

2007

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### Recommended Citation

Pablo A. Ormachea, *Agriculture Subsidies and the Free Trade Area of the Americas*, 13 LAW & BUS. REV. AM. 139 (2007)  
<https://scholar.smu.edu/lbra/vol13/iss1/6>

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# AGRICULTURE SUBSIDIES AND THE FREE TRADE AREA OF THE AMERICAS

Pablo A. Ormachea \*

## I. INTRODUCTION

TO many in the developing world, internal American, European, and Japanese rules governing domestic agriculture serve only two purposes: first, to heavily subsidize agricultural products and effectively close developed countries' markets, and second, to lower agricultural goods' export value by depressing global prices. The United States has been pushing since the 1994 Summit of the Americas in Miami for a hemisphere-wide free trade zone and asking that developing countries in Central and South America eliminate their own barriers, while being able to maintain its own protectionist measures.<sup>1</sup> In essence, U.S. trade officials are demanding that Latin America open its door to increased competition from American producers while keeping the American market protected against agricultural competition.

The United States originally hoped to create that free trade zone with the Free Trade Area of the Americas (FTAA). Those talks have stalled for the last two years largely because of disputes over farm subsidies and other policies that distort global prices.<sup>2</sup> The U.S. drive for a hemisphere-wide free trade zone has thus failed, ironically because of an unwillingness to liberalize. The U.S. government must eliminate or reduce its non-tariff barriers to trade, primarily the agricultural subsidies, before it can convince the zone's detractors to sign onto the multi-lateral agreement. The ongoing debate between the United States and Brazil highlights the issue for three main reasons: Brazil has the largest Latin American econ-

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1. *Otro Round con Estados Unidos Por el ALCA*, INSTITUTO BOLIVIANO DE COMERCIO EXTERIOR (Nov. 12, 2003), <http://www.ibce.org.bo/Documentos/round.htm> ("El Gobierno de George Bush no acepta, eso está claro, incluir los subsidios agrícolas en la negociación sobre la Asociación de Libre Comercio de América (ALCA), ni siquiera admite que se sugiera esa posibilidad"). See also Carmen G. Gonzalez, *Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries*, 27 COLUM. J. ENVTL. L. 433, 438 (2002).

2. See Mary Milliken & Kevin Gray, *Americas Leaders Fail to End Free-Trade Stalemate*, REUTERS, Nov. 5, 2005.

omy,<sup>3</sup> serves as the United States' FTAA negotiating co-chair,<sup>4</sup> and leads the opposition as a major leader of MERCOSUR, a regional free trade bloc for many South American nations.<sup>5</sup>

This Note evaluates agriculture's role in the negotiations, and it proceeds in four sections. The first section explains the background of globalization in general and the FTAA in particular. The second section examines agricultural subsidies and the impasse. The third section then moves on to discuss Brazil's opposition and its strategies. Finally, the fourth section evaluates America's present political strategy and advances an alternative proposal to overcome the Brazilian-led resistance.

## II. BACKGROUND

The current tangled web of bilateral initiatives, regional agreements, and global negotiations creates a unique problem for world trade negotiators. Because the World Trade Organization (WTO), bilateral free trade agreements, and the FTAA all negotiate essentially the same issues of agriculture, services, investment, market access, intellectual property, and dispute settlement, it is not clear under which context an issue should be negotiated.<sup>6</sup> Not surprisingly, the less a given nation wants to concede on a topic, the more it advocates moving that topic to another forum. For instance, the United States' unwillingness to negotiate agricultural subsidies independently of Japan or the European Union led it to push moving agriculture negotiations to the WTO.<sup>7</sup>

Some commentators fear that the reverse will happen, with regional free trade agreements potentially undermining the negotiations for global agreements by reducing a country's willingness to concede issues on the global stage when they can settle for a more amenable, regional agreement with their neighbors.<sup>8</sup> This is particularly the case when those neighbors are generally already their largest trading partners.<sup>9</sup> Evidence suggests, however, that free trade agreements lead to a partial reduction

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3. CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/br.html>.

4. *Antecedents of the FTAA Process: Structure and Organization of the FTAA Negotiations*, FREE TRADE AREA OF THE AMERICAS, [http://www.ftaa-alca.org/View\\_e.asp](http://www.ftaa-alca.org/View_e.asp) (last visited May 2, 2006).

5. Venezuela's Chavez has opposed the FTAA outright on an ideological basis, making it completely unrealistic to assume the United States could overcome his resistance. I instead have chosen to focus on the possible by advancing a proposal to bring Brazil into the American camp. See Milliken & Gray, *supra* note 2 (for a short discussion on Chavez's intractability).

6. Deborah James, *Summary of the Proceedings of the FTAA Negotiating Committee*, GLOBAL EXCHANGE, Dec. 4, 2003, <http://www.globalexchange.org/campaigns/ftaa/1311.html> (last visited May 2, 2006).

7. *Id.* See also Brink Lindsey, *El Fiasco del ALCA: Un Cancun en Miniatura*, CENTRO DE ESTUDIOS DE POLÍTICA COMERCIAL DEL CATO INSTITUTE, (Dec. 2, 2003), <http://www.elcato.org/publicaciones/articulos/art-2003-12-02.html> (last visited May 3, 2006).

8. News Release, Institute for International Economics, Regional Blocs Support Global Trade System (Oct. 16, 1997), available at <http://www.iie.com/publications/newsreleases/newsrelease.cfm?id=36> (last visited May 2, 2006).

9. *Id.*

in barriers to outsiders in the course of lowering barriers among the free trade agreement members.<sup>10</sup>

The Most Favored Nation provision, article XXIV(5)(a) of the General Agreement on Trade and Tariffs of 1994 (GATT), attempts to address these concerns by mandating that trade cannot be more restricted for nations that were not parties to the creation or expansion of a customs union than it was prior to the formation of that union.<sup>11</sup> As interpreted in the Turkey Textiles case, “[a] customs union should facilitate trade within the customs union, but it should *not* do so in a way that raises barriers to trade with third countries.”<sup>12</sup> Therefore, all trade agreements involving WTO members, bilateral or regional, cannot directly negatively impact countries that are not parties to the agreements—this ensures that the overall effect of any agreement is one of trade liberalization.<sup>13</sup>

#### A. GLOBALIZATION

Studies have shown that globalization is a positive force leading to “faster growth, higher living standar[d]s, [and] new opportunities.”<sup>14</sup> Empirical studies have demonstrated that there is a strong correlation between a country’s level of openness to international trade and its per capita income.<sup>15</sup> Opponents of globalization, however, argue that the costs outweigh the benefits and have organized an anti-globalization protest alongside every major international economic summit in the last ten years.<sup>16</sup> There are two main opponents to globalization: first, those who are essentially anti-capitalist and second, those who blame a variety of today’s social ills on the disparate and unequal distribution of globalization’s benefits.<sup>17</sup> In Sub-Saharan Africa, for instance, poverty rose from 41 percent in 1981 to 46 percent in 2001, and an additional 150 million people were living in extreme poverty.<sup>18</sup> For “many in the developing world, globalization has not brought the promised economic benefits.”<sup>19</sup>

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10. *Id.*

11. See Appellate Body Report, *Turkey—Restrictions on Imports of Textile and Clothing Products*, ¶ 57, WT/DS34/AB/R (Oct. 22, 1999).

12. *Id.*

13. *Id.*

14. Kofi A. Anan, U.N. Sec’y Gen., Message to the Baur International Model United Nations (Apr. 6, 2001), available at <http://www.carolbaur.edu.mx/bimun2003/presentation.htm> (last visited May 2, 2006).

15. Jeffrey Frankel and David Romer estimated that increasing the ratio of trade to GDP by 1 percentage point raises per capita income from 1/2 to 2 percent. See Jeffrey A. Frankel & David Romer, *Does Trade Cause Growth?*, 89 AM. ECON. REV. 379, 379-99 (1999).

16. See JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION 3 (Oxford University Press 2004).

17. *Id.*

18. Overview: *Understanding Poverty*, THE WORLD BANK, <http://www.worldbank.org/poverty> (follow “Poverty Analysis” hyperlink; then follow “Overview” hyperlink) (“for the purpose of global aggregation and comparison, the World Bank uses reference lines set at . . . \$1.08 and \$2.15 in 1993 Purchasing Power Parity terms”).

19. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 5 (2002).

Others, including prominent Brazilian and Argentine leaders, argue instead that even the most pro-globalization nations have failed to liberalize enough, particularly in agricultural policy.<sup>20</sup> Nations, whether rich, poor, urban, or rural, have vastly different internal subsidies and protections, and attempts to standardize this across borders has proven an intractable issue,<sup>21</sup> complicating international trade talks for the last fifty years.<sup>22</sup> According to one study, developed countries spend \$300 billion in direct and indirect agricultural subsidies,<sup>23</sup> while others put that figure closer to \$360 billion.<sup>24</sup> A World Bank report from 2003 suggests that reducing those agricultural manufacturing tariffs and ending all agricultural subsidies would cut the number of those in poverty by 8 percent by 2015.<sup>25</sup>

## B. FREE TRADE AREA OF THE AMERICAS

### 1. History of Negotiations

The FTAA began smoothly enough in the Miami 1994 Summit of the Americas, which launched preliminary FTAA negotiations for an agreement explicitly involving, among other issues, agricultural subsidies.<sup>26</sup> With only Cuba not participating, the thirty-four members of the Organization of American States (OAS)<sup>27</sup> agreed to a specific plan of action where the countries' ministers would take a series of concrete initial steps

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20. Gonzalez, *supra* note 1, at 437 ("Nowhere is the tension between the critics and the proponents of the existing multilateral trading system more evident than in matters of agricultural policy"). See also Laura Carlsen, *Área de Libre Comercio de las Américas: Un Fallecimiento a Tiempo*, PROGRAMA DE LAS AMÉRICAS DEL INTERNATIONAL RELATIONS CENTER COMMENTARY, (Dec. 7, 2005), <http://www.ircamericas.org/esp/2975>.

21. Agriculture has been at the forefront of trade policy, particularly since the Fourth Ministerial Conference in Doha, Qatar in November 2001. *Description to Overview of the Current WTO Agricultural Negotiations* (The World Bank B-Span Video Sept. 16, 2003), available at <http://info.worldbank.org/etools/bSPAN/presentationView.asp?EID=452&PID=862> (last visited May 2, 2006).

22. Carter Dougherty, *World Trade Organization to Seek More Open Markets*, WASH. TIMES, Nov. 15, 2001, at C9.

23. *The Challenge: Reducing Poverty*, THE WORLD BANK, [http://www.worldbank.org/progress/reducing\\_poverty.html](http://www.worldbank.org/progress/reducing_poverty.html) (last visited May 2, 2006).

24. See James D. Wolfensohn, Pres., The World Bank, Remarks at the Conference on Making Globalization Work for All (Feb. 16, 2004), available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20169719menuPK:34472pagePK:34370piPK:34424theSitePK:4607,00.html>.

25. *Global Economic Prospects 2004: Realizing the Development Promise of the Doha Agenda*, THE WORLD BANK XXIX (2003), available at <http://www.worldbank.org/prospects/gep2004/full.pdf>.

26. First Summit of the Americas, Miami, Fla., Dec. 9-11, 2004, *Summit of the Americas Plan of Action*, available at <http://www.summit-americas.org/miamiplan.htm#9> (last visited May 2, 2006).

27. The thirty-four nations include Argentina, Bolivia, Brazil, Canada, Chile, Mexico, Peru, the United States, Uruguay, and Venezuela. See Press Release, Office of the United States Trade Representative, Zoellick to Lead U.S. Effort to Advance FTAA in Key Miami Meeting (Nov. 14, 2003), available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2003/November/Zoellick\\_to\\_Lead\\_US\\_Effort\\_to\\_Advance\\_FTAA\\_in\\_Key\\_Miami\\_Meeting.html](http://www.ustr.gov/Document_Library/Press_Releases/2003/November/Zoellick_to_Lead_US_Effort_to_Advance_FTAA_in_Key_Miami_Meeting.html) (last visited May 2, 2006).

followed by a transparent negotiation process between the heads of states and governments or their representatives.<sup>28</sup> They expected the Ministers' preparatory work to culminate in a completed and ratified agreement by 2005.<sup>29</sup> Negotiations were officially begun in 1998 at the Second Summit of the Americas in Santiago, Chile.<sup>30</sup> At the sixth ministerial meeting in Buenos Aires in April 2001, the Ministers received the draft text of the FTAA agreement, which was eventually made public in four different languages.<sup>31</sup>

All three draft texts<sup>32</sup> focus on nine major areas of trade negotiations: "market access; agriculture; services; investment; government procurement; intellectual property; competition policy; subsidies, antidumping, and countervailing duties; and dispute settlement."<sup>33</sup> The combined set of negotiated issue areas was originally envisioned as an all-or-nothing approach.<sup>34</sup> Countries would either have to agree to the package as a whole, or reject it on the same terms. Traditionally, this approach serves as an important tool for negotiations, allowing for a trading of interests and giving minority positions greater leverage.<sup>35</sup> This gave developing nations a greater incentive to band together against the United States and to create pressure for a fair dialogue.<sup>36</sup>

## 2. Negotiation Impasse

In spite of the promising beginning, progress in the FTAA negotiations came to a grinding halt in 2003,<sup>37</sup> with Brazil and the United States at a negotiating standstill. Essentially, "[w]ithout [U.S.] concessions, there will not be an FTAA,"<sup>38</sup> largely because of protections for American farmers.<sup>39</sup> Brazil successfully challenged one of those protections, the \$264 million the United States spent on cotton export subsidies in 2004, at

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28. *Antecedents of the FTAA Process: The Preparatory Process 1994-1998*, FREE TRADE AREA OF THE AMERICAS, available at [http://www.ftaa-alca.org/View\\_e.asp](http://www.ftaa-alca.org/View_e.asp).

29. Third Summit of the Americas, Quebec City, Can., Apr. 20-22, 2001, *Declaration of Quebec City*, available at [http://www.ftaa-alca.org/Summits/Quebec/declara\\_e.asp](http://www.ftaa-alca.org/Summits/Quebec/declara_e.asp).

30. Sherry M. Stephenson, *The Current State of the FTAA Negotiations at the Turn of the Millennium*, 6 NAFTA L. & BUS. REV. AM. 317 (2000).

31. Free Trade Area of the Americas, Sixth Ministerial Meeting, Ministerial Declaration of Buenos Aires, Argentina (Apr. 7, 2001), available at [http://www.ftaa-alca.org/Ministerials/BA/BA\\_e.asp](http://www.ftaa-alca.org/Ministerials/BA/BA_e.asp) (last visited May 2, 2006).

32. Draft FTAA Agreement, [http://www.ftaa-alca.org/ftaadrafts\\_e.asp](http://www.ftaa-alca.org/ftaadrafts_e.asp).

33. Kristin Sampson, "FTAA Lite: Victory for the People or More Bargaining Power for Transnationals?," AMERICAS PROGRAM, INTER-HEMISPHERIC RESOURCE CENTER 1 (Dec. 5, 2003).

34. *Id.*

35. *Id.*

36. *Id.*

37. Milliken & Gray, *supra* note 2.

38. Mariana Martínez, *ALCA: Lucha de Gigantes*, BBC MUNDO, Nov. 2, 2003, [http://news.bbc.co.uk/hi/spanish/business/barometro\\_economico/newsid\\_3234000/3234379.stm](http://news.bbc.co.uk/hi/spanish/business/barometro_economico/newsid_3234000/3234379.stm) ("En suma, sin concesiones no hay ALCA").

39. Alan Clendenning, *Brazil's Silva Says Free Trade Zone "Off the Agenda" for South America's Largest Economy*, GLOBAL EXCHANGE, Apr. 20, 2005, available at <http://www.globalexchange.org/campaigns/ftaa/3017.html>.

the WTO in 2005.<sup>40</sup> The United States has made clear its belief that domestic support reduction can only be achieved through the WTO, because the United States adamantly refuses to reduce its protectionist programs without reaching an agreement involving Japan and the European Union.<sup>41</sup>

Understandably, the United States is hesitant to disadvantage its farmers on the global market, as Japan and the European Union are two other major global subsidizers. This very hesitance, however, then lends support for the argument that subsidies have a significant market-distorting effect. And if the United States, with its modern agricultural system designed in economies of scale, fears for its competitiveness on a global market skewed by subsidization, imagine the difficulties for smaller farmers in Brazil or Argentina.

In an effort to restart the talks without directly addressing agricultural non-tariff barriers, U.S. representatives offered a proposal where the United States would eliminate all import duties for most industrial and agricultural goods as soon as an agreement entered into effect.<sup>42</sup> One of the most noteworthy components would have made all textile imports from the region duty-free just five years after the FTAA took effect.<sup>43</sup> About 65 percent of U.S. imports on industrial and consumer goods would become immediately duty-free.<sup>44</sup> Even so, Brazil and other countries dependent on agricultural exports failed to follow the U.S. proposal, undoubtedly because it failed to address non-tariff barriers for agricultural products.

### 3. *FTAA-Lite*

In light of the inability of Brazilian and U.S. negotiators to reach a compromise on agricultural subsidies,<sup>45</sup> and with American calls for mov-

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40. Ken Cook & Chris Campbell, *U.S. Taxpayers Spent \$264 Million in 2004 on Cotton Export Subsidies Ruled Illegal by WTO*, ENVIRONMENTAL WORKING GROUP (June 9, 2005), <http://www.ewg.org:16080/issues/agriculture/20050609/step2analysis.php>.

41. FTAA Negotiating Group on Agriculture, *Summary of the United States' Negotiating Positions in the FTAA*, FOREIGN TRADE INFORMATION SYSTEM, available at [http://72.14.203.104/search?q=cache:FaEZv1dmGjUJ:www.sice.oas.org/geograph/north/uspoag\\_e.asp+United+States+FTAA+agriculture&hl=en&gl=us&ct=clnk&cd=7&client=firefox-a](http://72.14.203.104/search?q=cache:FaEZv1dmGjUJ:www.sice.oas.org/geograph/north/uspoag_e.asp+United+States+FTAA+agriculture&hl=en&gl=us&ct=clnk&cd=7&client=firefox-a). "In 2002, U.S. farm support was 17.6 percent of the total value of agricultural production, compared with 36.5 percent in the European Union, and 59 percent in Japan." Robert Looney, *The Cancun Conundrum: What Future for the World Trade Organization?*, 2 STRATEGIC INSIGHTS 10 (Oct. 2003), available at <http://www.ccc.nps.navy.mil/si/oct03/trade.pdf>.

42. Press Release, Office of the United States Trade Representative, U.S. Advances Bold Proposals in FTAA Negotiations (Feb. 11, 2003), available at [http://www.ustr.gov/document\\_library/press\\_releases/2003/february/US\\_advances\\_bold\\_proposals\\_in\\_FTAA\\_negotiations.html](http://www.ustr.gov/document_library/press_releases/2003/february/US_advances_bold_proposals_in_FTAA_negotiations.html).

43. *Id.*

44. *Id.*

45. The United States refuses to discuss agricultural subsidies outside of the WTO. See *Las Negociaciones Están Complicadas*, ALCA: EL DESMENTIDO DE LA REALIDAD No. 3 (May-Aug. 2003), [http://www.cubaminrex.cu/Enfoques/Boletin\\_ALCA/Boletin\\_ALCA\\_No3.asp](http://www.cubaminrex.cu/Enfoques/Boletin_ALCA/Boletin_ALCA_No3.asp) (last visited May 3, 2006) ("Estados Unidos . . . persiste en que el espacio hemisférico no es el conveniente para discutir

ing agricultural negotiations to the ongoing Doha negotiations of the WTO, the draft FTAA prepared in 2001 had to be significantly amended. Although the new draft incorporated some political compromises, it did so at the expense of consistency among all the nations.<sup>46</sup> The resulting document would create a vague two-tier FTAA system, with flexibility for countries to choose the level of commitments they will undertake under the agreement.<sup>47</sup> This would allow some nations to only partially commit to the FTAA, while leaving others free to pursue complete liberalization; this FTAA-lite is predictably vague on contentious issues.<sup>48</sup> Importantly, even though the new FTAA-lite condemns domestic agricultural support, the preliminary draft opts to take agricultural negotiations completely off the table and only “work toward an agreement in the WTO negotiations on agriculture.”<sup>49</sup>

#### 4. Failure?

Ultimately, even this softer version could not generate a consensus; by the end of the 2005 Argentine Summit of the Americas, Argentina, Brazil, Paraguay, Uruguay, and Venezuela, which represent nearly 75 percent of Latin America’s GDP,<sup>50</sup> were ready to suspend negotiations, believing that the stalemate made a fair free trade agreement impossible.<sup>51</sup> Because of this impasse, the United States has shifted much of its focus towards bilateral agreements (as discussed in Part V(A)), however, those bilateral initiatives have ignored these five countries and have only been executed with the smaller Latin American nations.<sup>52</sup> Because the agreements are therefore more of a political victory than an economic one, in ignoring nearly three-quarters of the Latin American economy, they cannot serve as a substitute for the FTAA.

### III. BRAZILIAN OPPOSITION

Thanks in large part to its well-developed agricultural, mining, manufacturing, and service sectors, Brazil is Latin America’s leading economic

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la reducción/eliminación de los subsidios agrícolas, lo que no es aceptable para Brasil”).

46. See Free Trade Agreement of the Americas, Eighth Ministerial Meeting, Ministerial Declaration of Miami, USA (Nov. 20, 2003), available at [http://www.ftaa-alca.org/ministerials/miami/miami\\_e.asp](http://www.ftaa-alca.org/ministerials/miami/miami_e.asp) (last visited May 2, 2006).

47. “[C]ountries may assume different levels of commitments . . . [with a] common . . . set of rights and obligations applicable to all countries . . . [and may also] choose, within the FTAA, to agree to additional obligations and benefits.” *Id.*

48. See *Id.*

49. Free Trade Area of the Americas, *Second Draft Agreement*, arts. 15.1, 15.2, & 15.3, FTAA.TNC/w/133/Rev.2 (Nov. 1, 2002), available at [http://www.ftaa-alca.org/ftaadraft02/draft\\_e.asp](http://www.ftaa-alca.org/ftaadraft02/draft_e.asp) (last visited May 2, 2006).

50. Diego Cevallos, *Is an ‘FTAA-Lite’ a Real Possibility?*, IPS (Nov. 9, 2005), available at [http://www.bilaterals.org/article.php3?id\\_article=3085](http://www.bilaterals.org/article.php3?id_article=3085).

51. Fourth Summit of the Americas, Mar Del Plata, Arg., Nov. 5, 2005, *Declaration of Mar del Plata*, available at [http://www.ftaa-alca.org/Summits\\_e.asp](http://www.ftaa-alca.org/Summits_e.asp) (follow “Declaration of Mar del Plata” hyperlink) (last visited May 2, 2006).

52. Cevallos, *supra* note 50.



power with a 2005 GDP of \$1.568 trillion, accounting for 36 percent of Latin America's combined GDP of \$2.8 trillion.<sup>53</sup> In terms of economy, population, and land size, Brazil constitutes almost 50 percent of South America.<sup>54</sup> This size has translated into a willingness to oppose the United States on a variety of issues, ranging from requiring a \$100 fee for a visa "to U.S. citizens in reciprocity for the identical fee paid by Brazilian citizens,"<sup>55</sup> to creating a free trade region separate from the United States in the form of MERCOSUR.<sup>56</sup>

Continuing in that independent tradition, Brazil has publicly expressed an unwillingness to acquiesce to American interests in the context of FTAA negotiations. Brazilian and Argentinean leaders, while not ideologically opposed to the FTAA, represent some of the world's largest agricultural economies and drafted their own clause at the Fourth Summit of the Americas, held in 2005 at Mar del Plata, Argentina, stating "that the necessary conditions are not yet in place for achieving a balanced and equitable free trade agreement" and making an explicit reference to the current practice of subsidies.<sup>57</sup> As Brazilian President Luiz Inacio Lula da Silva said in April of 2005, "[f]or two years, FTAA has not been discussed in Brazil, because we took it off the agenda."<sup>58</sup> These statements by the U.S.' co-chair for the negotiation process show how unlikely a hemisphere-wide free trade zone has become.

#### A. MOTIVATIONS BEHIND THE OPPOSITION

The opposition ultimately comes down to an American aversion to negotiate on agriculture outside the WTO. Many countries in the proposed FTAA depend on that industry. In 2001, Brazil and Argentina had a combined share of 50 percent of all soybean and product exports, almost 14 percent of corn exports, and 10 percent of all wheat exports.<sup>59</sup> In that same year, Argentina was among the world's leading exporters of sorghum, sunflower, and peanuts and Brazilian agriculture accounted for 14 percent of Brazil's GDP, 33.5 percent of the value of its exports, and employs one in three Brazilian workers.<sup>60</sup> These Latin American countries hoped negotiations would improve market access for their most important good: agricultural products. By stripping the agreement of any agri-

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53. CIA World Factbook, *supra* note 3.

54. Ambassador Celso Lafer, Minister of Foreign Affairs, Brazil at the Inter-American Dialogue, Washington (Mar. 1, 2001), *available at* [http://www.brasilemb.org/profile\\_brazil/brasilemb\\_ejournal\\_lafer.shtml](http://www.brasilemb.org/profile_brazil/brasilemb_ejournal_lafer.shtml) (last visited May 2, 2006).

55. Tourist Visa Requirements, Brazilian Embassy in Washington, [http://www.brasilemb.org/consulado/consular\\_visa\\_tourism.shtml](http://www.brasilemb.org/consulado/consular_visa_tourism.shtml) (last visited May 2, 2006).

56. Clendenning, *supra* note 39.

57. *Declaration of Mar del Plata*, *supra* note 51, at ¶ 19(B).

58. Clendenning, *supra* note 39.

59. RANDALL D. SCHNEFF ET AL., U.S. DEPT. OF AGRICULTURE: ECONOMIC RESEARCH SERVICE, TRADE REPORT NO. (WRS013), AGRICULTURE IN BRAZIL AND ARGENTINA: DEVELOPMENTS AND PROSPECTS FOR MAJOR FIELD CROPS 1-2 (Dec. 2001).

60. 31 percent of the labor force. *Id.* at 4-5.

cultural negotiation, the United States removed the main benefit these countries sought from liberalized trade.

This means, then, that to Brazil, the necessary sacrifices simply are not being shared. As Brazilian Ambassador Celso Lafer put it, were Brazil to ratify the FTAA in its present state, it “would be expected to change numerous laws as well as make several new commitments . . . , whereas the US would not be willing to amend its laws regarding matters such as antidumping or to reduce its current level of subsidies to agriculture.”<sup>61</sup> So even though the United States promised to remove some trade barriers in February of 2003 when it offered to eliminate import duties for many industrial and agricultural products immediately upon entry into force of the FTAA,<sup>62</sup> the United States failed to please Brazil and other nations dependent on food exports. Nowhere in the accompanying press release did the United States mention any of its non-tariff barriers, staying completely silent on internal agricultural subsidies.<sup>63</sup>

Right now, the United States has a massive and ever-increasing agricultural subsidy program that gave out \$22.5 billion in 1999.<sup>64</sup> The 2002 Farm Bill is projected to distribute about \$190 billion in 2012, and that figure does not include other farm programs such as crop insurance, conservation measures, and ad hoc emergency support, placing the total support amount even higher.<sup>65</sup>

While the U.S. economy is generally one of the most open in the world, with its average tariff rates below 5 percent, 130 U.S. tariffs go higher than 35 percent.<sup>66</sup> Of those, 100 are in agribusiness and on many of Brazil’s most valuable exports, such as tobacco, dairy products, and orange juice.<sup>67</sup> It almost seems as if these tariffs and import quotas carefully target Brazil. For example, it is the world’s number one sugar exporter; the United States spent \$2 billion protecting that domestic industry alone.<sup>68</sup> Soybeans are Brazil’s top export; the United States spent \$3 billion to guarantee minimum prices for American producers.<sup>69</sup> These internal subsidies then lead to increased global production and therefore lower average prices, directly impacting Brazilian business’s bottom line.

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61. Ambassador Celso Lafer, *supra* note 54.

62. Press Release, Zoellick to Lead U.S. Effort to Advance FTAA in Key Miami Meeting, *supra* note 27.

63. *Id.*

64. CHRISTOPHER CONTE & ALBERT R. KARR, AN OUTLINE OF THE U.S. ECONOMY ch. 8 (U.S. Department of State’s Bureau of International Information Programs 1991), available at <http://usa.usembassy.de/etexts/oecon/chap8.htm> (last visited May 2, 2006).

65. BARRY K. GOODWIN ET AL., LANDOWNER’S RICHES: THE DISTRIBUTION OF AGRICULTURAL SUBSIDIES (Feb. 2004), available at <http://www.bus.wisc.edu/realestate/pdf/04LandownersRiches.pdf> (last visited May 2, 2006).

66. Marcos Jank, *U.S. Agricultural Protectionism: FTAA Seed of Discord*, FOREIGN TRADE INFORMATION SYSTEM 1, available at <http://www.sice.oas.org/geograph/westernh/jank2.pdf>.

67. *Id.*

68. *Id.*

69. *Id.*

Clearly, agriculture is central to Brazil's economy (in 2005, it exported US\$31,811,125,000 in agricultural products<sup>70</sup> and has the largest commercial cattle herd in the world).<sup>71</sup> Brazil's main goal with the FTAA was to secure a larger market for its own exports, one third of which are agricultural products.<sup>72</sup> Without a clause eliminating or diminishing those barriers to agricultural imports for the United States, Brazil loses a key incentive to ratify the agreement. While Brazil is still willing to continue negotiations on the FTAA, it is reasonably concerned that U.S. subsidies and tariffs heavily favor U.S. economic interests.<sup>73</sup>

## B. CURRENT POLITICAL STRATEGIES

### 1. MERCOSUR

Understandably reluctant to wait for the United States to liberalize its internal subsidy system, Brazil pushed forward on a regional program of free trade through the Southern Common Market (MERCOSUR), which is the third largest trade bloc in the world, after the European Union and NAFTA.<sup>74</sup> That free trade region is made up of Argentina, Brazil, Paraguay, and Uruguay (with Venezuela in the process of joining).<sup>75</sup> Through MERCOSUR, Brazil has continued to liberalize its markets—the zone was expanded by extending associate memberships to Bolivia, Chile, Colombia, Ecuador, and Peru.<sup>76</sup> This bloc has also been negotiating for the liberalization of trade with the European Union.<sup>77</sup>

As a response to the United States' heavy-handed negotiations, Brazil has also pushed the United States to pursue negotiations on a so-called "four-plus-one" basis.<sup>78</sup> Essentially, Brazil hopes that presenting one front with its MERCOSUR partners of Argentina, Paraguay, Uruguay, and Venezuela in free trade talks will lead to a fairer agreement and minimize any U.S. domination of the terms.<sup>79</sup> Only by balancing out the

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70. Ministério da Agricultura, Pecuária e Abastecimento, *Brasil: Agropecuária – exportações totais*, available at <http://www.agricultura.gov.br> (click on "estatísticas" (top right), then "Agricultura Brasileira em Números - Anuário 2005" (first item), and then scroll down and click on "5.1.1. Exportações brasileiras de produtos agropécuarios") (last visited Feb. 8, 2007).

71. SCHNEPF, ET AL., *supra* note 59, at 6.

72. *Id.*

73. *Brazil and U.S. to Restart FTAA Talks*, UPI (Jan. 31, 2005), available at [http://www.polarisinstitute.org/polaris\\_project/public\\_service/news/ftaa\\_jan\\_31\\_05.html](http://www.polarisinstitute.org/polaris_project/public_service/news/ftaa_jan_31_05.html)

74. Ambassador Celso Lafer, *supra* note 54.

75. SCHNEPF, ET AL., *supra* note 59, at 34.

76. Secretaría del Mercosur, *Preguntas Frecuentes*, <http://www.mercosur.int/msweb/contenidos/es/preguntas.asp#2>.

77. External Relations, *The EU's Relations with MERCOSUR*, EUROPEAN COMMISSION, [http://ec.europa.eu/comm/external\\_relations/mercosur/intro/index.htm](http://ec.europa.eu/comm/external_relations/mercosur/intro/index.htm).

78. *Allgeier Unsure of Potential Date for Concluding FTAA Negotiations*, INSIDE U.S. TRADE, Feb. 11, 2005, available at [http://www.polarisinstitute.org/polaris\\_project/public\\_service/news/ftaa\\_feb\\_11\\_05.html](http://www.polarisinstitute.org/polaris_project/public_service/news/ftaa_feb_11_05.html) (last visited May 2, 2006).

79. Doreen Hemlock, *FTAA: Brazil, Whose Clout Pales Against U.S. Might, Wants Balance*, SOUTH FLORIDA SUN-SENTINEL, Nov. 9, 2003.

United States' size-based leverage<sup>80</sup> can Brazil create a more balanced agreement that explicitly addresses agricultural trade.

## 2. Group of 21

Brazil has also been pursuing a global strategy in case the United States continues in its refusal to discuss agricultural subsidies outside of the WTO. With the Group of 21 (G21), Brazil hopes to balance leverage at the global negotiating table. These twenty-one nations, led by Brazil, China, and India, formed a cohesive negotiating bloc of countries at the 2003 Cancun Ministerial Meeting.<sup>81</sup> The G21 differed sharply with the more developed countries and prevented those countries from commanding the proceedings on a variety of issues. This coalition was particularly significant because it was the first time in over twenty years that developing countries united in a common bargaining position.<sup>82</sup> And even if the United States succeeds in splitting the G21 with aggressive bilateral bargaining, Brazil gained both substantial negotiating clout as a major leader and formed a strong set of alliances with India, China, and South Africa, which, when combined with MERCOSUR, give Brazilian negotiators a great deal of influence on the world stage.

## IV. GOING FORWARD: AMERICAN STRATEGIES

In response to stiff resistance to the U.S. vision of liberalization, the United States attempted to push through a two-tier approach to the FTAA. Under this approach, all countries would agree to basic liberalization, with nations free to pursue a fuller abolition of trade barriers.<sup>83</sup> But even this simpler, less progressive proposal, developed at the Miami 2003 Ministerial Round, failed to meet the January 2005 deadline.<sup>84</sup> The United States must pursue a new strategy if it hopes to resurrect the FTAA.

### A. DIVIDE AND CONQUER

Shortly after the creation of FTAA-lite, and believing that the multi-lateral aspect of the negotiations led to the standstill, the United States began pursuing a "divide and conquer" strategy by forging separate free trade accords with either individual nations or smaller regions.<sup>85</sup> The bi-lateral negotiations have so far been with Bolivia, Chile, Colombia, Ecua-

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80. *See id.* ("‘They’re an elephant compared to us,’ Parolin said of the U.S. economy, 10 times the size of Brazil’s and with almost 20 times the trade”).

81. Jane Bussey, *Nations Dig in Their Heels at WTO Face-Off*, MIAMI HERALD, Sept. 12, 2003, available at <http://www.tradeobservatory.org/headlines.cfm?refID=18611>.

82. Looney, *supra* note 41.

83. Ministerial Declaration of Miami, *supra* note 46.

84. This proposal has also been called “FTAA-lite” by critics. *See* Clendenning, *supra* note 39.

85. Hemlock, *supra* note 79.

dor, Peru,<sup>86</sup> and the major regional agreement with Central America.<sup>87</sup> With these bilateral agreements, the United States has effectively isolated each country from its hemispheric context and thereby reduced its negotiating power.<sup>88</sup>

In 2002, America and Chile concluded negotiations on a free trade agreement where both ministers explicitly anticipated that the agreement would encourage the FTAA negotiation progress.<sup>89</sup> While that 2002 agreement gradually made about three-quarters of both United States and Chilean farm goods tariff-free, it ignored the impact of non-tariff barriers.<sup>90</sup> Chile has different concerns than Brazil or Argentina because it does not depend on agricultural exports to the same extent—the average U.S. tariff on the vast majority of Chilean goods is less than 4 percent.<sup>91</sup> Importantly, signing a similar bilateral free trade agreement could have Brazilian farmers competing with heavily subsidized U.S. farmers.

But even bilateral agreements run into problems with the United States' unwillingness to budge on agriculture. Panama, whose government presented the text to continue negotiating the FTAA in the 2005 Fourth Summit of the Americas in Mar del Plata, Argentina, demands protections against subsidized import surges in basic crops that could drive its small farmers out of work.<sup>92</sup> Additionally, concerns have been raised about impoverished corn farmers in Mexico and rice farmers in Honduras and Haiti being driven to other employment because of America's subsidized products.<sup>93</sup> A study that examined NAFTA's impact on Mexico found that the value of subsidized imports from the United States went from \$1,830 million in 1980 to \$4,655 million in 2001.<sup>94</sup> Logically, an increase in imports negatively impacts domestic production. Although reducing or eliminating agriculture protections is extremely important for rural Latin American countries, the United States has shown little flexibility on the matter.

86. Sampson, *supra* note 33.

87. *Id.*

88. Cevallos, *supra* note 50.

89. Press Release, Office of the United States Trade Representative, U.S. and Chile Conclude Historic Free Trade Agreement (Dec. 11, 2002), available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2002/December/US\\_Chile\\_Conclude\\_Historic\\_Free\\_Trade\\_Agreement.html](http://www.ustr.gov/Document_Library/Press_Releases/2002/December/US_Chile_Conclude_Historic_Free_Trade_Agreement.html).

90. *Id.*

91. *Id.*

92. Laura Carlsen, *Timely Demise for the Free Trade of the Americas*, AMERICAS PROGRAM, INTERNATIONAL RELATIONS CENTER (Nov. 23, 2005), available at <http://americas.irc-online.org/am/2954> (last visited May 2, 2006).

93. Mary Robinson, *FTAA: Latin America Deserves Better*, COMMON DREAMS NEWSLETTER, <http://www.commondreams.org/views03/1118-11.htm> (last visited May 2, 2006).

94. Antonio Yunez-Naude, *Lessons from NAFTA: The Case of Mexico's Agricultural Sector*, THE WORLD BANK 40 tbl. 7 (Dec. 2002), available at [http://wbldn0018.worldbank.org/lac/lacinfoclient.nsf/e7fa9f9c5de82e6e8525694d007a6689/2e11a4d12a57e2ee85256c4d006d9b66/\\$FILE/Yunez%20Text%20Final.pdf](http://wbldn0018.worldbank.org/lac/lacinfoclient.nsf/e7fa9f9c5de82e6e8525694d007a6689/2e11a4d12a57e2ee85256c4d006d9b66/$FILE/Yunez%20Text%20Final.pdf).

## B. ALTERNATIVE STRATEGY: ELIMINATE THE SUBSIDIES

The United States stands to gain immensely from a multi-lateral agreement and should redouble its efforts to push through the FTAA instead of discarding it. This means the United States should cut its agricultural subsidies or risk foregoing the substantial benefits of the FTAA to the U.S. economy.

### 1. Importance of the FTAA

The geographic proximity of Latin America makes it an obvious trade partner for the United States. But this market opportunity remains largely untapped. In 2001, U.S. trade with Latin American countries (excluding Canada and Mexico) was only 8 percent of total U.S. trade.<sup>95</sup> Eliminating Latin American tariffs, which average from 10 percent to 15 percent,<sup>96</sup> would open up these markets, increasing both the average U.S. family's income, by \$814 a year, and U.S. market share within this hemisphere.<sup>97</sup> In addition to the general market expansion that would result from increased U.S.-Latin American trade, the FTAA could uniquely support some of the United States' most struggling industries. For example, the U.S. auto industry could benefit enormously from an agreement. Today, U.S. auto-makers must pay a 35 percent tariff on all exports to MERCOSUR nations,<sup>98</sup> and ratifying an FTAA could add as many as 2.5 million units to the annual sales of new cars and light trucks throughout the entire Western Hemisphere.<sup>99</sup>

The FTAA would also provide stability to U.S. trade interests during times of economic distress by ensuring that Latin American markets remain open to U.S. exports during times of crisis. During its currency crisis of the 1980s, Mexico raised its tariffs and shut out U.S. exports. When another currency crisis happened ten years later, the newly enacted NAFTA kept the Mexican market open to U.S. goods.<sup>100</sup> Because U.S. goods accounted for 79 percent of all Mexican imports,<sup>101</sup> closing that market would have significantly impacted U.S. business' bottom-line. By making sure those markets stay open, the FTAA would also help American businesses weather any economic downturns.

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95. Jenny Bates, *The Free Trade Area of the Americas: Why the United States Must Take the Lead*, BLUEPRINT MAGAZINE, Feb. 7, 2001, at 11, available at [http://www.ppionline.org/ppi\\_ci.cfm?knlgAreaID=108&subsecID=206&contentID=2974](http://www.ppionline.org/ppi_ci.cfm?knlgAreaID=108&subsecID=206&contentID=2974)

96. *Id.*

97. TEHSIN FARUK ET AL., FTAA—WHY IT'S BENEFICIAL (2003), available at <http://www.umassd.edu/iba/reports/ftaa-tehshin.pdf>.

98. Bates, *supra* note 95.

99. John S. McClenahan, *Rougher Ride After NAFTA?*, INDUSTRY WEEK (Feb. 2004), available at [http://www.findarticles.com/p/articles/mi\\_hb3044/is\\_200402/ai\\_n13035069](http://www.findarticles.com/p/articles/mi_hb3044/is_200402/ai_n13035069) (last visited May 2, 2006).

100. Bates, *supra* note 95.

101. *Market Report t- Nov '99 - Mexico Focus: The Doubtful Future of the FTAA*, INFO AMERICAS (Nov. 1999), available at [http://tendencias.infoamericas.com/market-reports/1999/Tendencias\\_9911.pdf](http://tendencias.infoamericas.com/market-reports/1999/Tendencias_9911.pdf) (last visited May 2, 2006).

Finally, having a uniform trade agreement would be far more economically efficient simply by eliminating regulatory variations. A company already sending widgets to Argentina cannot increase production and send them to Chile without pouring over a new set of trade documents. Streamlining today's patchwork of regional and bilateral agreements would allow American businesses to respond far more quickly to any new opportunity.

## 2. *Proposed Solution*

Even though Japan and Europe so far refuse to reduce their subsidies, the United States should therefore eliminate or substantially reduce its protectionist agricultural programs. Only then will Brazil and MERCOSUR actively support the FTAA. Opening up agricultural trade within the Western Hemisphere could push Japan and the European Union towards liberalization, out of fear of being left behind. The U.S. Trade Representative has openly criticized Japan's and the European Union's opposition to cutting agricultural barriers to trade,<sup>102</sup> and by taking the bold first step, the United States could lead the way while becoming more economically efficient.

This effect has already been seen in U.S. confectionary production, where exports to Mexico and Canada increased 22 percent by 2003 thanks to the implementation of NAFTA.<sup>103</sup> Such an expansion for U.S. market share would often come at the expense of less efficient industries within Europe and Japan, which would, logically, give greater weight to advocates of liberalization within those economies.

More importantly, those subsidies, far from protecting the small farmer, benefit the 17 percent largest producers that represent about 80 percent of all U.S. agricultural output.<sup>104</sup> Since the subsidy system covers the difference between the selling price and the cost of production, companies have an incentive to produce as much as possible. This action then increases supply, leading to lower prices and a greater subsidy. It has reached the point where more than 92 percent of all farmers rely heavily on off-farm income.<sup>105</sup> Eliminating the subsidy system would push prices to accurately reflect the cost of production and remove a deadweight on the U.S. economy (both in terms of shifting manpower away from a highly inefficient industry and in terms of federal tax money). Essen-

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102. *USTR's Zoellick Criticizes Japan on WTO Ag Negotiations*, U.S. DEPARTMENT OF STATE (Feb. 16, 2003), available at <http://usinfo.state.gov/ei/Archive/2003/Dec/31-190215.html>.

103. FTAA – Comm. of Gov't Representatives on the Participation of Civil Society, June 10, 2003, *Submission from the U.S. Confectionary Industry Concerning Negotiations in the Free Trade of the Americas*, FTAA.soc/civ/96 (May 1, 2003), available at [http://www.ftaa-alca.org/spcomm/SOC/Contributions/Miami/cscv96\\_e.asp](http://www.ftaa-alca.org/spcomm/SOC/Contributions/Miami/cscv96_e.asp) (last visited Aug. 24, 2006).

104. Jank, *supra* note 66.

105. Prairie Writers Circle, *Restructuring Farm Subsidies*, WORKING FOR CHANGE (Apr. 24, 2006), <http://www.workingforchange.com/article.cfm?ItemID=20689> (last visited May 2, 2006).

tially, if Brazil can produce soybeans cheaper than the United States, then it makes sense for the United States to dedicate more resources, public and private, towards competitive industries.

Subsidization can also cripple internal development of new industries. U.S. sugar has been driven to prohibitively expensive levels for biodiesel and ethanol manufacturers, forcing them to use corn.<sup>106</sup> Using Brazilian sugarcane would save enough in costs of production to allow for commercial viability at \$40 per barrel instead of the \$60 required by corn-based ethanol.<sup>107</sup> This has undoubtedly contributed to Brazil's much higher penetration rate of more environmentally-friendly fuels.<sup>108</sup> By eliminating those subsidies and the current restrictions on sugarcane imports, the United States could follow Brazil's lead and become far less dependent on foreign fuel. Such a move would be of great interest to Europe, particularly since Russia has already used its energy supplies as a political weapon against ex-Soviet states.<sup>109</sup>

By eliminating those subsidies and benefiting the Brazilian farmer, the United States benefits itself in another, less obvious way. Subsidizing agricultural prices within the United States lowers prices worldwide. This is not only because a major global market is effectively closed, but also because the United States is a major exporter in all sorts of protected agricultural goods. That means lower incomes for soybean or sugar farmers in Brazil (or any other Latin American country) and in turn less money for schools. When foreign farmers' incomes drop too far, they search for a job that pays a living wage, often migrating into the United States.

As this Note mentioned earlier, Brazil has already successfully challenged the \$264 million the United States spent protecting its cotton industry at the WTO in 2005.<sup>110</sup> If WTO jurisprudence continues to fall against agricultural subsidies, the United States might find that much of its leverage for future WTO negotiations could become illegal. Alternatively, these developments could spill over into the FTAA negotiations and bring the parties together by doing away with agriculture as a major point of contention.

## V. CONCLUSION

With the FTAA, the United States expected to not only open up Latin America to U.S. goods and services, but also to benefit the entire hemisphere by increasing U.S.-Latin American trade, increasing trade within

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106. *Ethanol*, THE ECONOMIST, July 15, 2006, at 93, available at [www.economist.com/markets/indicators/displaystory.cfm?story\\_id=7167086](http://www.economist.com/markets/indicators/displaystory.cfm?story_id=7167086).

107. CG/LA Infrastructure, *Ethanol Investment: Corn, Sugarcane, and Market Potential*, slide 9, WEC/USEA Biofuels Forum, Washington DC, April 28, 2006, available at <http://www.cg-la.com/docs/web/BioFuelsWEC2006.pdf>.

108. *Brazil Leading the World in Effort to Boost Use of Ethanol*, CNN, March 10, 2006, <http://www.cnn.com/2006/WORLD/americas/03/10/brazil.ethanol.example.ap/index.html>.

109. *Russia: Richer, Bolder and Sliding Back*, THE ECONOMIST, July 15, 2006, at 25, available at [www.economist.com/world/printerfriendly.cfm?story\\_id=916130](http://www.economist.com/world/printerfriendly.cfm?story_id=916130).

110. Cook & Campbell, *supra* note 40.



Latin America, and encouraging more foreign direct investment.<sup>111</sup> The United States has already demonstrated a willingness to agree to relatively lighter intellectual property protections,<sup>112</sup> leaving agricultural subsidies as the last major stumbling block. Since a failure to reach a consensus with Brazil and its bargaining partners could shut the United States out of an enormous and growing market, America must reduce or eliminate its agricultural tariffs.

Even though Article XXIV of the GATT of 1994 does not allow trade agreements to raise barriers to trade for nations that were not a party to that agreement, the European Union has been actively negotiating with MERCOSUR and a United States failure to act could push the MERCOSUR nations towards imports from the European Union at the expense of the United States. Locking in economic reforms across borders would reduce risk for U.S. investors, promote development, and boost foreign investment. The benefits of more prosperous, stable, and democratic neighbors far outweighs the hit to U.S. agribusiness' pocket-book, particularly since increasing economic cooperation increases political cooperation on issues of common concern, such as illegal drug trafficking. The United States must take the first step and offer reduced or eliminated agricultural subsidies or it risks losing all momentum in its push for the FTAA.

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111. INTER-AMERICAN DEVELOPMENT BANK, *BEYOND BORDERS: THE NEW REGIONALISM IN LATIN AMERICA: ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA 2002 REPORT* 25, 32-33, & 62 (2002) (those pages discuss these three reasons).

112. *Allgeier Unsure of Potential Date for Concluding FTAA Negotiations*, *supra* note 78.