

Technical Cooperation Needs for Hemispheric Trade Negotiations

BY SIDNEY WEINTRAUB

How to trace the interactions of trade negotiations with development needs, organize and manage a country's negotiating role, and master the complexities of specific trade issues under negotiation? Such tasks are difficult for developing countries with large economies and trade-negotiating experience, and even more so for smaller economies. They become still more challenging when the negotiations cover such fast-changing fields as telecommunications and bring in all the countries in the Western Hemisphere. Sidney Weintraub, consultant to Executive Secretariat for Integral Development of the Organization of American States, discusses how technical cooperation can help.

BACKGROUND

There is clear agreement that smaller economies in Latin America and the Caribbean (LAC) need technical assistance if they are to get the most out of the negotiations for a Free Trade Area of the Americas (FTAA). Countries with larger economies can also benefit from such assistance. The need is recognized in documents of the Organization of

American States (OAS), the Inter-American Development Bank (IDB), and the UN Economic Commission for Latin America and the Caribbean (ECLAC). This paper examines the demand for such assistance, as seen in personal experience with trade negotiations and development assistance, in documents of many agencies that provide technical assistance, and in inter-

views with experts familiar with trade negotiations in general and the FTAA process in particular.

ORGANIZING FRAMEWORK

A large network of assistance providers could help countries with small economies to engage profitably in comprehensive trade negotiations, although the training offered may not always meet the needs. The main complicating factor is the vast scope of the FTAA endeavor.

To the uninitiated, a “trade” negotiation has the ring of a limited venture. But in fact it goes to the heart of development policy. Hardly an aspect of national development is completely divorced from trade policy—the country’s macroeconomic framework, exchange-rate policy, handling of capital inflows, tax structure, infrastructure needs, education of the work force, assessment of existing and potential comparative advantages, keeping up with exploding technology, and the effectiveness of the judicial system for dealing with trade and investment disputes.

Many countries need to develop their information-gathering capacity so as to be able to evaluate the effects on their economic fortunes of trade concessions given and received. They need data on how much is being imported, from where, the impacts on domestic ventures, and potential export markets. Many data are now gathered sporadically and often erroneously.

The best way to learn about the

dynamics of trade negotiation is from actual experience, as shown in the ongoing FTAA exercise. Many small countries have had little opportunity for this learning-by-negotiating and have a limited cadre of experienced negotiators. The slow pace of the operation at the outset, the formation of working groups, the repeated gathering of players from around the hemisphere, and the discussion and debates thus generated have taught neophyte negotiators a great deal

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about what is involved. This learning experience presumably will continue until the hard, specific negotiating begins, sector by sector and item by item.

The training task relates not just to the up-front negotiators, but also to their backstopping in capitals. A negotiator cannot be knowledgeable in all technical areas and must rely on experts back home. This involves analysis of the benefits for the country of the offers made and the requests it should make. Acquiring and maintaining this expertise is becoming increasingly complex

when changes occur at what seems the speed of light in such fields as information technology, telecommunications, and financial services.

Because the needs are vast, it is impossible for small countries with limited financial and human resources to cover all issues. So countries have to set priorities, make judgments about their most vital needs, and concentrate on them. Technical assistance can help small countries winnow the significant from the largely irrelevant universe that confronts them. Of course, the precise needs will depend on each country's own assessment of its situation.

The enormity of the task requires some organizing structure to lay out the needs for technical assistance for the LAC countries. As shown in Figure 1, this organizing structure addresses three key questions:

- What are the key *development* needs that must be stressed to get the maximum benefit from a comprehensive negotiation that will lead to hemispheric free trade?
- What are the *overall negotiating* needs?
- Finally, what are the needs in the *specific negotiating* and consultative groups that have been established?

DEVELOPMENT PROGRAM NEEDS

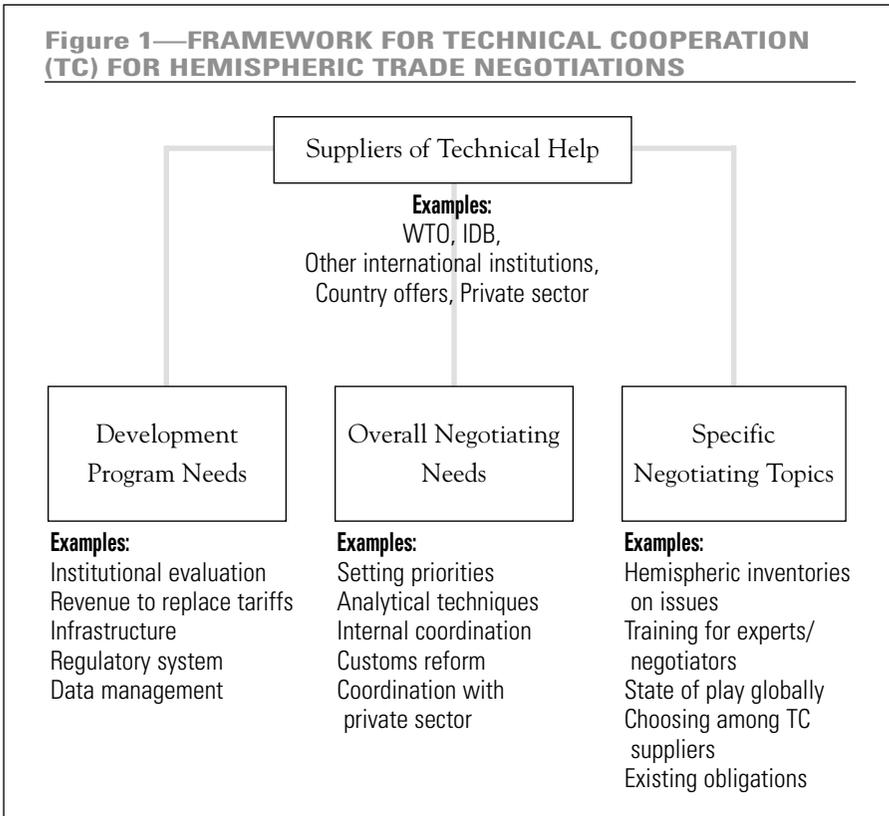
Providers of assistance and training to help the LAC countries get ready for free-trade negotiations should include not just international trade agencies, but

also institutions more directly concerned with overall national development. In addition, the persons being trained should not come exclusively from trade agencies.

This requirement has already been recognized at the hemispheric and international level. The IDB has a proposed line of credit for sectoral investment and technical cooperation for trade development which envisages assistance for institutional evaluation and diagnosis, as well as training for trade negotiations. This line of credit would be extended on a fast-track basis and be reimbursable. The diagnosis would include evaluation of the capacity (human and financial) of national institutions; the interaction among national institutions and between them and the private sector; examination of information systems in the country; and mechanisms to support trade development and diversification. While the specific line of credit is not yet operational, a number of countries have expressed interest in using regular IDB credits for the same purposes (see Figure 1). These countries include, as this is written, Argentina, Bolivia, Colombia, the Dominican Republic, and Uruguay. The design of the activities in each program will entail different levels of sophistication depending on the development situation of the country.

A combination of developmental, institutional, evaluative, and negotiating elements are incorporated in an ongoing IDB grant project to encourage

Figure 1—FRAMEWORK FOR TECHNICAL COOPERATION (TC) FOR HEMISPHERIC TRADE NEGOTIATIONS



Paraguay to participate more effectively in international trade negotiations. Among its objectives, the project trains nationals to set priorities for different aspects of trade negotiations, develop technical data bases, improve information dissemination and coordination among internal players, public and private, and train the trainers. The Paraguay project (TC-96-10-503) will extend over two years, whereas technical cooperation (TC) programs for trade of other institutions are short-term, from days to a few weeks. The IDB trade-related assistance program is clearly more ambitious.

Six international agencies have established an integrated framework to supply TC in trade. It includes three trade-related institutions: the WTO, the United Nations Conference on Trade and Development (UNCTAD), and the International Trade Center (ITC). In addition, it includes three financial/development institutions: the World Bank, the International Monetary Fund (IMF), and the United Nations Development Program (UNDP). Its program includes institution building to handle trade issues, development of “think-tank” capacity, seeking more effective coordination among relevant govern-

ment departments, and creating a regulatory and policy framework to encourage trade and investment. The integrated framework is intended to train officials in the least-developed countries and does not, therefore, include most of the LAC area. However, it envisages many elements similar to the proposed IDB credit line, although it is not as comprehensive or long term. The trade-related institutions, international and national, that engage in TC to enable developing countries to participate in trade negotiations quite naturally emphasize direct trade aspects. These include training nationals of the countries to negotiate, to analyze key sectors involved in the negotiations, to evaluate the impact of trade proposals, and to examine national laws and regulations that impinge on trade. Linkages between these institutions and national development programs, whether explicit (as in the integrated framework) or informal, are essential for a number of tasks. The IDB line of credit is noteworthy because it places responsibility for trade-related assistance directly in a development agency. Some trade issues which require participation by development agencies are as follows:

- Many LAC countries rely on tariff revenues to finance large segments of their budgets. Under FTAA, these revenues from intra-hemispheric trade will diminish during a transition period and then disappear. Assistance is needed in
 - devising alternative revenue-raising (tax) programs.
- Development policies that emphasize export growth are now the norm throughout the LAC region and require improved infrastructure and marketing facilities. Much funding for these needs will have to come from international development banks, and their participation in the TC program for the FTAA is therefore highly desirable.
- A number of LAC countries seeking trade assistance may have a comparative advantage for increasing the role of tourism as a foreign-exchange earner. To achieve this requires development of roads, airports, seaports, food supplies, health facilities, trained personnel, and more—and these needs should be considered alongside other trade-related issues.
- Suppliers of trade-related technical assistance often include training on devising or altering a regulatory structure to encourage trade and investment. However, the structure must extend to the encouragement of national development, which is not separable from trade outcomes.
- Investors are reluctant to risk their resources in countries with inadequate judicial structures, and many countries need assistance in this field. This surely is desirable in its own right.

- Efficient systems to obtain and manage data are essential for effective trade negotiation and to monitor trade developments, and offers of technical assistance for trade generally include this need. Many LAC countries need assistance for both hardware (computers) and software. These information management needs extend well beyond the trade area and should be considered in thinking about national development programs.

This is not a complete list of LAC needs for TC for national development programs that grow out of trade discussions. However, it makes clear that trade and trade-related TC by its very nature requires complementary assistance in related development fields, if the exercise is to be fruitful.

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OVERALL NEGOTIATING NEEDS

In February 1997, the Working Group on Smaller Economies (WGSE) identified country-by-country needs for technical assistance in the FTAA process. Several overall TC objectives (as distinct from specific negotiating requirements) show up repeatedly. These include training of officials to reform the customs service,

revise the tariff structure, strengthen export promotion and simplify export procedures, and develop or improve computerized information systems.

It is not necessarily easy to meet these basic needs because entrenched interests in existing customs services are reluctant to change old habits, let alone give up opportunities for illicit enrichment that might exist. A reorganized tariff structure is not just an administrative task, but a significant policy action. A less scattered structure of tariff rates or a drastic tariff reduction in the context of a trade negotiation may adversely affect many powerful interests.

In smaller economies the most urgent TC requirements often deal with institution building. Customs services are not the only institutions that may need reform; in fact, customs operations can be obtained by hiring private companies, as many smaller countries do. Personnel from trade ministries, which generally carry out the trade negotiations and then keep track of the resulting outcomes, need training. So, too, do officials from other agencies involved in activities that are part of modern trade negotiations; these cover such areas as investment, anti-monopoly measures, dispute settlement, the drafting of regulations, government procurement, complex sectors such as telecommunications and information technology, and so on.

As shown in this listing and in interviews conducted for this article, cross-agency coordination is perhaps the

biggest weakness in many countries engaged in trade negotiations and in carrying out resulting obligations. This shortcoming can affect countries with large or small economies and may be the most crucial institutional need for TCDC to address. Interviews and documentation used in preparing this report show that a host of pre-negotiation requirements cannot be met satisfactorily in many hemispheric countries without TC. Some specific needs which stand out are the following:

- Countries must establish negotiating priorities based on their national endowments and export opportunities.
- Small economies with limited human resources and negotiating leverage must decide which issues to concentrate on and which should get less attention because the outcomes will have little effect on their economies.
- They must know in some detail the obligations they already have undertaken in prior negotiations, whether bilaterally, sub-regionally, or in the WTO.
- They must determine whether they are complying with existing obligations before they take on new ones.

Meeting this brief list of pre-negotiation requirements involves considerable introspection in countries. It means confronting internal political, economic, and legal issues: who benefits from the

priorities selected; what internal monopolies may exist that impede carrying out past obligations or taking on new ones; what laws and regulations may have to be altered and how likely is it that these changes can be made; who are the losers as border protection declines.

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Opportunities exist to meet most of the training demands discussed here, though it less clear whether the depth of most current training is adequate. Countries themselves must set policy and determine the internal political limits that exist, but assistance can help make such determinations more professional. The WTO has a range of seminars, workshops, technical missions, briefings, legal assistance, and TC in specific areas and general policy, and there is financing for this TC to a large extent. UNCTAD offers TC to help developing countries analyze policy options, formulate and implement trade-policy decisions, understand the trade policies of industrial countries and how these affect developing countries, and adapt national trade laws and institutions to meet international obligations. Here, too, financing is generally available. Many bilateral pro-

grams also provide this kind of pre-negotiation assistance. Officials from developing countries are sometimes unaware of TC opportunities and how to access the financing being offered. These problems should be reduced as the supply inventory is completed and updated.

Training in negotiation itself is the pre-negotiation TC need most often mentioned by officials from countries with small economies who have limited trade-negotiation experience, especially in such wide-ranging negotiation as the FTAA. Some training is feasible and can help, but experience is surely the best teacher—learning from the very process itself. Much of the TC will have to be in specific aspects of the FTAA negotiating groups, and this may best be provided to experts or technicians who advise the negotiators.

What is most needed in the current stage of the FTAA is to identify these technical needs according to each country's definition of priorities. Inexperienced negotiators and their technical counterparts can get a reasonable idea of what they must know from looking at patterns in existing sub-regional agreements, such as NAFTA and MERCOSUR. FTAA will not be a carbon copy of these agreements, but they are good models of what is involved in the negotiations.

SPECIFIC NEEDS

The main TC response to the development program needs and overall negotiating needs described above is "training" to empower individuals to be more effective

in negotiations over a longer period. For immediate specific needs, however, the appropriate response is "technical assistance" for analyzing and acting on individual issues in FTAA intergovernmental preparations and direct negotiations. There are certain TC needs which cut across all negotiating groups, and other needs arise specifically for each negotiating group established for the FTAA.

Much public discussion about FTAA focuses on the negotiating difficulties stemming from the lack of presidential fast-track authority in the United States, the desire of Brazil to widen free trade in South America before moving full speed ahead on hemispheric free trade, and the current economic uncertainty in Brazil and its possible effects on other LAC countries. While such commentary is legitimate, it ignores the very nature of this historic effort in hemisphere affairs. There have been other proposals in the past in favor of hemispheric unity. But these have been either appeals for hemispheric solidarity in the spirit of Simón Bolívar, despite the forces which pull countries apart, or efforts to achieve hegemony such as the United States' calls for hemispheric free trade in the last century. This time, when the hemispheric free-trade proposal was made, it was seen immediately as constructive, and two summit meetings of heads of state and government ratified the proposal as being feasible.

There are two reasons for the change in attitude: development policy in LAC

has changed to emphasize the promotion of exports; and the country making the hemispheric free-trade proposal, the United States, is the most important market for LAC exports. The FTAA negotiations are taking place in a world of growing economic integration, as is evident in Western Europe and sub-regionally in the LAC area. A single free-trade undertaking in the Western Hemisphere would arrest the trend toward separate sub-regional arrangements, which complicate trade policies even as they augment trade among their members. A hemisphere of a single open market at a time when almost all the countries advocate export expansion is a worthy objective, and this explains why it has garnered so much support in the entire region.

In past trade rounds, particularly those at global level, negotiations were essentially among major industrial powers—the United States, the European Union, and Japan. Smaller economies had little say about the end results, but this time they are part of the process. Technical cooperation is designed to make them more effective in this role and not to exclude them. The negotiations represent a significant opportunity for them and for the hemisphere as a whole. It is this point—and not the negotiating complexities—that deserves most emphasis.

Some cross-cutting negotiating issues

Many preliminary negotiating matters have been and are being attended to. As

shown in the table below, the three Tripartite Committee institutions supporting the FTAA negotiations have pulled together or are updating a number of inventories on trade-related issues, and studies have been requested on other issues. As a result, most countries of the hemisphere are already better equipped for their participation in this negotiation, despite its large scope, than they were for past negotiations.

Other aspects cut across all the negotiating groups, some of which could benefit from TC. These include the following:

Private sector consultations. All developed countries have organized arrangements for trade negotiators to consult regularly with the private sector, both generally and specifically, about what private business wants to obtain and to protect in the negotiations. This is required by statute in the United States. The Mexican authorities built up an elaborate sectoral structure to do this in the NAFTA negotiations. Guidance on how to best carry out substantive interchanges between the trade negotiators and interested private-sector groups should be part of the TC effort.

Lead negotiator. Normal practice in most countries is to designate a lead person for the conduct of negotiations. Positions on sectoral and functional matters all pass through this lead negotiator, who also must assure proper inter-agency coordination back home. Personnel from different agencies may take the lead in specific negotiating groups—

treasury for financial issues, agriculture in its field, justice on competition issues, and so on—but under general supervision of the lead negotiator. The relevant TC in this instance would be on the organization of negotiating teams for the FTAA. (When the team consists of one person, this obviously is not relevant.)

Evolving negotiating positions. In organizing for the down-to-earth bargaining, countries must formulate their positions, negotiating group by negotiating group. Practiced negotiators think not only about opening positions, but also about the end game. The starting points will be modified in the course of the negotiations, and a major aspect of any negotiation is to understand the limits of compromise for the country, and to understand what changes in laws and regulations may be required at that point. This TC closely relates to assistance in formulating the role of the trade

negotiation in accomplishing broader development objectives.

Flexibility for smaller economies. It is unlikely, by the nature of hemispheric negotiation, that the more developed countries will provide explicit tariff or nontariff preferences to countries that are less developed. The main area of flexibility to favor countries with smaller economies will be the transition to free trade—different time frames for transitions, the exceptions to free trade permitted during that period, discrimination that may be inherent during the transition as a result of existing preferences in subregional arrangements, and related issues. Smaller economies, and perhaps some larger ones as well, will need guidance in this significant area.

Trade remedies. The question of trade remedies will concern all participating countries in each negotiating group. International institutions dedicated to trade

PREPARATORY STEPS PRIOR TO NEGOTIATION

Inventories on:

Structure and nature of tariff schedules
Trade impediments in agriculture (tariffs, nontariff measures, and subsidies)
Sanitary and phytosanitary standards
Antidumping and countervailing duties
Investment policies
National laws and regulations on competition policy
Measures affecting trade in services
Government procurement procedures

Studies requested on:

Effects of economic integration on small and medium enterprises (SMEs)
Fiscal dependence and trade liberalization
Relationship between trade and financial liberalization
Significance of financial issues for smaller countries
Implications of growing electronic commerce for different countries

issues—mainly the WTO—have considerable expertise in this area and can advise on how countries have exercised trade remedies and what is consistent (or inconsistent) with the obligations undertaken.

Worker rights and environment.

The participating countries have agreed to renew their commitments to observe internationally recognized worker rights and to make their trade liberalization and environmental policies mutually supportive. Precisely how to link these issues is controversial, and resolving countries' differing viewpoints is probably impossible. Nevertheless, it is important that countries be aware of the range of views on these issues. Perhaps public and private, national and international organizations which have experience in managing the different viewpoints can share it with negotiators who do not.

Individual negotiating groups

In nine negotiating groups set up for the FTAA negotiations, there are needs and possibilities for technical cooperation, as follows.

Market access. If any negotiating group can be singled out for its overall importance for the FTAA negotiations, it is the Negotiating Group on Market Access (NGMA). The elements it covers include tariffs and nontariff measures; customs procedures; rules of origin; and standards and technical barriers to trade. These are the most important areas for which many hemispheric countries must upgrade their computer equipment, mas-

ter information management, establish data bases, and learn how to evaluate the effects of the trade negotiations on their overall economic development and on trade and investment in those areas most important for their economies.

NGMA's report on its second meeting referred to updating the hemispheric data base; the method and timetables for tariff elimination and the approach to tariff elimination; identification of other measures that affect applied tariffs, such as customs surcharges and other fees; the identification and analysis of special regimes; notifications of customs procedures applied under preferential sub-regional agreements; safeguarding of regimes under these preferential, sub-regional agreements; identification of nontariff measures subject to negotiation; elements of the rules of origin; and identification and elimination of unnecessary technical barriers to trade. One way to deal with standards and technical regulations is to devise mutual recognition agreements (MRAs) in the Western Hemisphere.¹

The central objective of a free-trade negotiation is to identify and eliminate barriers to trade, particularly those implemented at the border (like tariffs and similar measures), and to specify when products are eligible for preferential, free-trade treatment (rules of origin). It is in precisely these areas, plus the use of allegedly technical standards to keep out competitive foreign goods, that most trade negotiation concen-

trates and NGMA must deal. A program of TC can be very valuable in such highly technical areas.

TC on market access issues is available from many international institutions, including workshops offered by the IDB through the Instituto para la Integración de América Latina y el Caribe (INTAL). INTAL also organizes courses in Tegucigalpa for Central American countries, including Belize and Panama, sponsored by the IDB and the Central American Bank for Economic Integration.

As a rule, these training sessions can only scratch the surface of the complex issues. In addition, considerable learning on market access themes occurred in the former working groups and now takes place in the negotiating groups for FTAA. The NGMA will have to rely heavily on the technical analyses requested from the Tripartite Committee. Individual countries with limited negotiating personnel may need to hire outside consultants experienced in the technicalities of rules of origin, setting of standards, mutual recognition agreements, and the like.

Perhaps the most important element of TC for the work of this negotiating group is the provision of equipment and training to set up information systems and to enable the country's officials to analyze the impact of the many proposals that will be forthcoming. The benefits of such assistance will not be confined to the NGMA, but this is a good place to start.

Agriculture. Liberalizing trade in agriculture has been less successful than in just about any other sector since GATT was formed after World War II. The tariffication of agricultural protection in the Uruguay Round, even though rates are generally high, was an important step in that it introduced more transparency in protection than had existed before. Nevertheless, the agriculture sector is replete with domestic support programs that lead to restrictions of competitive imports, tariff quotas and seasonal import duties to limit internal competition, and widespread export subsidies by developed countries that can afford them.

Sanitary and phytosanitary standards (SPS) to protect consumers are an essential ingredient in the agricultural field, but these, like technical standards generally, are subject to abuse for protectionist purposes. Various techniques for mutual recognition should also be part of the negotiations in this sector. Technical help for working these out will probably be essential. The training priority should probably focus on the technical personnel and then on facilitating communication between these experts and the negotiators.

In view of the great overlap between the Negotiating Groups on Agriculture and on Market Access, the two groups have mutual briefings on such aspects as customs procedures, data collection, tariffs and nontariff measures, and safeguards. The work of the NGAG also

overlaps to a great extent with that dealing with subsidies, antidumping, and countervailing duties.

The NGAG must deal with SPS and other technical issues not always evident to negotiators who are not steeped in domestic policies and international trade in agriculture. In this sector, seasonal duties are unique, tariff quotas are more prevalent, trade-distorting measures are more extensive (often hidden), and export subsidies (largely eliminated in other sectors) remain common. The search for transparency is particularly important in agricultural trade. One negotiating objective of developing countries in the FTAA negotiations is to eliminate export subsidies in agricultural trade in the hemisphere and keep out subsidized imports from outside the region. Other international organizations have worked out agricultural producer subsidy equivalents (for example, the Organization for Economic Cooperation and Development [OECD]), and this information should be available to the NGAG. All these points bring out how much the NGAG will have to look to the Tripartite Committee for background information.

Key TC needs for overall conduct of the negotiations are particularly relevant in this sector because agriculture has great importance in the life of the small and less-developed economies in the hemisphere and in their exports. These needs include TC in data gathering and management, in techniques to analyze

the significance of trade liberalization, and in penetrating the veil of complexity that typifies agricultural trade.

TC is particularly needed to help understand the sanitary and phytosanitary standards of each hemispheric country, particularly the more developed ones. Countries with substantial expertise in agriculture and SPS still need information on the practices in their major export markets, and those with only rudimentary knowledge of the intricacies of agricultural trade need help in this area as well. It may be that experts from Latin American countries with more advanced economies, and hence more experience in dealing in agricultural export markets, would be the best providers of technical assistance to the technical people from smaller economies.

Services. TC is needed for the negotiators to understand what already has been done in the services field in the WTO General Agreement on Trade in Services (GATS) and in the subregional agreements in the hemisphere, in LAC countries and in NAFTA. Negotiation of trade in services cuts across many sectors and therefore differs markedly from negotiation in a specific sector such as agriculture. Negotiating experience, both global and hemispheric, is less extensive for trade in services than for merchandise trade. Consequently, it is more difficult to specify the TC needs in the services negotiation than in many other groups because there is less certainty about where the services negotia-

tions will go. It is likely that the needs of participants in the Negotiating Group on Services (NGSV) will expand as the negotiations proceed.

Nevertheless, some TC needs already can be seen clearly. The services negotiations are certain to extend to international telecommunications, which is expanding at a phenomenal pace. Negotiators from just about all hemispheric countries, but particularly those with small economies, will need guidance on what the issues are in this field. As for trade in financial services, hemispheric countries have more experience, but here again fast-paced changes—particularly when combined with advances in communication technologies—mean that negotiators from most hemispheric countries need updating about current practices. Recent experience with weak banking structures leading to financial and economic turmoil highlights this need for deeper knowledge by negotiators and supporting experts. They also need to understand the position of their countries on the inflow of portfolio capital. Much the same can be said about the need for background information about transportation, inevitably an important issue in services negotiations. Much technical guidance in these areas can be provided by the Tripartite Committee, but it is unlikely to be able to do so without outside assistance. As in other fields, decisions must be made whether to give training priority to technical personnel or to the negotiators.

Trade in services is closely linked with foreign investment because many services can be provided only by persons transplanted from home countries to the countries in which the services are to be provided. This is true for such professional services as engineering, architecture, law, and accounting. Providing communication services requires vast investment as well as transplanted experts. Trade in financial services is increasingly linked to ownership of foreign financial institutions, whether commercial banks, investment banks, or insurance companies. The growth in tourism has been accompanied by foreign ownership of hotels and other facilities.

In the first instance, what is needed to conduct negotiations for trade in service is background information. This includes: what are country obligations stemming from the Uruguay Round; what obligations are included in the various sub-regional integration agreements; what are the technical requirements for negotiating in information technology, communications, finance; what are the opportunities and pitfalls of opening electronic commerce more widely?

The negotiators in the NGSV have recognized their need for more background information. This is reflected in their requests to the agencies of the Tripartite Committee, as well as in the matrices they have been compiling about possible subjects for negotiation and the many suggestions being made by participating countries. The participants

from small economies undoubtedly need this background information because the economic futures of many of their countries are closely tied to the ability to export a variety of services. The TC needs will expand and become clearer as negotiations proceed.

Government procurement. Many trade-negotiation veterans from both developed and developing countries in the hemisphere are edgy about how much progress can be made in the negotiating group on government procurement (NGGP). There are a number of reasons for this: uncertainty about the extent of government procurement in different countries; ambiguity about national procedures; the built-in incentives for bribery by bidders and self-enrichment (corruption) of decision-makers; and the power of entrenched interests accustomed to national favoritism in letting out government contracts. Aware of these problems, NGGP participants are asking the Tripartite Committee for comprehensive documentation about the extent of government procurement, areas of commonality and divergence in the various country programs, and the nature of classification systems in reporting on government procurement by LAC countries and their compatibility with international systems.

Beyond these initial information needs, assistance is also required in identifying the relevant laws and regulations with respect to government procurement. What conditions exist for transparency,

how much advance notification is given potential suppliers, are there conditions forcing multiple bidding, what is the ability of decision-makers to bypass these requirements in making awards, how extensive is public information when awards are granted—these are among the issues that need to be examined. Another question—how extensively are electronic systems used in the process—once again brings up the need for updating computer and informational systems if the LAC countries are to take maximum advantage of the FTAA process.

Confining bidding for government procurement contracts to national companies has a long and notorious history. Even when national exclusivity is not required, many countries provide incentives to national bidders—because they are small in size, or are minority owned, or come from backward regions, or promise to hire more workers, or whatever. These features are not confined to the developing countries, but are embedded in practices of industrial countries. They exist in federal systems at the national and state/provincial levels, and are prevalent at the municipal level. In other words, favoritism of this type is a common political feature of government procurement practice across the world.

The shortcoming of this favoritism, of these politically motivated government expenditures, is that governments—and therefore taxpayers as a whole—are not optimizing their expenditures. Because government procurement can be exten-

sive, the discrimination against non-nationals is a powerful nontariff barrier. Past negotiations have recognized this, but countries also demonstrated that they were unwilling to open government procurement completely. The more common practice is to open the process for some government-owned entities, but not for others. To the extent that this is done, negotiators must have substantial knowledge about the practices not just of governments, but of government-owned operations. In other words, the informational needs must go beyond global numbers in order to include meaningful breakdowns by entities.

TC will not eliminate the political character of government procurement, but it can help make this more transparent to foreigners and nationals alike. Successful negotiation to liberalize these activities requires transparency, and this is where TC can play an important role.

Investment. A transformation in thinking has taken place in the LAC countries about receptivity to foreign direct investment (FDI).² LAC countries generally resisted extensive FDI in the first three decades after World War II. They were concerned that if foreigners dominated large segments of their economic activity, national control and sovereignty would be compromised. FDI was not excluded, but was tolerated only on certain conditions: minority equity positions for foreigners, export and other performance requirements, insistence on using national courts to settle disputes,

and exclusions of foreigners from certain activities (usually energy, mining, and power generation and distribution).

This policy changed in most countries during the 1980s, when it became evident that foreign debt financing did not shield countries from turmoil and perhaps made it worse by leading to domestic bankruptcies and forcing governmental debt restructurings. This policy shift led to more open import markets and the desire to promote exports of goods and services. These objectives went together with seeking FDI because, unlike debt accumulation, the investors had an incentive to export as well as to penetrate the national market.

What occurred, therefore, was a search for FDI rather than mere toleration. The opening has never been complete; countries still reserve certain sectors for their governments and nationals, and many still seek assurance that the foreign investors will export and not focus exclusively on the domestic market. However, the change has been remarkable and took place quite rapidly during the "lost decade" of the 1980s. The active search to attract FDI has not been exclusive to the LAC area, but extends to developing countries generally and, indeed, to localities in industrial countries. One salient reality of the globalization phenomenon is that FDI has grown more rapidly over the past decade than the collective GDP of the world's economies. The internationalization of production, consequently, has increased.

The themes that the Negotiating Group on Investment (NGIN) must deal with reflect both the attitudinal change and the lingering aspects of nationalism. It is therefore not surprising that the NGIN must define such issues as they apply to FDI as national treatment, most-favored-nation treatment, fair and equitable treatment, expropriation and compensation, and compensation for losses. In addition, the negotiations will have to deal with such topics as performance requirements, admission of foreigners for technical and managerial positions, the nature of exceptions and reservations, the handling of transfer pricing between affiliated companies, and dispute settlement. These issues have historical antecedents and contemporary salience.

The informational needs go beyond those cited above. Countries need background on the nature and scope of the TRIMs (trade-related investment matters) agreement in the Uruguay Round and the extent of the obligations they have already committed themselves to. The nature of the investment provisions in the subregional integration agreements, both those of the LAC countries and those of NAFTA, must be set forth. Many countries have bilateral investment treaties (BITs), particularly with the United States, and the NGIN participants need to know about all of them and what rights and obligations they impose on the signatories. Information on the extent of FDI in the hemisphere must be kept up to date.³

Many international institutions have short courses on investment issues, but it is uncertain whether these are adequate. The WTO deals with the issue in connection with the contents of the TRIMs agreement, which, while useful, probably does not go far enough. OECD has short seminars which may be valuable—especially on the Multilateral Agreement on Investment (MAI) negotiations, now suspended—but insufficient. Much the same can be said for training by other institutions, such as the OAS, UNCTAD, INTAL, and the Economic System for Latin America (SELA). The more extensive IDB reimbursable credit programs, when instituted, should be detailed and extensive enough to correct the shortcomings of other courses. The secretariats of the subregional groupings in the LAC region have had much experience with investment issues and may be able to provide considerable information to their members.

Investment has only recently taken its place alongside trade as a major issue in international trade negotiations. The long delay is substantively surprising because the two really are inseparable in this age of globalization, but is historically understandable. The FTAA negotiators, particularly those who have had limited experience in investment negotiations, could well benefit from extensive technical help in this field.

Intellectual property. Protection of intellectual property—patents, copyrights, trade secrets—is one of the “new” themes

in international trade negotiations. The subject itself is far from new, but it took considerable effort by developed countries, particularly the United States, to put it on the agenda of international trade negotiations. The World Intellectual Property Organization was established in 1883 and became a specialized agency of the United Nations in 1974. Agreement was reached in the Uruguay Round on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Some agreements in the Uruguay Round were à la carte (i.e., countries could sign on at their own discretion), but TRIPs was not. Consequently, the rights and obligations of the TRIPs agreement apply to the hemispheric countries. It is therefore necessary to provide TC to assure that all the FTAA participants are briefed fully on their TRIPs obligations and are informed on how completely these are being met.

Considerable training is available on intellectual property rights (IPR). WTO and WIPO cooperatively enhance their legal-technical TC to developing countries relating to the TRIPs agreement. Article 67 of TRIPs itself requires that developed countries engage in financial and technical cooperation with developing countries at the request of the latter, on terms that are mutually agreeable. The training is apparently directed primarily at officials who work in IP offices in developing countries. This means that coordination between the negotiators and the experts, assuming they are separate persons, is essential in this field, as in many others.

Because IPR issues have substantial legal and technical content, many universities provide doctoral level training programs and offer specialized courses. While most of these are in developed countries, this university-level training is offered as well in Argentina, Colombia, and Venezuela. Many governmental and nongovernmental organizations, national and international, offer practical training on various aspects of IPR, and conferences on these issues are frequent.

The IPR issue has often been controversial in relations between developed countries, which generate most patents and copyrights, and developing countries, which are obligated to protect these rights. This has been true in the Western Hemisphere between the United States and LAC countries in the pharmaceutical sector in what can best be described as a classic conflict between countries where the research is done and those which seek low-cost medicines for their population. Conflicts arise as well in pirating of video tapes and compact disks.

The areas in which most information is needed for the FTAA negotiations, particularly for the less-developed and small countries, include full knowledge of their existing trade commitments; full knowledge of their own laws and regulations; an understanding of the requests likely to be made by the more developed countries, primarily but not exclusively the United States and Canada; and what changes in laws and regulations will be needed if more obligations are taken on

in the FTAA. The Negotiating Group on Intellectual Property (NGIP) can obtain some of this information, but by no means all, from inventories of country laws prepared by the institutions of the Tripartite Committee. They can also take advantage of Article 67 of the TRIPs agreement.

Countries also could use assistance in assessing their own IPR interests. It is not necessarily the case that only developed countries will make demands for IP protection and that only developing countries will be the recipients of these demands. Many small economies have their own IPR interests—for example, copyrights for music in which some of them excel. Others have unique textile designs for which they may wish to seek protection. A number of small countries—Ecuador, Jamaica, Nicaragua, and Trinidad and Tobago—have bilateral IPR agreements with the United States which go beyond the terms of TRIPs. Honduras and the United States are now negotiating an IPR agreement.

This issue has come a long way in a short time in trade negotiations, and it may be wise to provide TC to help the smaller countries take stock of where they are with respect to what is going on outside their borders and, therefore, what they should seek in the FTAA negotiations.

Subsidies, antidumping (AD) and countervailing duties (CVD). This negotiating group (NGADCV) must deal with an issue replete with conflict. This is because these measures, particu-

larly AD actions, are increasingly becoming the protective instrument of choice of many nations. Coupled with this, there are no simple solutions to the problem of AD and CVD actions. There may be somewhat more pay dirt in seeking to limit subsidies, but this issue was addressed in constructive fashion in the Uruguay Round. The NGADCV's work overlaps with that of other negotiating groups, such as market access, investment, agriculture, and competition policy, and coordination among them is necessary, as each group recognizes.

AD and CVD actions, within limits defined in the WTO and in regional free-trade agreements (FTAs), generally permit countries to enact and define their own laws and regulations. There are exceptions to this—for example, in the Australia–New Zealand Closer Economic Relations agreement, and potentially for AD actions in the Canada–Chile bilateral FTA. Canada, when it negotiated its FTA with the United States, sought to eliminate the use of AD measures by either country. This failed, but chapter 19 of that agreement (later incorporated in slightly modified form in NAFTA) authorized compulsory arbitration to determine if the country applying compensatory duties followed its own laws and procedures. This has worked reasonably well, but it requires a form of due process and transparency to permit review of exactly how AD actions were taken, and this degree of openness may not exist broadly in the laws of other

hemispheric countries. Mexico deliberately modified its laws in order to enter into this appeals arrangement.

The NGADCV has requested an updated inventory of AD and CVD measures taken in the hemisphere, as well as a compendium of AD and CVD legislation that exists. This is necessary background that the Tripartite Committee agencies can provide and keep current. The WTO provides training on its AD and CVD provisions and offers a broad framework to design model legislation. Hemispheric institutions, INTAL for one, provide short training sessions on AD/CVD and trade remedies in general. These are all useful, but by no means adequate.

As one interlocutor put it, most hemispheric countries dread petitions by U.S. companies for AD investigations and protection, but are unsure how to prevent these from happening. The simple answer that they should not dump is unsatisfactory because U.S. procedures defy simple interpretation. The United States may not be unique in this respect. Perhaps the best that can be provided in the way of TC is to make sure that trade officials of other hemispheric countries are familiar with the laws and practices in the U.S. and all countries. Workshops and seminars on these issues abound, and many law firms sponsor courses on new legislation in this field. One part of TC should be the establishment of a technique to keep trade officials informed of these meetings and, to the extent possible, to provide financing to participate.

Negotiations in the FTAA may revolve around the application of legal processes for imposing AD/CVD measures to see if there are ways to circumscribe the boundaries. If this is possible, the countries would need information on the boundaries that now exist in various countries. Law firms advise countries about the use of AD/CVD measures, sometimes in advance but more typically after a case is in play. This is a costly but necessary defense. Policy issues between countries often become intense, as they are now with respect to AD petitions in the United States against steel imported from Brazil, but these often become company-specific disputes rather than matters of high public policy that can be negotiated in a comprehensive way.

AD/CVD legislation is well entrenched in the United States. The use of these measures is becoming more frequent in other countries as well, and decades of effort to circumscribe them have had only modest effect. Yet there have been constructive modifications, as in the Canada-U.S. FTA and then in NAFTA. What this implies is that the effort to improve AD/CVD practice can have a payoff; and this, in turn, requires that hemispheric countries be well informed about the situation to make the negotiation meaningful.

Competition policy. A number of the negotiating groups are dealing with issues new to international trade negotiations—services, intellectual property

rights, investment, and to a large extent government procurement. The newest topic, however, is that handled by the Negotiating Group on Competition Policy (NGCP). Indeed, there is no accepted agreement of how to best get at the linkage between trade policy and competition policy. Most hemispheric countries, particularly the smaller ones, have no effective anti-monopoly and unfair-business-practice policies. Many that do (Brazil, Mexico, Venezuela) introduced them relatively recently and are still experimenting with how to make them work well. Even more economically advanced countries are conceptually unclear as to how the changing structure of private enterprise meshes with traditional anti-trust policies, as witness the recent U.S. lawsuit against Microsoft for allegedly monopolistic behavior. Defining monopoly in a fast-evolving, ever-changing industry like computer software may not be the same as it was in oil and steel earlier in the century.

It is not clear how the work of this FTAA negotiating group relates to concerns of countries with small economies, and studies have been requested on this theme. Differences in jurisprudence between countries under civil law systems and those under common law have to be understood and taken into account. There are legitimate concerns that monopolistic practices distort international trade. The mega-mergers taking place across national boundaries in such fields as telecommunications, banking,

insurance, power generation, and auto production raise fears about restraint of trade. Even if the way competition policy and trade should be linked is unclear, a hemispheric start is appropriate. In other words, this negotiating group has an unenviable task.

As with other working groups, the first requirement here is an updated inventory of national laws and practices, and this is being compiled by the OAS. The state of play in the WTO must be clarified to the negotiating group participants, and so too must any material relating to this subject in hemispheric agreements, particularly NAFTA. This is the learning stage for this negotiating group and, consequently, gathering of the necessary information and TC for officials involved in the negotiations are probably the most urgent tasks.

Much TC can take the form of sending relevant officials to international meetings on competition issues, something that requires information and financing. The U.S. Department of Justice and the Federal Trade Commission, which have responsibility for anti-trust (anti-monopoly) matters in the United States, accept foreign officials for brief, on-the-spot observation and participation in their activities. This is probably more useful for countries with large economies than with small ones. The Centro de Formación para la Integración Regional (CEFIR) in Montevideo offers short courses on the links between competition and other policies—e.g., those

dealing with regulation—plus practical training. INTAL, under the joint IDB–Central American Bank for Economic Integration technical assistance program, has a module in its training in Central America on defense of competition which provides a conceptual framework and analysis of some specific cases.

Dispute settlement. Disputes between trading partners will always arise, whether the countries are joined together in a trade integration arrangement or not. This is evident from the disputes that erupt between member countries of the subregional trading groups in the hemisphere. The existence of these groups, however, does provide an organized way to settle conflicts, and this is surely better than anarchy or settlement by the exercise of superior power by the stronger country. One purpose of an agreed dispute-settlement procedure is to minimize the practice of the powerful imposing a solution.

The Negotiating Group on Dispute Settlement (NGDS) has a relatively clearcut objective, but it must confront complex issues in achieving it. The working group must have considerable information on how other dispute-settlement mechanisms are working. Foremost among these, probably, is that in the WTO, which was strengthened in the Uruguay Round. Information on how the WTO has worked to settle disputes, the number and kinds of cases, who brought them, how they were or were not resolved, should be available to

the NGDS. The FTAA mechanism that is devised should be seen as an adjunct to that in the WTO. In addition, the working group should study the nature and functioning of the dispute-settlement mechanisms in the subregional integration agreements in the hemisphere because these can provide models of the thinking of hemispheric countries.

TC for dispute settlement is available from many sources. The WTO has short programs on its own dispute settlement procedures and can send a legal expert to any developing-country member which seeks help to settle a trade dispute.

Disputes will occur in the FTAA on issues other than trade per se. Investment disputes will arise, and the negotiating group on this subject is examining that. NAFTA has specific provisions dealing with investment disputes, and FTAA participants should be informed about how these work. Many conflicts arise from agricultural policies (such as food aid, subsidies), sanitary and phytosanitary standards, other standards and technical measures, environmental matters—indeed, across the board—and some of these disputes may need resolution techniques different from straightforward import restrictions. The training of hemispheric officials should lay out how the various kinds of disputes may require their own resolution procedures.

CONCLUSIONS

Hemispheric leaders deserve considerable kudos for seeking ways to equip all

LAC countries involved to participate effectively in the FTAA negotiations. This is a far cry from earlier multilateral trade negotiations, when the interests of countries with small economies were given short shrift.

Technical training and cooperation for a venture as ambitious as the FTAA must go well beyond the specific negotiating areas, as important as these are, and take into account how the trade negotiation outcomes will affect national development efforts. TC, therefore, starts at this national level and is best when it includes development institutions and experts as well as experts from trade institutions. Many TC needs transcend specific negotiating groups, involving cross-cutting trade issues, and these tend to be most in demand. They include help to devise information systems and learn techniques for analysis of the consequences of the trade bargains. There is a seamless web of needs for the smaller economies that starts at the national program level, includes the cross-cutting negotiating requirements, and then absorbs the explicit negotiating groups.

The stress has been on the smaller economies because that is where the TC needs are greatest. However, many coun-

tries with larger economies also need assistance in many technical areas—e.g., how to use pesticides in agricultural production without running into sanitary problems later, how to construct anti-monopoly institutions, or how to deal with the interplay between financial and trade liberalization. Such assistance, when requested, should also be forthcoming.

The FTAA is an ambitious exercise whose ultimate success is uncertain. Enabling full engagement by all participants, regardless of the size of the economy or past experience in trade negotiations, is a worthy endeavor. ■

N O T E S

- ¹ The OAS trade unit distributed several papers on this subject. See, for example, Sherry M. Stephenson, "Standards and the Regional Integration Process in the Western Hemisphere," OAS, November 1997.
- ² Portfolio investment negotiations may take place in the Negotiating Group on Investment as well as in the NGSV.
- ³ ECLAC submitted a report to the negotiating countries on "Direct Investment by the United States and Canada in Latin America and the Caribbean."