

***The Civil Society in the Americas: balance and  
perspective on an attempt to give it a place at the  
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Contributions from civil society to the global trade regime have clearly increased since the 1990's. This increase in approaches from civic organizations in the trade regime has flowed in part from the recent important growth in civil society across most of the world. This revolution generate a greater participation of the civil society's representatives as it was the case for example in Peru where the necessities of the population often were satisfied thanks to the work made by more than 110,621<sup>1</sup> private non profit organizations. Significant parts of this expanding civil society have involved transborder affiliations too. For example, only in the Americas the participation of transborder civic groups (e.g. professionals, human rights campaigners, etc) has been increased from 5,497 registered civil organizations in 1995<sup>2</sup> to a total of 5,521<sup>3</sup> for this year.

This "associational revolution" caused in the 1970s that the Economic and Social Council of the United Nations approved the Council resolution 1296 (XLIV) that established the dispositions concerning the consultative status of the NGOs. After this date, the Economic and Social Council of United Nations, his subsidiary bodies and others United Nations specialized agencies, established a series of mechanisms to give opportunity to the civil organizations to participate within the process of decision making considering their consultative status<sup>4</sup>. On the other hand, civil society's representatives have, since the 1990s, convened global meetings with regularity, for example alongside the Annual meetings of the World Bank and International Monetary Fund.

In the WTO trade system created after the Marrakesh agreement approved in 1994, we found an article which explicitly acknowledges interest and involvement by civil society in the trade liberalization process. Article V(2) of the Agreement establishing the WTO stipulates that the General Council should make "*appropriate arrangements for consultation and co-operation with*

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<sup>1</sup> See CYNTHIA SANBORN et. al., "Peru", in LESTER M. SALAMON et. al. (Eds), *Global civil society. Dimensions of the non-profit sector*, Maryland, The John Hopkins Center for Civil Society Studies, 1999, p. 446. For an extensive analysis about the non profit organizations labours in Peru during this last decade consult the paper prepared by ROSA MENDOZA & WALTER MELGAR, "*Las ONGDs y los retos de la globalizacion frente al siglo XXI: organizaciones de prestacion de servicios o promotoras del cambio social?*", (1999) 18 *Franja* 1, 3, document online: <<http://ekeko2.rcp.net.pe/escuela/articulos.shtml>>, (visited may 8, 2000).

<sup>2</sup> See UNION OF INTERNATIONAL ASSOCIATIONS, *Yearbook of International Organizations 1995/1996*, vol. 2, Munich, Saur, 1995, p. 1727.

<sup>3</sup> See UNION OF INTERNATIONAL ASSOCIATIONS, *Yearbook of International Organizations 1999/2000*, vol. 2, Munich, Saur, 1999, p. 1515.

<sup>4</sup> This participation of the organizations of the civil society in the process of the decision making is at the moment in process of overhaul after being approved the Council resolution 1996/31 in July 1996 (which superceded resolution 1296 (XLIV) of 23 May 1968).

*non governmental organizations"*<sup>5</sup>. In July 1996, the General Council of the WTO had already approved the Decision WT/L/162 establishing the formal guidelines for increased relations with non-governmental organizations. In this decision the WTO members recognizes the role that NGOs can play to increase the awareness of the public in respect of WTO activities and agree in this regard to improve transparency and develop communication with NGOs.

To achieve greater transparency, the members of WTO agreed to give more information about their activities. Two years later, in July 1998, the Director-General Renato Ruggiero announced new measures to improve contacts with the civil society. This WTO plan for cooperation with NGOs consisted to initiate a program of regular briefings for NGOs about the work of WTO committees and working groups<sup>6</sup>. Nevertheless, the WTO members considered "... *that is not be possible for NGOs to be directly involved in the work of the WTO or its meetings. Closer consultation and cooperation with NGOs can also be met constructively through appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making*"<sup>7</sup>.

At the regional level, a different situation arises as we will see further. Indeed, within the framework of FTAA process, the 34 countries which take part in this project have decided at the Summit of Miami held in 1994 to introduce some elements in order to make possible the civil society's participation in the decision-making process concerning the subject about trade liberalization and investment in the Americas.

In this context and before analyzing the place that civil society really has in the Americas trade agenda, we need to define the concept of "civil society". After that, we will be able to answer some questions concerning what the civil society wants to obtain with his participation on the FTAA process. At the same time, if this participation represents or not a danger for the progress of hemispheric negotiations? What are the prospects and problems that can be anticipated with the civil society participation? What is the point of view of Latin American governments, especially Peruvian government, about the role of civil society on the hemispheric agenda?

The most common way of presenting civil society is one that poses civil society as one of three sectors of the nation state, complementary to the government sector and the business sector. "Civil society" term is also identified with "NGOs" because this term refers to those organizations, which are non-governmental and non-profit. Thus civil society organizations are reduce to a broad collectivity of non-governmental, non-commercial, more or less formal organizations. In this order of ideas, Scholte and al. put forward this useful overview: "*[civil society] it encompasses, all those groups that, from outside official circles and firms (though sometimes closely linked with them), pursue objectives that relate explicitly to reinforcing or*

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<sup>5</sup> See WORLD TRADE ORGANIZATION, Agreement establishing the World Trade Organization, document online: WTO <<http://www.wto.org/wto/eol/e/pdf/04-wto.pdf>>, (visited may 8, 2000).

<sup>6</sup> See WORLD TRADE ORGANIZATION, "Ruggiero announces enhanced WTO Plan for cooperation with NGOs", WTO *Press Release* 107 dated 17 July 1998.

<sup>7</sup> See WORLD TRADE ORGANIZATION, *Guidelines for arrangements on relations with non-governmental organizations (NGOs)*, WT/L/162, 23 July 1996 Organization (96-2889).

altering existing rules, norms and/or deeper social structures"<sup>8</sup>. On the other hand, Cohen and Arato say: "[w]e understand civil society as a sphere of social interaction between economy and state, composed above all of the intimate sphere (specially the family), the sphere of associations (especially voluntary associations), social movements and forms of public communication"<sup>9</sup>.

In the present study, the "civil society" term refer us to those organizations who operate outside the state apparatus, that do not distribute profits and for whom citizens have absolute freedom to decide if they join them or not to to pursue common interests. This definition is in accordance which indicates with the one established by the 34 countries of the Americas in the "Plan of Action of Miami" that the civil society "is organized in various ways and sectors, including individuals, the private sector, labor, political parties, academic, and other non-governmental actors and organizations"<sup>10</sup>.

Having defined the concept of "civil society" that we will handle, we will analyze in the next section if the civil society has really its place in the hemispheric negotiations.

***The Free Trade Area of the Americas: does really exist an open door for the civil society participation in the decision making process?***

The idea to unify the nations of the Americas comes from the days of Simon Bolivar and the Pan American Congress of 1826. Bolivar never saw the advent of a unified America but more than a century and a half later, his vision for the hemisphere became reality with the Free Trade Area of the Americas(FTAA). The FTAA previous initiative can be found in the "Enterprise for the Americas Initiative" elaborated by former President Bush in 1990. The cornerstone of this initiative was the creation of a free trade zone stretching from the port of Anchorage (Alaska) to the Tierra del Fuego (Argentina). This Initiative aimed at building "more constructive relations in the Western Hemisphere and a more hopeful future"<sup>11</sup>. To achieve this goal the "Enterprise of the Americas Initiative" was based on three pillars actions: trade, investment and debt. The United States government designed this project to support Latin American countries in their efforts to carry out domestic economic reforms and international trade and investment liberalization.

Although it had received a great acceptance from Latin American and Caribbean countries, the initiative had to wait until 1994 to become reality. The preparation for negotiations of the FTAA began on December 1994 in Miami with the participation of 34 democracies in the Western Hemisphere -all countries except Cuba-. The hemisphere's Heads of State and Government of the Americas hosted by President Bill Clinton in Miami approved on this

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<sup>8</sup> See JAN AART SCHOLTE et. al., "The WTO and civil society", (1999) 33 *Journal of World Trade* 107, 109.

<sup>9</sup> See JEAN COHEN & ANDREW ARATO, *Civil society and political theory*, Boston, MIT Press, 1992, p. ix.

<sup>10</sup> See FREE TRADE OF THE AMERICAS, *Summit of the Americas. Plan of action*, document on line : <<http://www.sice.oas.org/ftaa/miami/sapoae.asp>>, (visited may 8 , 2000).

<sup>11</sup> See GEORGE BUSH, *Message to the Congress transmitting the Enterprise for the Americas Initiative Act of 1990*, September 14, 1990, document online: <<http://bushlibrary.tamu.edu/papers/1990/90091401.html>>, (visited may 9, 2000).

occasion a negotiating mechanism and an agenda that included a "**Declaration of Principles**" and a "**Plan of Action**".

The "**Declaration of Principles**" established four broad objectives and only one of them was trade related. The objectives were the following: 1) preserving and strengthening democracy in the Americas; 2) promoting prosperity through economic integration and free trade; 3) eradicating poverty and discrimination, and 4) assuring sustainable development while preserving the environment<sup>12</sup>.

With respect to the second objective, the 34 leaders affirmed that the FTAA would "*build on existing subregional and bilateral agreements in order to broaden and deepen hemispheric economic integration*"<sup>13</sup>.

If we look back to the first point, the 34 leaders of the Americas declared their interest about the civil society participation in all aspects of the hemispheric agenda. In this sense, they emphasized on "*the important contribution of individuals and associations in effective democratic government and in the enhancement of cooperation among the people of the Hemisphere*"<sup>14</sup>. Moreover, they said this would "...*facilitate fuller participation of our people in political, economic and social activity, in accordance with national legislation*"<sup>15</sup>. This recognition supposed an unprecedented opportunity for civil society participation in the hemispheric policy process and in the implementation and monitoring of international agreements.

In the "**Plan of Action**" elaborated during the Summit of Miami, the 34 leaders of the Americas deepened this subject. They established the necessity to have "[a] *strong and diverse civil society*"<sup>16</sup> to allow the existence of a greater transparency in the negotiations aiming at the creation of the FTAA. At the same time, they indicated that it was necessary to :

"- [r]eview the regulatory framework for non-governmental actors with a view to facilitating their operations and promoting their ability to receive funds. This review will emphasize the management and oversight of resources as well as transparency and the accountability to society of said actors;

- Take steps to improve the participation in social activities and initiatives of groups traditionally marginalized, including women, youth, indigenous people and the extremely poor;

- Exchange progress reports on activities in the civil society area at the 1996 Summit Conference on Sustainable Development in Bolivia;

- Consider the development by the IDB of a new Civil Society Program to encourage responsible and accountable philanthropy and civic engagement in public policy issues"<sup>17</sup>.

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<sup>12</sup> See FREE TRADE OF THE AMERICAS, *Summit of the Americas. Declaration of Principles*, document online: <[http://www.ftaa-alca.org/ministerials/miami\\_e.asp](http://www.ftaa-alca.org/ministerials/miami_e.asp)>, (visited may 10, 2000).

<sup>13</sup> See Miami Summit Declaration, op. cit. *supra* note 11.

<sup>14</sup> See id.

<sup>15</sup> Id.

<sup>16</sup> See FREE TRADE OF THE AMERICAS, op.cit. *supra* note 10

<sup>17</sup> Id.

Finally, in the section of the Plan dedicated to the environment, there were some indications about the need to promote citizen participation in all policymaking related to sustainable development activities.

The idea of promoting the civil society participation in the hemispheric agenda was conceived by the Government of the United States who considered interesting, in a democratic perspective, that the third sector participate actively in the FTAA process. According to Robin Rosenberg, Deputy Director of the North-South Center, "[t]he deliberate use of "participatory diplomacy" by the Bill Clinton administration in developing the Summit agenda,...and the agreement to incorporate the "Invigorating Society/Community Participation" initiative in the Summit Plan of Action have helped attract broader support for Summit initiatives"<sup>18</sup>. In addition, Richard E. Feinberg, principal architect of the Miami Summit of the Americas in 1994, indicated that "The US delegation argued that in the spirit of continuing the advances made following the Miami Summit regarding invigorating civil society, private sector interest groups and nongovernmental organizations should be consulted by governments in the formulation of positions on agenda items"<sup>19</sup>.

The idea to open the doors for the civil society's participation in the hemispheric agenda was not adopted by consensus by the countries participating in the Summit of Miami in 1994. Indeed, some Latin American countries expressed, during the previous consultations realized before the Miami's Summit, their disagreement with the strong language proposed in drafts by the United States. For these countries, some of the civil society organizations (CSOs) claimed to represent the people but sometimes it is not easy to verify if these organizations really represent their interests or if they rather represent the interests of some civil organizations from developed countries which have a strongly paternalist or protectionist attitude. According to Robin L. Rosenberg, the viewpoint defended by these countries reflects the "still uneasy relationship that exists between civil society and governments in the hemisphere"<sup>20</sup>.

The lack of consensus around the strengthening of civil society participation in the FTAA was again evident at the moment of debating what kind of mechanisms would be established to promote a real civil society's participation. The United States's proposal to create a social fund at the Inter-American Bank to have financial resources for the real implementation of these projects was not retained during the negotiations. It was rejected by both Mexico and Brazil, with the endorsement of the Peruvian government, who indicated that this proposal not to see the light of the day.

After the Summit of Miami and before the Summit of Santiago in 1998, the trade ministers of the 34 countries of the Americas gathered in Denver (1995), Cartagena (1996), Belo Horizonte (1997) and San José (1998). During these meetings, the CSOs took an active part, although in a disorganized way at the beginning, in the process of the FTAA. Some activists met

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<sup>18</sup> See ROBIN L. ROSENBERG, *Implementing the Summit of the Americas: Invigorating Civil Society participation*, Florida, North-South Center-University of Miami, 1998, p.1.

<sup>19</sup> See RICHARD E. FEINBERG, *Summitry in the Americas. A progress report*, Washington, Institute for International Economics, april 1997, pp. 192-193.

<sup>20</sup> See ROBIN L. ROSENBERG, *op. cit. supra* note 16, p. 2.

the representants of trade since the Denver's meeting in 1995<sup>21</sup>. But it is only in 1998, at the Fourth Western Hemisphere Trade Ministerial and Business Forum in San José (Costa Rica), where the possibilities of a civil society's participation started to take form.

We can find another example of the active participation of the CSOs in the FTAA process during the Summit of Bolivia on Sustainable Development carried out, in 1996. The initial purpose of the Summit was to define what was going to be the concept of sustainable development that the countries of the Americas would consider to accept. However this initial idea was pushed beyond the objectives and widened the Summit agenda. During this meeting, the CSOs found another interesting opportunity to participate in the FTAA decision-making process, especially because their host supported the civil society's participation. This environment of friendship towards the CSOs was reinforced by the efforts made by the World Resource Institute, a nongovernmental organization based in Washington, and the Bolivian government. With the authorization of Bolivian government, this organization set up a Technical Commission composed by environmental NGOs, government representatives and some others multilaterals organizations (IDB, WorldBank, OAS, etc.). This Technical Commission as well as the two mechanisms of participation that were created and also the support of the Bolivian Government determined that in the Bolivia Summit Conference, the civil society reached high levels of participation.

Later, during the Fourth Ministerial meeting in San Jose, the 34 Trade Ministers of the Americas formally established a Government Committee on Civil Society (GCCS)<sup>22</sup> besides the nine negotiating groups (market access; investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies, antidumping and countervailing duties; and competition policy). The idea to create the GCCS was proposed by the Canadian Trade Minister, Sergio Marchi who after intense negotiations achieved the creation of this group. This proposal, conceived to allow a real participation of the CSOs, was supported by United States, Argentina, Chile and some Caribbean countries. These countries, under the pression of the CSOs, expected the creation of a study group on labour and environment. Unfortunately Mexico, Peru and several Central American countries quickly rejected this idea. The Peruvian stance about this question can maybe be explained because in Peru, the "third sector" is still an elusive concept that has not gained sufficient recognition in policy circles.

The strong resistance to the Marchi's proposal had an important effect. The GCCS was only charged to receive inputs from CSOs (including the views of business, labor, consumers, environmental interests, academics and others), to analyze them and present the range of views for consideration by Ministers. This situation supposed that the CSOs could not provide their opinions directly to the FTAA process. Thus the GCCS works as a filter which excludes the viewpoints that are not in conformity with the guidelines approved by the governments in the Fourth Western Hemisphere Trade Ministerial. For Yasmine Shamsie, researcher of the Centre

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<sup>21</sup> See DORVAL BRUNELLE et CHRISTIAN DEBLOCK, *Les mouvements syndicaux et sociaux d'opposition à l'intégration économique par les marchés : de l'ALE à la ZLEA. Vers la constitution d'une Alliance sociale continentale*, document online <<http://www.unites.uqam.ca/gric/index.htm>>, (visited may 12, 2000).

<sup>22</sup> The 34 representatives also established a Consultative Group on Smaller Economies, a Trade Negotiations Committee (TNC) at the Vice-ministerial level, a Administrative Secretariat and the Joint Government-Private Sector Committe of Experts on Electronic Commerce.

for Research on Latin American and the Caribbean, this last stipulation "was to alleviate the concern of some officials that "non-trade issues" such as human rights, gender and poverty were being brought into the trade arena"<sup>23</sup>.

After the ministerial meeting in San José, the 34 Heads of State and Government of the Americas met for a second time in Santiago, on April 1998. To prepare the Summit of Santiago, the Chilean government gave to the Corporation PARTICIPA the mandate of elaborating a consultation process. This experience permitted the participation of some CSOs in the elaboration of the draft papers of the Declaracion and the Plan of Action of Santiago. However the CSOs who participated in this process were organizations that had shown their interest to work with their governments<sup>24</sup>.

### ***The Summit of Santiago: chronic of expectations failure announced?***

The achievements obtained during the Summits of Miami and Bolivia looking to facilitate the actively civil society's participation in the FTAA seemed to announce a greater opening. However, as we will see further, the events that occurred during the Summit of Santiago showed that great deal remains to be done.

During the Summit of Santiago, the governments of the Americas approved an agenda divided into four general headings: education, preserving and strengthening democracy and human rights, economic integration and free trade, and erratication of poverty and discrimination. In addition, the governments reiterated that the FTAA negotiations would be transparent in order to create the opportunities for a real participation by all countries. In this sense, they indicated that they would encourage "... all segments of civil society to participate in and contribute to the process in a constructive manner, through our respective mechanisms of dialogue and consultation and by presenting their views through the mechanism created in the FTAA negotiating process"<sup>25</sup>.

In the "***Plan of Action of Santiago***", the governments indicated again their interests to promote a real participation of civil society in the development of principles and recommendations for institutional frameworks. To achieve these goals, they entrusted the OAS to encourage support among Governments and CSOs to carry out this initiative and the IDB "to develop and implement, along with interested States and other inter-American institutions, hemispheric financial mechanisms specially devoted to the implementation of programs oriented toward strengthening civil society and public participation mechanisms"<sup>26</sup>.

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<sup>23</sup> See YASMINE SHAMSIE, *Engaging with Civil Society. Lessons from the OAS, FTAA and Summits of the Americas*, Ottawa, The North-South Institute Papers, January 2000, p. 15.

<sup>24</sup> In the Canadian case, we have for example the interesting work realized by FOCAL who was charged to organize a series of workshops around Canada. The results of these workshops were presented during this previous consultation.

<sup>25</sup> See FREE TRADE OF THE AMERICAS, Second Summit of the Americas. Santiago Declaration, document online: <[http://www.sice.oas.org/ftaa/santiago/sadop\\_e.asp](http://www.sice.oas.org/ftaa/santiago/sadop_e.asp)>, (visited may 5, 2000).

<sup>26</sup> See FREE TRADE OF THE AMERICAS, Second Summit of the Americas. Plan of Action, document online: <[http://www.sice.oas.org/ftaa/santiago/sapoa\\_e1.asp](http://www.sice.oas.org/ftaa/santiago/sapoa_e1.asp)>, (visited may 5, 2000).



Despite this compromise, it seems that the CSOs did not have a real participation in the decision-making process in Santiago. In words of the Leadership Council for Inter-American Summitry, the Santiago text "*seemed to shout down civil society...*"<sup>27</sup> because, according to his point of view, the Chilean government convened no private sector gatherings. The CSOs reacted by organizing a parallel and separate small Summit: "*People's Summit*". This summit took place a few days before the Summit of Santiago and gathered more than 2,000 representatives of the CSOs in the hemisphere. The CSOs went to Santiago to develop alternatives to the trade liberalization agenda and because the Santiago's Summit was the official launching of the FTAA negotiations. Participants at this current meeting included parliamentary and several national representatives from labour sector, indigenous people, rural producers, advocates for human rights, women's rights, social justice and the environment. However, this meeting did not have official links to the Santiago Summit and that is the reason why Santiago did not represent a significant progress for the civil society's participation.

Five days after intense negotiations in several parallel forums the "*People's Summit*" approved a Declaration in which they called for a hemispheric integration process that was socially just, ecologically sustainable and truly democratic. They also expressed their dissatisfaction with the FTAA process because it was focused only on the commercial aspects. Notwithstanding the efforts carried out by the CSOs during this Summit, the civil society was unable to influence directly in the hemispheric negotiations because everything was already completed. However, this gathering permitted that the CSOs decide to consolidate the "Hemispheric Social Alliance", a forum "*where progressive organizations and movements from around the Americas can gather, strategize, share information and plan joint actions process*"<sup>28</sup>.

In November 1<sup>st</sup>, 1998, seven months after the Santiago's Summit, the GCCS decided to establish a mechanism to receive inputs from CSOs<sup>29</sup>. They chose a mechanism consistent in a "*call for public comment*" from all sectors of society. This "*call for public comment*" adopted the form of an emailbox in the FTAA website that the governments publicized at the national level<sup>30</sup>. This open invitation was considered by most of the CSOs as an insufficient mechanism to invigorate the civil society's participation to the hemispheric process. On the contrary, others saw this opportunity as a first step to allow a real participation. The deadline for submissions was established on March 31, 1999.

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<sup>27</sup> See LEADERSHIP COUNCIL FOR INTER-AMERICAN SUMMITRY, *Mastering Summitry: An evaluation of the Santiago Summit of the Americas and its aftermath*, Policy report II, North-South publication, march 1999, p. 8

<sup>28</sup> See COMMON FRONTIERS CANADA, *Building a hemispheric social alliance in the Americas*, document online : <<http://www.web.net/comfront/cfhems.htm>> (visited may 17, 2000).

<sup>29</sup> During the first meeting of the FTAA Committee on Trade Negotiations held in June 1998, the delegates of the MERCOSUR (Brazil, Argentina, Uruguay and Paraguay) suggested the creation of a body similar to the bloc's Economic and Social Council, basically consisting of representatives of companies and trade unions. But this suggestion did not catch on among the others governments' delegates. See MARCELA VALENTE, Trade-Americas: Civil society fighting hard for inclusion in the FTAA, World News, June 22, 1998, document online: WORLD NEWS <[http://www.oneworld.org/ips2/june98/18\\_58\\_082.html](http://www.oneworld.org/ips2/june98/18_58_082.html)>, (visited may 15, 2000).

<sup>30</sup> For an interesting article concerning the viewpoint of the CSOs about the mechanisms adopted by the parties of the FTAA see ANDRÉS SERBIN, "Alca y sociedad civil. Los obstáculos a la participación", (1999) 87/88 *Revista del Sur* 1, document online : REVISTA DEL SUR <<http://www.revistadelsur.org.uy/revista.087-088/Integracion2.html>>, (visited January 12, 2000).

In June 17, 1999, during their second meeting, the GCCS considered the submissions received. Only 72 submissions proposed by 96 organizations, from 16 countries of the Americas, were received by the GCCS. According to the report prepared by the GCCS in October 1999 for the Fifth trade ministers:

*"50% of submissions were submitted by organizations or individuals from the United States and Canada; 16% of submissions were received from organizations which identified themselves as "international", "Inter-American" or "Latin American"; 13% of submissions came from organizations or individuals from South America (7% were from Mercosur); 10% of submissions came from organizations or individuals from the Caribbean; 7% of submissions came from organizations or individuals from Central America; and 4% of submissions were received from organizations or individuals which identified themselves as subregional (Andean Community and Caricom)"<sup>31</sup>.*

Labour organizations, environmental organizations, academics and other organizations and individuals submitted the majority of these submissions. Only 32% of them were submitted by the business sector<sup>32</sup>. The submissions received by the GCCS concerned procedural matters as well substantives aspects related to the FTAA process.

With regards to the procedural matters, the submissions of the CSOs included transparency and timeless, civil society input, responses to input, standing and future status of the GCCS. In their submissions, the CSOs generally argued the necessity to promote a greater transparency and a real access to the ministerial meetings and to receive the same treatment as the one given to the business sector. Concerning the substantives matters, the CSOs submissions expressed different viewpoints and recommendations concerning worker rights, environment, investment, capital flows/financial architecture, dispute settlement, gender issues, government procurement, and general and miscellaneous issues. According to Michael Schmicht the "[w]orker rights and environmental protection in the FTAA trade pact were two issues most frequently mentioned".<sup>33</sup>

Although these submissions *"were not representative of civil society throughout the hemisphere"*<sup>34</sup>, the GCCS accepted them and prepared a report for the trade Ministers who would meet in November 1999. This report was discussed at the Fifth Ministerial Meeting in Toronto (Canada) on November 3-4, 1999. In Toronto, the trade Ministers of the Americas decided to initiate the writing of the documents which will be used as model of the final agreement. They also decided, after a long debate, to transform the GCCS into a permanent committee. This fact has a certain importance if we considered the great opposition of several Latin American countries as Mexico who considered that the civil society had already been given the opportunity to put forward his viewpoints at the time of the first *"call for public comment"*.

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<sup>31</sup> See GOVERNMENT COMMITTEE ON CIVIL SOCIETY, *Report of the FTAA Committee of government representatives on the participation of civil society*, FTAA/soc.03, November 1999, document online: FTAA <<http://www.ftaa-alca.org/spcomm/derdoc/cs3e.doc>>, (visited may 17, 2000).

<sup>32</sup> Twenty-four of the 72 submissions received were submitted by the business groups. See MICHAEL SCHMIDT, *A comparative analysis of citizen opinion on new rules for the Global Economy*, document online : NEW ECONOMY INFORMATION SERVICE <<http://www.newwcon.org/FTAA-Analysis.html>>, august 6, 1999 , (visited may 16, 2000).

<sup>33</sup> See MICHAEL SCHMIDT, *op.cit. supra* note 26, p .11.

<sup>34</sup> See GOVERNMENT COMMITTEE ON CIVIL SOCIETY, *op.cit. supra* note 30, p.1.

After debating the report prepared by the GCCS, the trade ministers decided "...to obtain ongoing input from civil society on trade matters relevant to the FTAA through written submissions, using the San José Declaration as the frame of reference, and to provide a report outlining the full range of views received for our consideration at our next meeting"<sup>35</sup>. In consideration of this mandate, and in order to obtain ongoing input from civil society, the GCCS open did on April 10, 2000 a second "call for public comment". The deadline for these submissions was established on September 30, 2000 and people would still have the focus on trade matters related to the FTAA process. To submit their comments, the CSOs had to use the Ministerial Declarations of San Jose and Toronto as the reference frame. As it can be observed, the subject of civil society's participation has been maintained utilizing always the same mechanism chosen after San José's meeting.

During the Fifth Americas Business Forum, more than 800 business leaders from the 34 countries of the Americas also discussed about the civil society participation in the FTAA process. For the first time since the Business Forum was created, the Peruvian business sector participated with an important delegation composed also by 28 representatives from the academic sector. This delegation named "ALCA/Peru Commission" was created in 1998. It was composed by more than 170 representatives from the academic and business sector who gathered periodically with the objective of analyzing the themes that were dealt by the nine FTAA negotiating groups. For this reason some representatives of the academic sector affirm that the ALCA/PERU Commission can be qualified as an interesting progress made by the Peruvian government in order to allow civil society's participation in the decision making-process. According to Raul Maravi Sumar, President of ALCA/Peru Commission, the Commission "was created for acting like an ad-honorem advisor group of the government and to facilitate the participation of the Peruvian civil society in the FTAA negotiations"<sup>36</sup>. Nevertheless, in our opinion, since the ALCA/Peru Commission does not include within its members some representatives of the labor sector, environmental organization and others groups who work closely with the citizens, it does not reflect the general will of the Peruvian civil society.

Finally, during the Toronto's meeting, the "Hemispheric Social Alliance" coordinated a parallel meeting named: "Our Americas: Towards a Peoples' Vision of the Hemisphere". This meeting was realized with the help of "Common Frontiers", a Canadian multi-sectoral working group. The "Hemispheric Social Alliance" prepared two papers: "Social Exclusion, Jobs, and Poverty in the Americas" and "Investment, Finance and Debt" which are an expression of their concerns and ideas about the liberalization of trade and investment in the hemisphere<sup>37</sup>. The strategy adopted by the "Hemispheric Social Alliance" consisted in not being presented as a coalition opposed to free trade, but rather as a civil transnational group acting to make pressure on the governments of Americas so that they enlarge the negotiations in progress up to a social program and do not limit these negotiations to areas, which would be only defined by the private and governmental actors.

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<sup>35</sup> See SUMMIT OF THE AMERICAS, Free trade of the Americas. Declaration of ministers, Toronto, 4 November 1999, document online : <[http://www.sice.oas.org/ftaa/toronto/minis/minis\\_e.asp](http://www.sice.oas.org/ftaa/toronto/minis/minis_e.asp)>, (visited may 8, 2000).

<sup>36</sup> See RAUL MARAVI SUMAR, ALCA, *evolución del proceso y perspectivas-Reflexiones de un Perú globalizado*, Comisión ALCA/PERU, document online : <http://www.camaralima.org.pe/alcaperu/doc1.htm>, (visited may 4, 2000).

<sup>37</sup> See HEMISPHERIC SOCIAL ALLIANCE, *Americas civil society Forum documents*, document online : COMMON FRONTIERS <<http://www.web.net/comfront/forumdocs.htm>>, (visited may 12, 2000).

At the end of the Fifth Business Forum, the participants presented a summary of their reflexions about the policy matters and hemispheric business priorities related to the FTAA process. They also prepared a summary on commerce and the civil society in the new millennium. In this summary, they concluded that the business sector have to adopt a more active role *"in civil society issues and an approach based on consensus building where momentum is built on basic issues before moving towards more complex problems"*<sup>38</sup>. In addition, the leaders of the business sector considered necessary that the parties establish a consensus and dialogue with the representatives of the CSOs in order to create more fair societies in the Americas. However, in our viewpoint, the business sector did not propose concrete mechanisms to facilitate a real participation of the third sector.

After the fifth ministerial meeting and so as to prepare the next Ministerial meeting that will be carried out in Buenos Aires in april 2001, the GCCS met this year in march. According to their calendar of activities, the GCCS will have to meet four times more until December 2000 to discuss and analyze the inputs that will be received from the CSOs. During the first meeting held in March 2000, the representatives of the 34 countries of the Americas approved a new open invitation that we did refer to some paragraphs before.

After studying the evolution of the civil society's participation to the FTAA negotiations, let us now consider what does the civil society want to obtain as a result of their participation in the FTAA decision-making process and if their goal represents or not a danger for the progress of the negotiations. Finally, we will expose the reasons that explain the current situation in the FTAA process.

***Claiming the "call for public comment" mechanism: what does the civil society really want to obtain?***

On several occasions, the CSOs have indicated that the free trade process in the Americas will have considerable effects in the areas of environment, labour, trade, development, democracy, human rights, health and women's rights. For this reason, according to their viewpoint, it is necessary that the decisions made by the governments within the FTAA's negotiation framework were discussed beforehand with them such as the business sector does at the moment<sup>39</sup>. The cornerstone of the CSOs's arguments is that what is really concerned in the FTAA project is the essence of democratic self-determination. Nevertheless, far from what some governmental representatives think, these groups are not necessary against the establishment of rules who support the free trade and investment at the regional and hemispheric level. On the contrary, these groups think that the free trade has allowed to reach some economics goals but the add now that the governments must considerate the social aspects of this liberalization.

Indeed, for a significant number of CSOs, the problem is not the free trade but rather the fact to not recognize the different levels of development in countries that take part in the FTAA process and to not allow in consequence that the countries apply some differents rules to

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<sup>38</sup> See FIFTH AMERICAS BUSINESS FORUM, *Commerce and civil society in the millennium*, Rapporteur's summary prepared by Laura Ritchie Dawson, Centre for Trade Policy and Law (Ottawa), document online: ABF CANADA <<http://www.abfcanada.com/english/rapporteur-plenary-4.pdf>>, (accessed: may 8, 2000).

<sup>39</sup> See YASMINE SHAMSIE, op.cit. *supra* note 23, p. 7.

facilitate a real integration of the Americas economies. This viewpoint has been object of great debates between the Americas countries that have chosen to introduce an effective mechanism that allow a civil society participation and those who limited this participation. The governments who chose not to allow a direct participation of the CSOs on the FTAA process did it because they considered that the viewpoint of these organizations hide the idea to maintain some protectionists measures opposed to the guiding principles of the future FTAA agreement.

This situation would explain why the solution adopted in the hemispheric context was an intermediate solution consisting only in a "*call for public comment*" concerning the trade aspect of the FTAA process. This mechanism was proposed by Mexico<sup>40</sup> and supported by Peru and some Central American countries because they considered that the social questions are initially and above all a domestic matter. Secondly, these questions are usually promoted by social groups and trade-unions neo-protectionists from the North. Consequently, these viewpoints can distort the FTAA decision-making process. In addition, they argued that their countries are in favour of an opening to the international markets but to open doors for these groups can erodes the intergovernmental nature of the process of trade liberalization.

In our view, this assertion is doubtful because it does not mention the fact that in these countries, the actors who are actively in favour of an increased liberalization come from the private and public sectors and the members of civil society organizations are much more divided on this question.

In the Peruvian case, for example, the government indicated that he is not opposed to civil society participation to the plans of development neither to the inclusion of the social questions. On the contrary, the government asserts to have been working for some time with a few organizations that work in different areas like the environment. In addition, for the Peruvian government, the civil society participation is said to be very important. In the words of Liliana Honorio, Peruvian advisor of the Vice-minister of trade, integration and international negotiation, the government wants to obtain a greater participation of the civil sector in the discussion concerning all of the FTAA themes and, in this direction, government will make all the necessary efforts<sup>41</sup>. Furthermore, according to the government viewpoint, the civil society participation in the process of decision-making is real especially if we consider that this one work narrowly with the business sector<sup>42</sup> at the Business forum. But what is done by the civil society organizations

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<sup>40</sup> The Mexican position vis-à-vis the civil society's participation remain strong but the assistant of Representing Trade of the United States, Peter Allgeier, estimates now that the Mexican position was softened. According to Mr. Allgeier, the result more surprising in Toronto's meeting was the agreement of 34 ministers of the Americas to publish the 74 submissions of civil society concerning the standard of work, the environment and the social question in relation about the FTAA process. The report prepared by the GCCS was the fruit of a collaboration between Mexico and the United States, the first having made a point of re-examining the terms used in the document.

<sup>41</sup> Written communication with Miss Liliana Honorio, Advisor of the Vice-minister of trade, integration and international negociation of Peru, by email dated May 23 and 25, 2000. In this communication, Ms Honorio talk us about the efforts that Peruvian government is doing in this sense after the Toronto's meeting.

<sup>42</sup> Some Peruvian academics consider that in Peru the civil society takes part in an active way within the framework of the work completed by the Alca/Peru Commission. See ALAN FAIRLIE REYNOSO, "En busca de la integración", (1998) 2268 *Revista Comercio y Producción* 1, document online : revista Comercio y Producción CAMARALIMA, <<http://www.camaralima.org.pe/revista/comintegra2268.html>>, (visited may 8, 2000).

from Peru which work, for example, on social questions?

According to the Vice-President of PLADES (Programa Laboral de Desarrollo), a Peruvian organization who participated within the "Hemispheric Social Alliance", the Peruvian government did not allow a real access to the civil society organizations who were interested to the labour, human rights and environment affairs. From his viewpoint, only the business sector had a mechanism to participate in the decision making process and the labour sector did not receive any invitation to participate in the workshops organized by the ALCA/PERU Commission. However, this situation did not prevent the representatives of the Peruvian civil society organizations like PLADES to participate to the activities realized by the networks of the CSOs of the hemisphere.

This divergence of viewpoints among the representatives of the government and the members of the third sector are explained, in our opinion, by the fact that this country does not have at the moment national and global projects that establish serious mechanisms of civil society participation. Added to this, we have to add equally the lack of transparency in the mechanisms of intermediation between civil society and the State and in the political institutions and practices. Upon this point, Francisco Sagasti and Max Hernandez think, "*Peru needs to design a National project, understood as a set of shared objectives, policies and actions for the long term*"<sup>43</sup>.

After having seen the different viewpoints of the government and some Peruvian CSOS, we will to explain the reasons why the Peruvian government acted like this.

It seems that the Peruvian government was mostly interested in receiving the support of the business sector<sup>44</sup> and the organizations that agreed with his viewpoint concerning the liberalization of the Peruvian trade and economy. This attitude may be explained by four reasons: first, the Peruvian government wishes to insert the Peruvian economy in the global context and that in the shortest time. Secondly, the Peruvian government thinks that only the elected representatives are legitimated to speak in the name of the civil society. Thirdly, it wants to avoid any confrontation with the political opposition. Finally, perhaps the government considers that the CSOs participation can erode the FTAA process. But is this last reason valid?

In our opinion, the point of view defended by Peru and other countries is not absolutely valid. First, because the contribution of the civil society can be positive in the sense that it will be able to enrich the work already made by the governments and the private sector. Finally, this participation could avoid any possibility that the FTAA does not arrive at good end because the civil society would have previously legitimized the mechanisms that would facilitate the integration of the Americas.

In our point of view the only risk involved with the civil society participation to the decision making process is to exceed the established date for the creation of the free trade area.

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<sup>43</sup> See FRANCISCO SAGASTI and MAX HERNANDEZ, *Agenda : Peru's and the perspective for democratic governance*, p. 7, document online : <<http://www.waw.be/sid/dev1996/sagasti.html>>, (visited may 07, 2000).

<sup>44</sup> According to the government, the civil society's participation in the FTAA decision-making process is already remarkable in Peru owing to the fact that the academic sector take an active part in the ALCA/Peru Commission who gather the academic, business and public Peruvian sectors.

The risk would exist because many of the CSOs do not count with technical knowledge and experience in the matter of negotiation. This inexperience could affect the objectives established by the representatives of the countries in the Americas.

## Conclusion

The participation of CSOs in the process of decision-making has become increasingly relevant on a global scale. More and more, citizens organize themselves to achieve common objectives such as development and equity. Civil society organizations have in the 1990s undertaken a multitude of initiatives to reinforce, reshape or replace existing rules of world trade. For this reason some international organizations have responded with a larger number of variety of overtures towards civil society. The United Nations and his specialized agencies, for example, established a serie of mechanisms to open the doors to the civil society participation. On the other hand, in the trade system created by the Marrakesh agreement, the members of the WTO approved some mechanisms to include the subject of the civil society participation in decision-making process. In spite of the efforts made, the results are still modest and the representatives of the civil society which have access to the WTO works are especially from the business sector. It is for this reason that at the ministerial meeting carried out in Seattle last december, several organizations representing the interests of consumers, workers and engaged associations in the social questions raised their protestation voice.

At the hemispheric level, the door to the CSOs has been open in December 1994 when the Summit of Miami took place. On this occasion, the 34 countries of the Americas approved and promulgated a "*Declaration of Principles*" and a "*Plan of Action*". This last document stated the need to establish a strong and diverse civil society in order to allow a greater transparency in the FTAA negotiating process. These two instruments approved at the time of the Summit of Miami were completed subsequently in April 1998 during the Summit of Santiago.

Notwithstanding the will reinforce the civil society participation to the FTAA decision-making process, during the ministerial meetings realized between the two summits, this participation was not so favored. The CSOs participated despite that and prepared their strategy to ask the inclusion of labor and environmental themes into the negotiating process. They also prepared some documents expressing their wish to receive the same treatment that the one allowed to the business sector in the FTAA negotiating process. Unfortunately, despite these efforts and the interest expressed by the United States, Canada, Chili and other Latin America and Caribbean countries in order to establish some mechanisms to open the doors to the civil society participation and to include the social questions in the FTAA agenda, the parties have chosen an intermediary option.

The chosen mechanism was the "call for public comment" from all sectors of society which adopted the form of an mailbox that would be promoted by the 34 countries in their territory. This choice displaid the different approaches concerning the place that one must recognize to the civil society in the FTAA integration process. The submissions received by the GCCS during this "*call for public comment*" were not numerous and came mostly from North American organizations and individuals. According to the data list made by Michael Schmidt, 25% of the submissions came from the business sector. Environmental, labor and academic groups submitted the others one and for this reason the viewpoints received by the GCCS do not necessarily represent the point of view of the civil society of the Americas.

During the Toronto's meeting, the GCCS almost disappeared but according to Peter Allgeier, this possibility never came to reality because Mexico decided to soften its position concerning the civil society's participation. This attitude has surprised the majority of observers. Indeed, Mexico accepted finally to prepare with the United States the report which was going to be made public in the website of the FTAA.

The new approach of Mexico vis-a-vis this question represents, in our opinion, a great advisability for the defenders of the cause of the civil society to find some possibilities to reinforce the participation of this sector. Especially because a larger opening to the civil society and the inclusion of social questions will facilitate certainly the development of the draft of the future free trade agreement of the Americas. With no doubt, the inclusion of the social questions such as the civil society request will allow more that the goals are reached for 2005.

In our opinion, if the Peruvian and other Latin American governments wish to achieve the free trade area in 2005, it is necessary that the civil society participation would be intensified. On the other hand, the governments will have to create mechanisms of participation for the representatives of the third sector, especially for the representatives of the labour and environment interests. Although that the participation of the business sector is already significant, it is necessary that the governments allow truly that the representatives of the civil society can express their viewpoints about the future free trade area, the rules which will be applicable and the social impacts that this agreement will have.

In addition, the civil society participation in the FTAA decision-making process is a subject very significant because the CSOs can stimulate the debate about the FTAA policies, particularly by offering alternative perspectives, methodologies and proposals. Civil society participation in the FTAA negotiating process can also provide channels through which stakeholders may have their views on trade issues and have those opinions relayed to nine negotiating groups. The civil society participation in the FTAA negotiating process can reverberate to have more general democratizing effects and play an important role in democratically legitimating FTAA goals.

In conclusion, the civil society participation to the FTAA negotiating process can have far-reaching consequences for the design and the operation of the trade regime in the hemisphere. Indeed, the softened of Mexican position can open the door to introduce later social and environmental themes on the agreement. Especially if we considered that although a few countries expressed their disagreement in this respect before they started to include on the negotiating agenda these files. Thus, we have the case of the efforts carried out by the members of the Andean Community and the MERCOSUR.