

Original: English

**FTAA - COMMITTEE OF GOVERNMENT REPRESENTATIVES ON THE PARTICIPATION  
 OF CIVIL SOCIETY**

**COVER SHEET**

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<b>Country (ies) / Region (s)</b>	The Hemisphere

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**ISSUES ADDRESSED** (Check all that apply)

Agriculture		Subsidies, Antidumping and Countervailing Duties	
<b>Competition Policy</b>	<b>x</b>	Civil Society	
Dispute Settlement		Electronic Commerce	
Government Procurement		Smaller Economies	
Intellectual Property Rights		The FTAA Process	
Investment		Other:	
Market Access			
Services			

**EXECUTIVE SUMMARY** – 2 pages maximum – (see Open Invitation):

## **AGREED RECOMMENDATIONS**

### ***1. The private sector and competition negotiation***

As competition policy affects the core of business practice, governments must carefully consider the recommendations of the private sector. Mechanisms should be developed to ensure the success and effectiveness of this consultative process. As a suggestion, the Americas Business Forum should be scheduled sufficiently in advance of the Ministerial meeting so that the recommendations of the private sector are thoroughly considered and discussed by negotiating governments. Further, experts from the private sector should assist government officials during the negotiation process.

### ***2. Process and framework of competition negotiation***

- a. The negotiation process under the FTAA should be transparent, non-discriminatory and horizontal throughout all negotiation groups. It should identify competition principles common to all FTAA member-countries. These principles would allow the establishment of criteria to identify business conduct that could negatively impact competition. Further, these principles should be in accordance with international and constitutional principles and norms.
- b. The hemispheric agreement should establish basic principles for fair competition in order to facilitate the negotiation process and enhance investors' security and certainty with respect to conducting business in the hemisphere. This agreement should take into consideration the various levels of development of the different economies.
- c. All FTAA countries should, before 2005, enact national legislation promoting competition and the enhancement of market access for all businesses. Such legislation should be transparent and non-discriminatory. Further, existing national legislation should be harmonized, reconciled and strengthened.
- d. FTAA member-countries should establish a legal and institutional framework at the national, sub-regional or regional levels to deal with anti-competitive trade practices with cross-border effects.
- e. Mechanisms that would facilitate and promote competition policy, with particular emphasis on small economies, should be developed to ensure compliance across the hemisphere. This objective could be achieved through technical cooperation within FTAA countries and organizations such as the OECD, UNCTAD, World Bank and different international competition policy agencies. Further, this will require the development of a competition culture throughout society, including the government.

### ***3. Implementation, cooperation and coordination with respect to competition policy***

- a. FTAA member-countries should be guided by policies that would restrain all forms of anti-competitive behavior.
- b. Given the horizontal nature of competition policy, all negotiation groups should co-ordinate their efforts with the Competition Policy Negotiation Group.
- c. Cooperation among FTAA member-countries would be facilitated via an effective exchange of information regarding the application and enforcement of competition rules. The sharing of experiences regarding the implementation of competition policy should achieve consensus in order to establish other modes of collaboration. Confidential Information should be safeguarded.
- d. Hemispheric databases that include a compilation of national laws, regulations and jurisprudence regarding competition policy in the western hemisphere should be disseminated to all participants in the FTAA process for an effective and constant exchange of information.

### ***4. Scope and focus of competition agreement***

- a. The hemispheric agreement should promote mechanisms for handling anti-competitive practices with cross-border effects within the hemisphere. These mechanisms should not affect national jurisdiction with respect to internal competition policy.
- b. The hemispheric agreement should consider issues related to the interaction between trade and competition policy. In this context, it is critical not to confuse unfair trade and competition laws.
- c. A priority under competition regulations should be the prohibition of agreements related to price fixing, market division, bid rigging, and output restriction. All other practices, such as predatory pricing, price discrimination or resale price maintenance should be deemed illegal only if a structural analysis of the market suggests that, in the particular case investigated, the anti-competitive effect outweighs the positive competitive benefits. Further, mechanisms should be created which clearly spell out the rules for mergers and acquisitions.

d. Monopolies and oligopolies whether public or private should be carefully examined to avoid anti-competitive behavior.

***5. Small Economies and Competition Policy***

In the context of small economies, competition policy should be examined, taking into account MFN treatment. Thus, countries with small economies may implement their competition policies gradually in accordance with their individual timetables.

***6. Consumer Protection and Competition Policy***

In the sixth Americas Business Forum which will be held in Buenos Aires, the competition Policy Negotiation Group should include in its agenda the issue of consumer protection.

**BUSINESS FACILITATION MEASURES**

All the recommendations of the workshop are aimed at facilitating business.

**AREAS OF DIVERGENCE**

All the recommendations were reached with full consensus. Thus, there are no areas of divergence.

Chair: Mercedes Araoz, Peru

Vice-Chair: Kenneth Gordon, Trinidad & Tobago

Rapporteur: Chadi A. Salloum, Canada

Vice-Rapporteur: Rogelio Rozas, Argentina