felt the progress in the WTO was helpful to the FTAA and that further WTO progress was desirable. With respect to U.S. pursuit of sub-regional agreements such as bilateral FTAs, consistent with the evidence collected, the report notes that the United States believes that these are advancing U.S. trade goals in the hemisphere in a step-by-step fashion, but states that not all participants and observers are convinced that these are helpful to the FTAA and to hemispheric integration generally.

Comments from the U.S. Department of Commerce

Note: GAO comment supplementing those in the report text appear at the end of this appendix.

See comment 1.



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D. C. 20230

Mrs. Jacquelyn L. Williams-Bridgers
Managing Director, International Affairs and Trade
441 G Street, N.W.
Washington, D.C. 20548

Dear Mrs. Williams-Bridgers:

Thank you for sending your draft report, *Free Trade Area of the Americas: Negotiations Stalled; Differences Between Key Participants Persist as Deadline Passes (GAO-05-166)*.

Upon review of the draft report ITA suggests one change to the market access summary, on p. 57, which makes the following statement: "Brazil and its Mercosur partners want all tariffs to be phased out in the FTAA, but the United States is not prepared to commit to an outcome to fully liberalize tariffs on all products at this stage of the FTAA negotiations." ITA believes the statement oversimplifies the situation. While the United States left some products off the table at the point at which negotiations stalled, they were all agricultural products, and the percentage of agricultural products excluded was not high. The United States did not propose any non-agriculture exclusions.

The statement should be modified to reflect the preceding information. In addition, the market access summary makes no mention of the fact that the United States tabled very forthcoming initial tariff offers while Brazil's initial offer placed most of its products in the most conservative phase-out basket.

ITA always appreciates the opportunity to work with GAO. Thank you for the opportunity to review this report and we look forward to receiving the final version.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Linda Moye Cheatham".

Linda Moye Cheatham

Chief Financial Officer and
Director of Administration



Appendix III
Comments from the U.S. Department of
Commerce

The following is GAO's comment on the U.S. Department of Commerce's letter received January 24, 2005.

GAO Comment

1. GAO updated the report to reflect this.

GAO Contacts and Staff Acknowledgment

GAO Contacts

Kim Frankena (202) 512-8124
Venecia Rojas Kenah (202) 512-3433

Acknowledgments

In addition to those listed above, Jose Martinez-Fabre, Mark Keenan, Michelle Munn, Jonathan Rose, Jamie McDonald, Etana Finkler, and Ernie Jackson made key contributions to this report.

Related GAO Products

World Trade Organization: Cancun Ministerial Fails to Move Global Trade Negotiations Forward; Next Steps Uncertain. [GAO-04-250](#). Washington, D.C.: January 15, 2004.

International Trade: Intensifying Free Trade Negotiating Agenda Calls for Better Allocation of Staff and Resources. [GAO-04-233](#). Washington, D.C.: January 12, 2004.

Free Trade Area of the Americas: United States Faces Challenges As Co-Chair of Final Negotiating Phase and Host of November 2003 Ministerial, [GAO-03-700T](#). Washington, D.C.: May 13, 2003.

Free Trade Area of the Americas: Negotiations Progress, but Successful Ministerial Hinges on Intensified U.S. Preparations. [GAO-03-560](#). Washington, D.C.: April 11, 2003.

World Trade Organization: Early Decisions on Key Issues Vital to Progress in Ongoing Negotiations. [GAO-02-879](#). Washington, D.C.: September 4, 2002.

Free Trade Area of the Americas: Negotiators Move Toward Agreement That Will Have Benefits, Costs to U.S. Economy. [GAO-01-1027](#). Washington, D.C.: September 7, 2001.

Free Trade Area of the Americas: April 2001 Meetings Set Stage for Hard Bargaining to Begin. [GAO-01-706T](#). Washington, D.C.: May 8, 2001.

Free Trade Area of the Americas: Negotiations at Key Juncture on Eve of April Meeting. [GAO-01-552](#). Washington, D.C.: March 30, 2001.

World Trade Organization: Progress in Agricultural Trade Negotiations May Be Slow. [GAO/T-NSIAD-00-122](#). Washington, D.C.: March 7, 2000.

World Trade Organization: Seattle Ministerial: Outcomes and Lessons Learned. [GAO/T-NSIAD-00-86](#). Washington, D.C.: February 10, 2000.

World Trade Organization: Seattle Ministerial: Outcomes and Lessons Learned. [GAO/T-NSIAD-00-84](#). Washington, D.C.: February 8, 2000.

Agricultural Trade: Changes Made to Market Access Program, but Questions Remain on Economic Impact. [GAO/NSIAD-99-38](#). Washington, D.C.: April 5, 1999.

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548