

THE FREE TRADE AREA OF THE AMERICAS

AND THE THREAT TO SOCIAL PROGRAMS, ENVIRONMENTAL SUSTAINABILITY AND SOCIAL JUSTICE IN CANADA AND THE AMERICAS

by Maude Barlow

SUMMARY

The Free Trade Area of the Americas (FTAA), currently being negotiated by 34 countries of the Americas, is intended by its architects to be the most far-reaching trade agreement in history. Although it is based on the model of the North American Free Trade Agreement (NAFTA), it goes far beyond NAFTA in its scope and power. The FTAA, as it now stands, would introduce into the Western Hemisphere all the disciplines of the proposed services agreement of the World Trade Organization (WTO) – the General Agreement on Trade in Services (GATS) – with the powers of the failed Multilateral Agreement on Investment (MAI), to create a new trade powerhouse with sweeping new authority over every aspect of life in Canada and the Americas.

The GATS, now being negotiated in Geneva, is mandated to liberalize the global trade in services, including all public programs, and gradually phase out all government "barriers" to international competition in the services sector. The Trade Negotiations Committee of the FTAA, led by Canada in the crucial formative months when the first draft was written, is proposing a similar, even expanded, services agreement in the hemispheric pact. It is also proposing to retain, and perhaps expand, the "investor-state" provisions of NAFTA, which give corporations unprecedented rights to pursue their trade interests through legally binding trade tribunals.

Combining these two powers into one agreement will give unequalled new rights to the transnational corporations of the hemisphere to compete for and even challenge every publicly funded service of its governments, including health care, education, social security, culture and environmental protection.

As well, the proposed FTAA contains new provisions on competition policy, government procurement, market access and dispute settlement that, together with the inclusion of services and investment, could remove the ability of all the governments of the Americas to create or maintain laws, standards and regulations to protect the health, safety and well-being of their citizens and the environment they share. Moreover, the FTAA negotiators appear to have chosen to emulate the WTO rather than NAFTA in key areas of standard-setting and dispute settlement, where the WTO rules are tougher.

Essentially, what the FTAA negotiators have done, urged on by the big business community in every country, is to take the most ambitious elements of every global trade and investment agreement – existing or proposed – and put them all together in this openly ambitious hemispheric pact.

Once again, as in former trade agreements like NAFTA and the WTO, this free trade agreement will contain no safeguards in the body of the text to protect workers, human rights, social security or health and environmental standards. Once again civil society and the majority of citizens who want a different kind of trade agreement have been excluded from the negotiations and will be shut out of the deliberations in Quebec City in April 2001.

However, the stakes for the peoples of the Americas have never been higher, and it appears a confrontation is inevitable.

What Is the FTAA?

The Free Trade Area of the Americas is the name given to the process of expanding the North American Free Trade Agreement (NAFTA) to all the other countries of the Western Hemisphere except Cuba. With a population of 800 million and a combined GDP of \$11 trillion (US), the FTAA would be the largest free trade zone in the world. If reports coming from the Negotiating Groups working on the key elements of the deal are correct, the FTAA will become the most far-reaching free trade agreement in the world, with a scope that will reach into every area of life for the citizens of the Americas.

The FTAA was launched by the leaders of 34 countries of North, Central and South America and the Caribbean at the December 1994 Summit of the Americas in Miami, Florida. At that meeting, then President Bill Clinton pledged to fulfil former President George Bush's dream of a free-trade agreement stretching from Anchorage to Tierra del Fuego, linking the economies of the hemisphere

as well as deepening social and political integration among the countries based on the same free-market model as NAFTA.

However, little real progress was made until the next Summit of the Americas, this one held in Santiago, Chile, in April 1998, at which time the countries set up a Trade Negotiations Committee (TNC), consisting of the vice ministers of trade from each country.

With support from a Tripartite Committee made up of the Inter-American Development Bank, the Organization of American States and the UN Economic Commission for Latin America and the Caribbean (ECLAC), nine Working Groups were established to deal with the major areas of negotiations: services; investment; government procurement; market access (covering tariffs, non-tariff measures, customs procedures, rules of origin, standards and technical barriers to trade); agriculture; intellectual property rights; subsidies, anti-dumping and countervailing duties; competition policy; and dispute settlement.

As well, three non-negotiating special committees were established to deal with the issues of smaller economies, civil society and electronic commerce. These committees and working groups have been meeting with increasing frequency throughout 1999 and 2000 and the early part of 2001, regularly bringing over 900 trade negotiators and mountains of material to Miami where most of the meetings take place.

From the beginning, the big corporations and their associations and lobby groups have been an integral part of the process. In the U.S., a variety of corporate committees advise the American negotiators and, under the Trade Advisory Committee system, over 500 corporate representatives have security clearance and access to FTAA negotiating documents. At the November 1999 ministerial meeting in Toronto, the Ministers of Trade of the Americas agreed to implement 20 "business facilitation measures" within the year in order to speed up customs integration.

One of the tasks of the negotiators is to compare and consolidate the key components of a variety of trade and investment agreements throughout the area, including:

- NAFTA – a free trade and investment agreement between Canada, the U.S. and Mexico
- MERCOSUR – a common market of the Southern Cone countries of Brazil, Argentina, Paraguay and Uruguay
- the Andean Pact
- Caricom – the Caribbean Community

As well, a number of Bilateral Investment Treaties (BITS) have been signed between individual countries, based on the "investor-state" model of NAFTA, whereby corporations can directly sue governments for alleged property rights violations without first involving their own governments.

There are some differences among these pacts and agreements; MERCOSUR's goal, for example, is to become a common market, whereas NAFTA has not attempted to establish common labour standards among its three members and the U.S. clearly would not tolerate the free movement of labour from Mexico. And MERCOSUR does contain some social provisions and programs for displaced workers that are absent from NAFTA.

But the similarities between these treaties far outweigh the differences. Both NAFTA and MERCOSUR include measures to deregulate foreign investment and grant national treatment (non-discriminatory) rights to foreign investors. Both prohibit "performance requirements" whereby foreign investment must enhance the local economy and support local workers.

And both are based on a model of trade and investment liberalization that locks in the Structural Adjustment Programs (SAPs) introduced earlier into Latin America by the World Bank and the International Monetary Fund (IMF). Under these programs, most developing countries were forced to

- abandon domestic industry in favour of transnational corporate interests
- turn their best agricultural lands over to export crops to pay off their national debt
- curtail public spending on social programs and abandon universal health care, education and social security programs
- deregulate their electricity, transportation, energy and natural resources sectors
- remove regulatory impediments to foreign investment

Tensions of leadership exist in the negotiations. Since 1995, the U.S. Administration has been unsuccessful in obtaining renewal for its "fast-track" legislation, which basically authorizes Congress to adopt free trade agreements in full. This has given Brazil, the undisputed economic leader in Latin America, the opportunity to challenge U.S. supremacy in the negotiations and bid to lead the process of economic integration of the Americas.

As well, the encroachment of the business community of the European Union into Latin America, especially in banking, telecommunications, automobiles and consumer products, has served as a catalyst for the United States to reassert its leadership in the hemisphere. The EU has been intensifying its presence in the region, negotiating individual free trade and investment agreements with countries such as Chile, Mexico and Brazil. The U.S. is counting on the successful completion of the FTAA to maintain the dominance of its corporate sector in the region.

Further pressure has been placed on obtaining a successful FTAA in the light of the defeat of the Multilateral Agreement on Investment (MAI) at the first ministerial meeting of the WTO in 1996 and at the Organization for Economic Cooperation and Development (OECD) in 1998, and the shut-down of the "Millennium Round" meeting of the WTO in Seattle in December 1999. In fact, WTO officials are finding it difficult to even secure a venue for a new Ministerial meeting. As well, APEC – the Asia Pacific Economic Cooperation Forum – is faltering and few have expectations that it will make the hoped-for breakthrough to become a free trade and investment zone.

Many trade observers and pundits have identified the FTAA as the natural heir of these failed projects and are fearful that another such failure could put the whole concept of these massive free trade agreements on the back burner for years. In fact, in a January 2000 statement, Associate United States Trade Representative Peter Allegeier said that the FTAA has taken on new importance after the fiasco in Seattle and may well aspire to go further than the WTO, freed of the need to play the deals off against one another.

The next ministerial-level Summit of the Americas is to be held in Quebec City in April 2001. At this Summit, leaders will be presented with a heavily bracketed first draft for a Free Trade Agreement of the Americas, out of which they will start to fashion a full text. The agreement was originally intended to be completed for implementation by 2005, but some countries, including Chile and the United States, are pushing to move the ratification date up to 2003, depending on how far negotiators get at the Quebec City Summit meeting.

What's in the FTAA?

Essentially, the planned FTAA is an expansion of the existing NAFTA, both in terms of including many new countries in the pact and in terms of extending free trade's reach into new sectors, based on tough new WTO provisions. In a statement that accompanied the original 1994 Miami Summit, the Ministers made a series of recommendations in the form of a Declaration. In it, they said that agreement had been reached on several key "Objectives and Principles," including:

- economic integration of the hemisphere
- promotion of the integration of capital markets
- consistency with the World Trade Organization (WTO)
- elimination of barriers and non-tariff barriers to trade
- elimination of agricultural export subsidies
- elimination of barriers to foreign investment
- a legal framework to protect investors and their investments
- enhanced government procurement measures
- new negotiations on the inclusion of services

Since then, information about just what is contained in the FTAA working documents has been sparse. However, from meetings with the United States Trade Representative's office, members of Public Citizen's Global Trade Watch report that the U.S. is intent on liberalizing services, including health care, education, environmental services and water services. As well, the FTAA will include provisions on investment similar to those in the defeated Multilateral Agreement on Investment and Chapter 11 of NAFTA, whereby corporations will be able to sue governments directly for lost profit resulting from the passage of laws designed to protect health and safety, working conditions or environmental standards.

The "Miami Group" – the U.S., Canada, Argentina and Chile – are also intent on forcing all countries of the Americas to accept biotechnology and genetically modified foods (GMOs), thereby promoting the interests of biotech companies such as Cargill, Monsanto and Archer Daniels Midland over the survival needs of small farmers, peasants and communities throughout Latin America. Finally, reports Public Citizen, the U.S. is trying to expand NAFTA's corporate protectionism rules on patents to the hemisphere, rules that give a company with a patent in one

country the monopoly marketing rights to the item throughout the region, thereby robbing local people of access to traditional medicines.

As well, reports from the negotiators themselves have inadvertently found their way into the public domain. An October 7, 1999 confidential report from the Negotiating Group on Services was recently leaked; it contains detailed plans for the services provisions of the FTAA. Sherri M. Stephenson, Deputy Director for Trade with the Organization of American States, prepared a paper for a March, 2000 trade conference in Dallas, Texas, in which she reported on the mandate and progress of the nine Working Groups by sector. FTAA Web sites and Canadian government documents contain important information as well.

Put together, these reports expose a plan to create the most far-reaching trade agreement ever negotiated. The combination of a whole new services agreement in the FTAA combined with the existing (and perhaps even extended) NAFTA investment provisions represent a whole new threat to every aspect of life for Canadians. This powerful combination will give transnational corporations of the hemisphere important new rights, even in the supposedly protected areas of health care, social security, education, environmental protection services, water delivery, culture, natural resource protection and all government services – federal, provincial and municipal.

Mandates of the Nine Negotiating Groups

1. Services

The mandate of the Negotiating Group on Services is massive: "To establish disciplines to progressively liberalize trade in services, so as to permit the achievement of a hemispheric free trade area under conditions of certainty and transparency" and to develop a framework "incorporating comprehensive rights and obligations in services." It is a new agreement and meant to be compatible with the General Agreement on Trade in Services (GATS) – the WTO services negotiations now in progress.

The General Agreement on Trade in Services was established in 1994, at the conclusion of the "Uruguay Round" of the GATT and was one of the trade agreements adopted for inclusion when the WTO was formed in 1995. Negotiations were to begin five years later with the view of "progressively raising the level of liberalization." These talks got under way as scheduled in February 2000, chaired by Canada's Ambassador to the WTO (and former International Trade Minister) Sergio Marchi. The common goal of Europe, the U.S. and Canada is to reach a general agreement by December 2002.

It is called a "multilateral framework agreement," which means that its broad commission was defined at its inception and then, through permanent negotiations, new sectors and rules are to be added.

Essentially, the GATS is mandated to restrict government actions in regards to services through a set of legally binding constraints backed up by WTO-enforced trade sanctions. Its most fundamental purpose is to constrain all levels of government in their delivery of services and to facilitate access to government contracts by transnational corporations in a multitude of areas, including health care, hospital care, home care, dental care, child care, elder care, education (primary, secondary and post-secondary), museums, libraries, law, social assistance, architecture, energy, water services, environmental protection services, real estate, insurance, tourism, postal services, transportation, publishing, broadcasting and many others.

The FTAA negotiating services agreement is even more sweeping than the GATS. As well as incorporating "comprehensive rights and obligations," it will apply to "all measures [defined by Canada as 'laws, rules, and other official regulatory acts'] affecting trade in services taken by governmental authorities at all levels of government." As well, it is intended to apply to "all measures affecting trade in services taken by non-governmental institutions at all levels of government when acting under powers conferred to them by government authorities."

The services agreement, says the Negotiating Group, should have "universal coverage of all service sectors." Governments are granted the right to "regulate" these services, but only in ways compatible with the "disciplines established in the context of the FTAA agreement." The framework of the services agreement has six elements of consensus.

These include:

- sectoral coverage ("universal coverage of all service sectors")
- most-favoured-nation treatment (access granted to investors/corporations from any one FTAA country must be granted to investors/corporations from all FTAA countries)
- national treatment (investors/corporations from all FTAA countries must be treated the same as domestic and local service providers)
- market access ("additional disciplines to address measures that restrict the ability of service providers to access markets")
- transparency (disciplines "making publicly available all relevant measures which may include among others, new laws, regulations, administrative guidelines, and international agreements adopted at all levels of government that affect trade in services")
- denial of benefits ("FTAA members should be able to deny the benefits of the services agreement to a service supplier that does not meet such criteria." Criteria could include "ownership, control, residency, and substantial business activities.")

This list represents sweeping new authorities of a trade agreement to overrule government regulation and grants huge new powers to service corporations under an expanded FTAA. For

instance, if national treatment rights in services are included in the FTAA, *all* public services at all levels of government would have to be opened up for competition from foreign for-profit service corporations. This agreement would disallow any government or sub-national government from preferential funding to domestic service providers in services as diverse as health care, child care, education, municipal services, libraries, culture, and sewer and water services.

The combination of this sweeping services agreement with the proposed extension of the investment rules grants unprecedented new powers to the FTAA and the private interests it promotes. For the first time in any international trade agreement, transnational service corporations will gain competitive rights to the full range of government service provisions and will have the right to sue any government that resists for financial compensation. That the real goal of this services/investment juggernaut is to reduce or destroy the ability of the governments of the hemisphere to provide publicly funded services (considered "monopolies" in the world of international trade) is seen clearly in the words of OAS Deputy Trade Director Stephenson:

"Since services do not face trade barriers in the form of border tariffs or taxes, market access is restricted through national regulations. *Thus the liberalization of trade in services implies modifications of national laws and regulations, which make these negotiations more difficult and more sensitive for governments.*"

The FTAA Negotiating Group on Services has requested the organization of national inventories of measures affecting (i.e., inhibiting) the free trade in services.

2. Investment

The mandate of the Negotiating Group on Investment is to establish "a fair and transparent legal framework to promote investment through the creation of a stable and predictable environment that protects the investor, his investment and related flows, without creating obstacles to investments from outside the hemisphere." It builds on the investment chapter of NAFTA, Chapter 11, which is, as legal trade expert Barry Appleton explains, "the very heart and soul of NAFTA."

NAFTA was the first international trade agreement in the world to allow a private interest, usually a corporation or an industry sector, to bypass its own government and, although it is not a signatory to the agreement, directly challenge the laws, policies and practices of another NAFTA government if these laws, policies and practices impinge on the established "rights" of the corporation in question. Chapter 11 gives the corporation the right to sue for compensation for lost current and future profit from government actions, no matter how legal these actions may be or for what purpose they have been taken.

Chapter 11 was successfully used by Virginia-based Ethyl Corp. to force the Canadian government to reverse its legislation banning the cross-border sale of its product, MMT, an additive to gasoline that has been banned in many countries and that Prime Minister Jean Chretien once called a "dangerous neurotoxin." S.D. Myers, an American PCB waste-disposal company, also successfully used a Chapter 11 threat to force Canada to reverse its ban on PCB exports – a ban Canada

undertook in compliance with the Basel Convention banning the transborder movement of hazardous waste – and successfully sued the Canadian government for \$50 million (US) in damages for business it lost while the short-lived ban was in place.

Sun Belt Water Inc. of Santa Barbara, California, is suing the Canadian government for \$14 billion because British Columbia banned the export of bulk water in 1993, thereby closing any opportunities for the company to get into the water-export business in that province.

The Negotiating Group on Investment has made substantial progress in including in the FTAA the same or enhanced investor-state rights that exist currently in NAFTA, including:

- basic definitions of investment and investor
- scope of application (very broad)
- national treatment (whereby no country can discriminate on behalf of its domestic sector)
- most-favoured-nation treatment (whereby access to investors from one FTAA country must be given to investors of all FTAA countries)
- expropriation and compensation for losses (whereby an "investor" or corporation can claim financial compensation for lost business and profit from the creation or implementation of regulation, including environmental laws, from the government of another NAFTA signatory)
- key personnel (the ability of corporations to move their professionals and technicians across borders outside of the normal immigration process)
- performance requirements (limits on or the elimination of a country's right to place performance requirements on foreign investment)
- dispute settlement (whereby a panel of appointed trade bureaucrats can override government legislation or force the government in question to pay compensation in order to maintain the legislation)

The inclusion of such sweeping investment provisions is a way of introducing a form of the Multilateral Agreement on Investment, a proposed OECD investment treaty that was abandoned in the face of massive civil society resistance, into the FTAA. Combined with proposed strengthened provisions on market access, agriculture and intellectual property rights and sweeping new proposed provisions on services and government procurement, these investment provisions will grant new powers to the corporations of the hemisphere. Such powers will allow them to challenge all government regulations and activities, and undermine the ability of all governments to provide social security and health protection to their citizens.

3. Government Procurement

The mandate of the Negotiating Group on Government is very clear: "To expand access to the government procurement markets of the FTAA countries" within a new agreement. This will be done by achieving a "normative framework that ensures openness and transparency of government procurement processes," ensuring "non-discrimination in government procurement" and "impartial and fair review for the resolution of procurement complaints."

This FTAA mandate on government procurement appears to go further than that of the FTAA's WTO counterpart, the WTO Agreement on Government Procurement, whose aim is to prevent governments from fostering domestic economic development when purchasing goods. Measures targeted by the WTO include favouring local or national suppliers, setting domestic content standards or imposing community investment rules. For now, the WTO does not enforce market access or national treatment rules on the purchase of direct government goods and services.

However, the FTAA Negotiating Group appears to go much further and open up *all* government contracts, services and goods to competitive bidding from other FTAA countries' corporations. The Negotiating Group has requested an inventory of the relevant international classification systems and a compilation of each government's procurement statistics.

4. Market Access

The mandate of the Negotiating Group on Market Access is to select a methodology and timetable for the elimination of all remaining tariffs and "non-tariff" barriers and agree upon the pace of tariff reduction. Tariffs are border taxes; under both NAFTA and the WTO, they have largely been eliminated in Canada and the Americas.

Non-tariff barriers are all the rules, policies and practices of governments, other than tariffs, that can impact on trade. Non-tariff barriers can potentially include everything governments do, including delivering services and protecting the health and safety of their citizens. Their inclusion in the mandate of this Negotiating Group expands the scope of NAFTA market access provisions considerably.

These provisions are expanded in another important way. Under NAFTA, market access is subject to national treatment. This means that imported goods coming into a country from another NAFTA country must be treated "no less favourably" than domestic goods. But national treatment in NAFTA did not extend to government procurement or to domestic subsidies and was applied to services only in a limited way. This protected most government programs from national treatment challenge.

Under the proposed FTAA rules, however, it appears that services will be covered more fully by the market access rules. As well, government procurement restrictions that allow governments to protect local providers will be more open to challenge from an expanded mandate of the government procurement provisions. And the ability of foreign for-profit service corporations to use

the national treatment provision to challenge government services monopolies will be greatly expanded under a proposed new agreement on services.

Further, the Negotiating Group on Market Access has also been charged with identifying and eliminating any unnecessary "technical barriers to trade" in line with the WTO.

The WTO Technical Barriers to Trade (TBT) Agreement is an international regime to harmonize environmental and other standards which effectively creates a ceiling but no floor for such regulation. Under its rules, a nation must be prepared to prove, if challenged, that its environmental and safety standards are both "necessary" and the "least trade restrictive" way to achieve the desired conservation goals, food safety or health standard. This means that a country bears the burden of proving a negative – that no other measure consistent with the WTO is reasonably available to protect environmental concerns. The WTO TBT Agreement also sets out an onerous procedural code for establishing new laws and regulations so arduous that it is very difficult for any nation to meet.

While there are provisions in NAFTA on technical standards, they are not as stringent as those found in the WTO TBT Agreement. NAFTA does require that technical barriers not constitute "an unnecessary obstacle to trade." However, NAFTA acknowledges the right of all parties to maintain standards and regulatory measures that result in a higher level of protection than would be achieved by measures based on international standards as long as they apply these standards in a way that does not discriminate between national and domestic goods. By choosing the stronger provisions of the WTO, FTAA negotiators have introduced tougher restrictions on the governments of the Americas and their right to regulate in the best interests of their citizens.

5. Agriculture

The mandate of the Negotiating Group on Agriculture is to eliminate agricultural export subsidies affecting trade in the hemisphere, based on the WTO's Agreement on Agriculture (AOA); "discipline" other trade-distorting agricultural practices; and ensure that "sanitary and phytosanitary measures" are not used as a disguised restriction to trade, using the WTO agreement as a model.

The FTAA's AOA agriculture provisions set rules on the trade in food and restrict domestic agriculture policy, down to the level of support for farmers, the ability to maintain emergency food stocks, set food safety rules and ensure food supply.

The WTO Agreement on the Application of Sanitary and Phytosanitary Standards (SPS) sets constraints on government policies relating to food safety and animal and plant health, from pesticides and biological contaminants to food inspection, product labelling and genetically engineered foods. As with TBTs, the WTO SPS Agreement goes further than NAFTA.

The NAFTA provisions do not in themselves impose any specific standards; they set out a general approach to ensure that SPS measures are used for genuine scientific reasons, not as disguised barriers to trade. Member countries are still allowed to take SPS measures to protect human, animal

or plant life and health at the level they consider "appropriate." While NAFTA "encourages" the parties to harmonize their measures based on relevant international standards, the WTO seeks to remove decisions regarding health, food and safety from national governments and delegate them to international standard-setting bodies such as the Codex Alimentarius, an elite club of scientists located in Geneva, largely controlled by the big food and agribusiness corporations.

The WTO SPS Agreement has been used to defeat the use of the "precautionary principle," which it held not to be a justifiable basis upon which to establish regulatory controls. (The precautionary principle allows regulatory action when there is risk of harm, even if there remains scientific uncertainty about the extent and nature of the potential impacts of a product or practice.) By choosing the WTO SPS Agreement over the NAFTA SPS provisions, the drafters of the FTAA are moving to totally remove the right of individual governments of the Americas to set standards in the crucial areas of health, food safety and the environment.

6. Intellectual Property Rights

The mandate of the Negotiating Group on Intellectual Property Rights is "to reduce distortions in trade in the Hemisphere and promote and ensure adequate and effective protection to intellectual property rights."

Intellectual property refers to types of intangible property such as patents which generally grant their holders an exclusive power. Trade rules on intellectual property extend this exclusive right, often held by corporations, to the other signatory countries to the agreement. As of January 1, 2000, all FTAA countries are now subject to the rules of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

This agreement sets enforceable global rules on patents, copyrights and trademark. It has gone far beyond its initial scope of protecting original inventions or cultural products and now permits the practice of patenting plants and animal forms as well as seeds. It promotes the private rights of corporations over local communities and their genetic heritage and traditional medicines. It allows transnational pharmaceutical corporations to keep drug prices high; recently TRIPS has been invoked to stop developing countries from providing generic, cheaper drugs to AIDS patients in the Third World.

The FTAA Negotiating Group on Intellectual Property has speculated that it might go beyond the WTO TRIPS Agreement in certain unspecified areas. Certainly, through the additional powers of Chapter 11, the investor-state clause, intellectual property rights in the FTAA will have the additional enforcement powers of cash fines and harsh penalties.

7. Subsidies, Anti-dumping and Countervailing Duties

The mandate of the Negotiating Group on Subsidies, Anti-dumping and Countervailing Duties is to "examine ways to deepen existing disciplines provided in the WTO Agreement on Subsidies and Countervailing Measures and . . . to achieve a common understanding with a view to improving,

where possible, the rules and procedures regarding the operation and application of trade remedy laws in order not to create unjustified barriers to trade in the Hemisphere."

The WTO Agreement sets limits on what governments may and may not subsidize. It has been strongly criticized by many developing countries as favouring northern countries and large agribusiness concerns. As well, Article XXI of the GATT exempts activities in the military sphere, including massive government research and export subsidies, in order to protect governments' "essential security interests." Because the security exemption shields the war industry from WTO challenge, it spurs government spending on the military and any industry related to national security. Since the majority of global military spending is concentrated in the economies of a few northern countries, the WTO security exemption gives these countries an enormous competitive edge over other, smaller countries.

8. Competition Policy

The mandate of the Negotiating Group on Competition Policy is to "guarantee that the benefits of the FTAA liberalization process not be undermined by anti-competitive business practices." The Negotiating Group has agreed to "advance toward the establishment of juridical and institutional coverage at the national, sub-regional or regional level, that proscribes the carrying out of anti-competitive business practices" and "to develop mechanisms that facilitate and promote the development of competition policy and guarantee the enforcement of regulations on free competition among and within the countries of the Hemisphere."

Basically, the goal of competition policy, relatively new to trade negotiations, is to reduce or eliminate practices that appear to protect domestic monopolies. Canada is proposing that each country adopt measures and "take appropriate action" to "proscribe anti-competitive business conduct."

Ostensibly, the aim is to promote competition, but the result, particularly for developing countries, is that they are often forced to break up their existing monopolies, only to find that they have given foreign-based transnational corporations golden opportunities to come in and pick off the smaller domestic companies and establish a whole new monopoly protected by WTO agreements such as the TRIPS and the Financial Services Agreement, both of which protect global mega-mergers.

9. Dispute Settlement

The mandate of the Negotiating Group on Dispute Settlement is "to establish a fair, transparent and effective mechanism for dispute settlement among FTAA countries" and to "design ways to facilitate and promote the use of arbitration and other alternative dispute settlement mechanisms, to solve private trade controversies in the framework of the FTAA."

It is yet to be seen whether the FTAA dispute settlement mechanism will mirror the NAFTA model or the WTO model. However, the Negotiating Group's mandate includes "taking into account *inter alia* the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes." If

this is the case, then the FTAA dispute settlement system between governments is more likely to resemble the more punitive system of the WTO than the NAFTA.

Under NAFTA, a country that loses a case before a dispute resolution panel must either accept the ruling and offer "appropriate compensation" to the other government or risk retaliation of "equivalent benefits." NAFTA does not create a common set of trade laws for the member countries. NAFTA dispute panels rule on the basis of the domestic trade laws of the importing country.

The role of a WTO dispute panel, however, is to decide whether a country's disputed practice or policy is a "barrier to trade," and to overturn the offending practice or policy if it is deemed to be. Under the WTO Dispute Settlement Body, a country, often acting on behalf of its own corporate interests, can challenge the actual laws, policies and programs of another country and strike down its domestic laws. A losing country has three choices: change its law to conform to the WTO ruling; pay permanent cash compensation to the winning country; or face harsh, permanent trade sanctions from the winning country.

Dozens of nation-state health, food safety and environmental laws have been struck down through this WTO process. Needless to say, the rulings affect poor countries differently than wealthy ones. Sanctions against a country that depends on one or two export crops for survival can be devastating. It is little surprise that the majority of WTO challenges have come from wealthy countries. In fact, the United States initiated almost half of the 117 WTO challenges launched between 1995 and 2000.

Of course, the recourse to private "investors" (i.e., corporations) in NAFTA's Chapter 11 does not exist in the WTO. It would appear that the FTAA negotiators will choose to retain the powers of private dispute settlements contained in the investor-to-state provisions of NAFTA, while opting for the more stringent conditions of the WTO to settle state-to-state disputes. This would be in keeping with the other proposals for the FTAA; whichever existing (or even proposed) model has the strongest "disciplines" is the model of choice for the FTAA.

The three non-negotiating committees have also been meeting.

The Committee on Small Economies has "recognized the asymmetries" between the different countries of the Americas and the need to come up with a plan "in order to create the opportunities for the full participation of the smaller economies and to increase their level of development." However, the plan appears vague, consisting mostly of providing "a database of technical assistance needs of smaller economies." Nowhere in this committee's mandate is there an acknowledgement of the enormous disparity between the wealthy and the poor of the hemisphere, both between and within countries.

The Committee on Civil Society acknowledges that "civil society has emerged as a new actor in the trade dialogue." Although its mandate is "to receive inputs from civil society, to analyze them and to present the range of views to the FTAA Trade Ministers," the purpose of any dialogue is "to

maintain transparency in the negotiating process and to conduct the negotiations in such a manner as to broaden public understanding and support for the FTAA." It appears that the Committee's real role is not to listen, but to keep up the appearance of real dialogue. In fact, says Stephenson, the benefit of this Committee's work "may diffuse pressures related to issues of labour and the environment."

The Joint Government–Private Sector Committee of Experts on Electronic Commerce, on the other hand, is a very important committee whose subject has all the hallmarks of an emerging sector. Electronic commerce has exploded in recent years. United States E-commerce sales were close to \$30 billion (US) in 2000, up 75 percent in one year, and may account for one quarter of world trade by 2005, the year the FTAA is to be ratified. The U.S. has identified a goal of adopting worldwide rules for a global non-regulatory, market-oriented E-commerce regime. Many billions of dollars every year could be lost if taxes are removed from this kind of trade, leaving governments with even more reduced funding bases for government programs.

The committee, heavily dominated by the most powerful corporate producers of Internet hardware, software and communications equipment, such as Microsoft and AT&T, has already carried out extensive analyses of E-commerce issues and is exchanging views with other organizations such as the WTO and the OECD. It has mandated several key studies on all aspects of trade and E-commerce, and is clearly a growing powerhouse within the FTAA family.

Finally, the FTAA Trade Negotiations Committee has identified three areas for "early harvest agreements" – on forestry, energy and fisheries – which it hopes will be agreed upon at the April 2001 Ministerial Summit in Quebec City. This means that, in these areas, agreement could be reached before the 2005 deadline for full FTAA ratification to remove tariffs from these environmentally sensitive resources, with no opportunity for public input.

What Is Canada's Position on the FTAA?

Canada has taken a leading role in the FTAA process (as it has in the MAI, the WTO and the GATS). The Canadian government has become an enthusiastic champion of NAFTA and its expansion, and has been pursuing individual free trade and investment agreements with Latin American countries like Chile, El Salvador, Guatemala, Honduras and Nicaragua. Canada chaired the initial 18-month phase of the FTAA negotiations set up in Santiago in April 1998, and is on record in its support of extending a model of deregulated trade and privatization to Latin America.

At a March 1999 meeting of the Standing Committee on International Trade, George Haynal, Assistant Deputy Minister, Americas, Department of Foreign Affairs and Trade (DFAIT), said: "The hemisphere has gotten its act together. It has some way to go, but our engagement is with an area that is ready to engage us on our terms." Added Bob Anderson, Vice-President, Americas, Canadian International Development Agency (CIDA): "Virtually all of the countries have bought into the Washington Consensus in some form or other. That Washington Consensus implies a whole

series of sequenced reforms. What we in CIDA have tried to do is identify those kinds of reforms where Canada has some particular expertise, some comparative advantage."

DFAIT has been strongly criticized by civil society, labour, human rights and other non-governmental organizations for its past lack of consultations with any groups but business. For instance, when citizens groups in Canada heard about the MAI in late 1996, they were told by DFAIT that no such treaty existed. After they got a hold of a copy of the text in March of 1997, the groups acquired a list of government MAI consultations; it showed that DFAIT had been meeting with the Canadian Chamber of Commerce and the Canadian Council on International Issues – the international arm of the BCNI – as early as 1993, four years before the government later admitted it was even involved in such negotiations.

So on December 13, 2000, when DFAIT announced that it was releasing the government's negotiating position on the FTAA, calling it an unprecedented act of transparency, many groups were very pleased. At last, a meaningful consultation could begin. However, so much is missing from this document that, only months before the Quebec City meeting, it is impossible to gauge Canada's position on the most contentious of the issues.

Four areas – investment, services, dispute settlement and intellectual property rights – are missing altogether, and many questions remain in a number of other key sectors.

Areas of Concern

*** Investment**

The Government of Canada says that it has made no submissions to the Negotiating Group on Investment to date. This is hard to believe. Canada was chairing the process during the period that the Negotiating Group on Investment came up with its mandate and spelled out a very ambitious position on investment (set out in detail above) that includes national treatment, services and investor-state compensation provisions.

As well, in its introduction to its published negotiating position, DFAIT states its clear support for an investment agreement in the FTAA: "In recognizing that investment is the main engine for growth, Leaders further committed themselves to creating strengthened mechanisms that promote and protect the flow of productive investment in the Hemisphere." Then, in its own draft Preamble, DFAIT calls for all governments to commit to "establishing a fair and predictable framework for promoting and protecting investment."

International Trade Minister Pierre Pettigrew has said that he will not sign the FTAA if it contains the investor-state clause (Chapter 11) of NAFTA. This appears to be in direct contradiction to the commitments that have been made by his department's negotiators. There is an urgent need for the government to clarify its exact position on investment immediately.

*** Services**

Similarly, DFAIT says it has made no submissions to the Negotiating Group on Services either. Again, Canada was chairing the hemispheric Negotiating Group that came up with the sweeping definitions of services, including national treatment, universal coverage and extended market access.

It is clear from the introduction to Canada's position that the Canadian government looks favourably on including services in the FTAA: "Specifically, they (the Leaders) noted that the elimination of impediments to market access for goods and services among our countries will foster collective economic growth." In the draft Preamble, Canada calls for "enhancing market access for trade in goods and services" and acknowledges "the importance of regulatory reform to advancing trade liberalization."

Certainly, if Canada takes a position at the FTAA similar to its position at the GATS, it will be promoting negotiations in which, as the government's own WTO position paper states, "nothing is off the table, a priori, including the politically sensitive areas of health and education."

To see what Canada is likely to support, we can look to the existing GATS agreement as well as the proposed additions. The GATS currently covers all service sectors and modes of supply as well as most government measures, including laws, practices, regulations and guidelines – written and unwritten. No government measure that affects trade in services, whatever its aim, even for environmental or consumer protection, for universal coverage or to enforce labour standards, is beyond the scope of the GATS.

Essentially, the agreement prohibits discrimination against a foreign supplier in all covered areas notwithstanding the conditions under which services are provided and regardless of the human rights or environmental record of the provider. Parties have also agreed that some rules apply "horizontally" or across the board, whether or not the area has already been listed with the GATS. One "horizontal" rule is that all regulations in any given sector, including social services, must be "Least Trade Restrictive" and all member WTO countries must be prepared to include market mechanisms wherever possible, even in social programs.

At present, public services provided by government are technically applicable for exemptions. Hence, some countries have claimed exemptions for their publicly funded social security programs. But under GATS article 1.3C, for a service to be considered to be under government authority, it must be provided "entirely free." That means that the sector in question must be completely financed by government and have no commercial purpose. All government services supplied on a commercial basis – even if it is not-for-profit – are subject to GATS rules, as are government services publicly supplied but in competition with commercial suppliers. Since hardly any service sector in the world is entirely commercial-free, this exemption is increasingly meaningless.

In the new round of negotiations, GATS officials will attempt to expand access to domestic markets and governments will be under great pressure to list more of their services and exempt fewer. The powerful northern countries will be pressing for more binding market access provisions, pressing

developing countries for guaranteed, irreversible access to their markets and eliminating many more policy options.

As well, GATS officials are seeking to place severe restraints on domestic regulations, thereby limiting governments' ability to enact environmental, health and other standards that hinder free trade. Article VI:4 calls for the development of any "necessary disciplines" to ensure that "measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade." This provision would also apply horizontally. Governments would be compelled to demonstrate that regulations, standards and laws were "necessary" to achieve a WTO-sanctioned objective, and that no less commercially restrictive alternative was available.

Further, the new talks are aimed at developing new GATS rules and restrictions, intended to further restrict the use of government subsidies, such as those used in public works, municipal services and social programs. A particularly threatening development is the demand for an expansion of the "Commercial Presence" rules. Commercial Presence allows an "investor" of one GATS country to establish a presence in any other GATS country and compete not only for business against domestic suppliers but for public funds against domestic publicly funded institutions and services.

All of this is taking place under Canada's leadership; Canada's WTO Ambassador, Sergio Marchi, is chairing the WTO GATS negotiations. There is no reason to believe that the Government of Canada would take a substantively different position on services in the FTAA.

* Intellectual Property Rights and Dispute Settlement

Again, the absence of Canada's position on these two crucial areas from the document is very disturbing. As with services and investment, Canada was in the chair during the negotiations that led to the proposed mandate outlined above. The notion that the Canadian government is not in full compliance with the Negotiating Group on Intellectual Property Rights and the Negotiating Group on Dispute Settlement is not credible.

* Technical Barriers to Trade

Canada is proposing a new and separate chapter on the subject of Technical Barriers to Trade (TBTs) based on the TBT provisions of the WTO. (These are the rules that state a nation must be prepared to prove, if challenged, that its environmental and safety standards are both "necessary" and the "least trade restrictive" way to achieve the desired conservation goals, food safety or health standard.) These rules are of great concern to Canadian environmentalists and groups concerned with food and animal safety, as they have been used to strike down health and safety regulations around the world.

DFAIT says there is a need for a "broader framework" of discussion and commitment than exists in the proposed FTAA and recommends establishing a new Committee on TBTs which would meet regularly and provide technical assistance to the developing countries of the Americas in order to

assist them to deregulate "unjustified use of government regulatory powers that have an undue (more restrictive than necessary) or discriminatory impact on trade."

Canada's Preambular language expressing its hope of finding ways to "better protect the environment" is negated by the strong anti-environmental language of its position on TBTs.

* Agriculture

The Government of Canada is a hawk on the issue of agriculture. It is calling for the total elimination of export subsidies for agricultural products "as quickly as possible" and to prevent their re-introduction "in any form." It is also calling for the "maximum possible reduction or elimination of production and trade-distorting domestic support," even though the elimination of farm subsidies has had a devastating impact on Canadian farmers, and it wants to "accelerate the elimination of tariffs for originating agricultural products." It is bullish on non-tariff measures and regulations, calling for a zero-tolerance policy on restrictions on imports.

DFAIT also strongly endorses the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) in the FTAA. (The WTO Agreement on SPS sets constraints on government policies relating to food safety and animal and plant health, from pesticides and biological contaminants to food inspection, product labelling and genetically engineered foods.) Like TBTs, these rules are seen by many as a way to reduce or eliminate government regulations that protect human and animal health in favour of private interests.

As with TBTs, the Government of Canada wants to "facilitate" day-to-day SPS activities within the hemisphere and proposes the establishment of a "Consultative Group on SPS" to provide a "regular forum for consultations, problem-solving and institutional cooperation." The committee would look at harmonization, risk assessment and transparency, among other things. Canada's strong leadership on this form of deregulation, particularly in light of the deteriorating environment of the countries of the hemisphere, as well as the lowered standards resulting from giant corporate farms, is great cause for concern.

* Government Procurement

The Government of Canada is also a hawk on the issue of government procurement in the FTAA, calling for full transparency and the publication of all laws, regulations, judicial decisions and administrative rulings to do with government procurement. "Canada agrees that making public the rules and administrative measures related to doing business with a government is an important aspect of the Free Trade Agreement of the Americas."

But DFAIT goes further, calling for a prohibition of "any type" of offset. Offsets, DFAIT explains, are "measures imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its balance of payments accounts by means of domestic content, licensing of technology, investment, country-trade or similar requirements." In other words, DFAIT supports the elimination of all the ways in which governments ensure that

foreign investment return some local good to a community in return for the profit transnational corporations gain from such access.

If Canada followed this formula proposed by DFAIT, all sorts of affirmative action, community investment and local hiring programs would have to be eliminated when dealing with foreign-based transnational corporations.

* Competition

Canada is calling for very strong language around competition policy in the FTAA "to ensure that the benefits of the FTAA liberalization process are not undermined by anti-competitive business practices." However, DFAIT is strangely mute on the question of "official monopolies and state enterprises." Its hawkish position on government procurement coupled with its strong position on competition, as well as its apparent pro-services bias, may put Canadian public institutions, such as the CBC, in jeopardy.

What Impact Will the FTAA Have on Canadians?

Social Security

The expanded powers proposed for the FTAA in combination with Chapter 11 of NAFTA and the introduction of "universal coverage of all service sectors" pose a grave threat to Canada's social programs. Universal health care, public education, child care, pensions, social assistance and many other social services are now delivered by governments on a not-for-profit basis.

Until the recent GATS negotiations, and now the FTAA negotiations, Canada has always maintained that these social programs were a fundamental right of citizenship for all Canadians, and have exempted them from trade agreements. However, with these two agreements, the Canadian government is opening up itself, and every other level of government, to trade-sanctioned threats by transnational service corporations keen to break down the existing government monopolies in the hemisphere.

Services is the fastest growing sector in international trade, and of all services, health, education and water are shaping up to be the most potentially lucrative of all. Global expenditures on water services now exceed \$1 trillion every year; on education, they exceed \$2 trillion; and on health care, expenditures exceed \$3.5 trillion. In Canada, the service sector accounts for 75 percent of all jobs.

These and other services have been targeted by predatory and powerful entrepreneurial transnational corporations that are aiming at nothing less than the complete dismantling of public services by subjecting them to the rules of international competition and the discipline of the WTO and the FTAA. (Already over 40 countries, including all of Europe, have listed education with the GATS, opening up their public education sectors to foreign-based corporate competition, and almost 100 countries have done the same in health care.)

In the United States, health care has become a huge business, and giant health care corporations are registered on the New York Stock Exchange. Rick Scott, the president of Columbia, the world's largest for-profit hospital corporation, says that health care is a business, no different from the airline or ball-bearing industry, and he has vowed to destroy every public hospital in North America, as they are not "good corporate citizens." Investment houses like Merrill Lynch and The Lehman Brothers predict that public education will be privatized in the hemisphere over the next decade the way public health has been, and say there is an untold amount of profit to be made when this happens.

If services are included in the FTAA, as they so clearly appear to be, foreign for-profit health, education and other social service corporations from anywhere in the hemisphere will have the right to establish a "commercial presence" anywhere in Canada. They will have the right to compete for public dollars with public institutions like hospitals, schools and day care centres. Standards for health, education, child care and social work professionals will be subject to FTAA rules and review to ensure they are not an impediment to trade. Degree-granting authority will be given to all hemispheric-based education corporations. Foreign-based telemedicine services will become legal in Canada. And Canada won't be able to stop the transborder competition of low-cost health and education professionals.

If any government at any level in Canada attempts to resist these developments and tries to maintain these services in domestic control, every service corporation of the hemisphere will have the legal right to sue for financial compensation for lost revenues under the investor-state provisions of the FTAA. This is not speculation; in areas covered by the current NAFTA, there have now been many precedents of governments reversing decisions and paying onerous compensation packages to private interests affected by public policy.

As well, there is already a disturbing precedent in health care under the existing investment provisions of NAFTA. A March 2000 legal opinion by Canadian trade expert Steven Shrybman shows that when Alberta passed Bill 11, which permits for-profit corporations to compete with public hospitals for public funding to provide health care "services," it gave trade-sanctioned rights to U.S. for-profit foreign corporations to set up shop not only in Alberta, but in any province in Canada and to sue for compensation if denied this access.

"While in theory a government could retreat from contracting out health services to private companies, that government would face the full force of foreign investor compensation claims for not just present, but future losses. The costs of compensation resulting from re-establishing a public system would be prohibitive."

The reality is simple: once privatization is established in any public sector, it would be almost impossible to reverse. With time, Canadian governments would no longer be able to afford to publicly fund health care, social security programs and education as they would have to be prepared to give equal access to such funding to private contractors from the other FTAA countries.

Canadians have already seen a steady erosion of their social security under the new rules of economic globalization and trade agreements like NAFTA and the WTO, as Canada's economy has merged into the American orbit and American rules. Socially, Canada now looks more like the U.S. than in any time in its history, with its huge gaps between haves and have-nots. In Canada, as in the U.S., while great prosperity abounds in some quarters, great poverty is growing in others.

In fact, Canada has experienced the highest rise in child poverty in the industrialized world in the last decade – the same years in which the number of millionaires has tripled and corporate salaries have grown at an average of about 15 percent a year. In the very free trade years that corporate salaries skyrocketed, workers' wages rose just 2 percent, less than the rate of inflation.

The cuts to social programs and Employment Insurance (only one third of unemployed workers now receive EI benefits they have paid for, compared to almost 80 percent in 1989) have been so deep that Standard and Poor says that the myth of a "kinder Canada" must be put to rest. For the first time in 1999, says the New York-based ratings institute, Canada spent less on its elderly and unemployed than did the United States.

With the proposed FTAA, the assault on social security will dramatically escalate.

Environment

The FTAA draft, as it now stands, contains no safeguards for the environment. The original mandate for the FTAA, drawn up at the first Summit of the Americas in Miami in 1994, contained a promise to promote economic integration of the hemisphere in such a way as "to guarantee sustainable development while protecting the environment." A major Summit on Sustainable Development was held in Bolivia in 1996 in order to ensure that the principles of the 1992 Rio Earth Summit would be integral to the FTAA process. Out of that meeting (at which civil society groups and environmentalists were notably absent), came 65 initiatives known as the "Santa Cruz Action Plan," and a new body, the OAS Inter-American Committee on Sustainable Development.

However, the whole process was badly underfunded and had no clear mandate for action; it has been widely regarded as a failure. As a consequence, the whole goal of sustainable development was completely dropped from the FTAA's new mandate at the Santiago Summit in 1998, and the tracks of trade and environment were completely separated. With George W. Bush now in the White House, it is even more certain that environmental concerns about the hemispheric free trade deal will be set aside.

The Canadian government's recently published "position paper" on the FTAA contains a reference to the environment in its proposed Preamble. It calls for the FTAA to commit to "Better protecting the environment and promoting sustainable development by adopting trade and environmental policies that are mutually supportive." However, Preambular language in trade agreements is non-binding and unenforceable, so any promise in this section of the agreement is fairly meaningless. In any case, it is not possible to find compatibility between a trade agreement that contains investor-state rights for corporations and environmental stewardship.

Chapter 11

As briefly documented above (see Investment in "What's in the FTAA?"), and well documented in a number of other sources, the investor-state provisions of NAFTA have already had a very serious impact on government environmental policy. Not only have a number of health and environmental regulations in Canada, the United States and Mexico already been successfully challenged by the corporations of the continent, Chapter 11 is used to create a "chill effect," whereby governments are warned not to contemplate certain new regulatory measures for fear of running afoul of the investment provisions of NAFTA.

As legal trade expert Steven Shrybman explains: "The investor-state suit provisions of NAFTA represent nothing short of a radical departure from both the domestic and international legal norms in at least three fundamental ways. First, by providing corporations with the right to directly enforce an international treaty to which they are neither parties, nor under which they have any obligations. Second, by extending international commercial arbitration to claims that have nothing to do with commercial contracts and everything to do with public policy and law. Third, by creating substantive legal rights – concerning expropriation and national treatment that go far beyond those available to Canadian citizens or businesses."

Any new regulations that are brought to Parliament or any provincial legislature can be challenged by American corporations with interests in the sector in question. In essence, governments have to be prepared to pay dearly for the right to protect the ecological, human and animal health concerns within their mandate. As trade lawyer Barry Appleton explains, "They could be putting liquid plutonium in children's food; if you ban it and the company making it is an American company, you have to pay compensation."

To avoid this scenario, Canadian federal and provincial governments now have to allow all prospective environmental and natural resource protection regulations to be vetted by DFAIT. In an October 2000 exchange at a Parliamentary Environment Committee meeting, Liberal MP Clifford Lincoln asked senior DFAIT officials Nigel Bankes and Ken Macartney whether it was true that International Trade Minister Pierre Pettigrew is fighting against the inclusion of the precautionary principle in domestic environmental legislation, such as the proposed new law to protect endangered species, so as to ensure that Canada is in compliance with the WTO. The trade bureaucrats confirmed that this was indeed so.

Environment ministers now have less power over their jurisdiction than their trade counterparts. When the environment ministers of the three NAFTA countries announced in December 1998 that they were going to allow the Commission for Environmental Co-operation (CEC) – the NAFTA side deal that has become a toothless "environmental watchdog" – to scrutinize these Chapter 11 cases, they stepped way over the line drawn for them by DFAIT and its sister agencies in Washington and Mexico City. Months later, the environment ministers totally retracted the new powers, reigning in the agency so far, in fact, that they stopped just short of dismantling it altogether.

Given this track record, and the dropping of the goal of sustainable development from the principles of the FTAA process, there is little reason to believe that environmental concerns will fare much better in the hemispheric trade pact.

Energy

While there is no separate FTAA Negotiating Group on energy or any mention of the subject in the Canadian government's "position paper," there is a consensus to come up with an "early harvest" agreement on energy at the Quebec City Summit in April. In fact, it is highly likely that the FTAA will mirror the controversial energy provisions that were integral to both the Canada-U.S. Free Trade Agreement and NAFTA.

In these agreements, negotiators created an anti-environment, anti-conservation, deregulated continental energy policy based on short-term, high-cost, high-profit exports and controlled by transnational energy corporations with little interest in rising prices or the environmental consequences of their actions. If this deregulated energy regime gets extended to the hemisphere, it will have devastating consequences in the fight to reduce the overuse of climate-warming fossil fuels in the countries of the Americas.

In Canada, to comply with these NAFTA provisions, the National Energy Board was stripped of its powers and the "vital-supply safeguard" that had required Canada to maintain a 25-year surplus of natural gas was dismantled. No government agency or law now exists to ensure that Canadians have adequate supplies of our own energy in the future. (The United States, however, declared that its 25-year reserve was necessary for national security purposes, and maintained it.)

Export applicants, Canadian or American, were no longer required to file an export impact assessment and the all-Canadian gas distribution system was abandoned, setting off a frantic round of North-South pipeline construction. Export taxes on our energy supplies were banned, resulting in the loss of a source of tax revenue for governments and giving American customers, who don't have to pay the GST, a price advantage over Canadian consumers.

Most important, the trade agreements imposed a system of "proportional sharing" whereby Canadian energy supplies to the U.S. are guaranteed in perpetuity. In an astonishing surrender of sovereignty, the Government of Canada agreed that it no longer has the right to "refuse to issue a licence or revoke or change a licence for the exportation to the United States of energy goods," even for environmental or conservation practices.

This led to a spectacular increase in the sale of natural gas to U.S. markets; since 1986, exports have more than quadrupled to over 8.5 billion cubic feet a day. About 55 percent of total Canadian gas production is exported to the U.S. where American distribution companies, supplying a much larger population, have been able to sign long-term contracts at rock-bottom prices. Canadian consumers are left to compete for their own energy resources against an economy 10 times bigger with rapidly

dwindling reserves and accelerating demand. The story in oil is the same. Canada now produces 2.3 million barrels a day and ships 1.3 of those barrels to the U.S.

The free trade agreements committed Canada to an energy policy driven by massive, guaranteed exports to the U.S., corporate control of supplies and an economic policy more dependent than ever on the exploitation of primary resources. Because they exempted Canadian government subsidies for oil and gas exploration from trade challenge, they ensured that Canadian public funds would continue to pay for uncontrolled and environmentally destructive fossil fuel exploration, a process that has already destroyed habitats in the North and that threatens the sensitive spawning grounds off Cape Breton and Newfoundland, all to the benefit of transnational corporations.

In the FTAA, these provisions will very likely extend to all the countries of the Americas, who should be made aware of the resulting loss of sovereignty over their energy supplies and their environmental responsibility to husband those resources well.

Water

Similarly, it is unlikely that the United States would not extend the provisions of NAFTA concerning water to the other countries of the hemisphere under the FTAA. These provisions establish a continental water market in the case of the commencement of commercial water exports; for the countries of Latin America concerned about water privatization schemes, this is an issue urgently needing attention.

Chapter 3 of NAFTA establishes obligations, including national treatment rights, regarding market access for the trade in goods. It uses the General Agreement on Tariffs and Trade (GATT) definition of a "good," which clearly lists "waters, including natural or artificial waters and aerated waters" as a good, and adds in an explanatory note that "ordinary natural water of all kinds, other than sea water," is included.

When the NAFTA deal, and its predecessor, the Canada-U.S. Free Trade Agreement, were being negotiated, opponents urged that water be clearly exempted from them altogether. The governments said no, arguing that no water was being traded commercially at that time in any of the NAFTA countries; therefore, water in its "natural" state was safe. Critics argued that any such protection was temporary at best and that the moment any jurisdiction started selling its water for commercial purposes, key provisions of NAFTA would become applicable, putting public control of water in jeopardy.

There are three key provisions of NAFTA that place water at risk once it is traded. The first is national treatment, whereby no country can discriminate in favour of its own private sector in the commercial use of its water resources. Once a permit is granted to a domestic company to export water, the "investors" – i.e., corporations – of the other NAFTA countries have the same "right of establishment" to the commercial use of this water as the domestic companies. This applies to provinces as well; if British Columbia allows the commercial export of bulk water, all provinces will have to allow national treatment rights to the same foreign companies as well.

The second provision is Chapter 11, the investor-state clause. It applies to water in two ways. First, if any NAFTA country, state or province tries to allow only domestic companies to export water, corporations in the other NAFTA countries would have the right to sue for financial compensation. Second, if any NAFTA government introduced legislation to ban bulk water exports, by that act water would automatically become a commercial "good"; foreign investors' Chapter 11 rights would be triggered by the very law that excludes them, and they could demand financial compensation for lost opportunities.

The third key provision is Article 315, "proportional sharing," the same provision that has created a continental market for Canada's energy supplies. Under Articles 315 and 309, no country can reduce or restrict the export of a resource once the trade has been established. Nor can the government place an export tax or charge more to the consumers of another NAFTA country than they charge domestically. Canadian exports of water would be guaranteed to the level they had acquired over the preceding 36 months; the more water sent south, the more water required to be sent south. Even if new evidence were found that massive movements of water were harmful to the environment, these requirements would remain in place.

The proposed FTAA adds another threat to water sovereignty and conservation. "Environmental Services" are included in the list of services now being negotiated by the GATS. It is very likely that environmental services, which include water services, will similarly be included in the FTAA. This means that public water services could be challenged under the national treatment provisions of the proposed agreement, forcing public services such as water delivery and wastewater treatment to be privatized and contracted out to transnational water corporations like Suez Lyonnaise des Eaux and Vivendi. If any government attempts to maintain its water services in public hands, these corporations would have enormous compensation rights under Chapter 11.

This loss of public control of water is a very serious one for Canada, and of even greater urgency for the countries of Latin America, where water privatization, strongly promoted by the World Bank, is spreading very quickly.

Combined with the TBT and SPS agreements of the WTO and the plans for "early harvest" agreements in forests and fisheries, the proposed FTAA appears to be a disaster for ecological stewardship for the Americas.

Culture

No mention is made of culture or cultural exemptions in the mandates of any of the Negotiating Groups. Canada does mention culture in the Preamble to its position paper: "Recognizing that countries must maintain the ability to preserve, develop and implement their cultural policies for the purpose of strengthening cultural diversity, given the essential role that cultural goods and services play in the identity and diversity of society and the lives of individuals." Again, however, this Preambular language is largely decorative. It is very likely that culture will either be fully included

in the hemispheric pact or there will be a cultural "exemption" similar to the one that exists in NAFTA. And that is almost as bad as having culture fully included.

The terms on culture were clearly set out in NAFTA Annex 2106. While one article (2005:1) exempts the cultural industry from the agreement with the exception of tariff elimination, divestiture of an indirect acquisition, and transmission rights, another (2005:2) puts culture right back in by giving the U.S. the right to retaliate against Canada with measures "of equivalent commercial effect" and to do so using sectors unrelated to culture. Yet another (2011:2) permits the U.S. to circumvent the dispute settlement procedure when it retaliates. Other sections of the agreement, particularly dealing with investment, competition policy and monopolies also infringe on the right of Canadians to protect cultural policy.

This means that the U.S. has the legal right to unilaterally decide if a Canadian cultural measure is "inconsistent" with NAFTA, to retaliate against Canada and to select the nature and severity of the retaliation. Canada has no legal rights whatsoever. It cannot even request a panel to judge whether U.S. accusations are justified and, if so, to ensure U.S. retaliation is commensurate with the offence.

It appears from the mandate of the FTAA Negotiating Committees that an additional risk to Canada's cultural programs will find its way into the FTAA in the services chapter. If cultural services are included in the definition of services, as they appear to be ("universal coverage of *all* service sectors"), and the principles of national treatment and most favoured nation apply to these cultural services, as they also appear to do, then government subsidies to the arts and culture could not be allocated exclusively to Canadian artists, publications, production companies and the like.

There are really only three forms of cultural protections left in Canada in the wake of WTO rulings: government subsidies, such as those given to the CBC or to book publishers of Canadian titles; Canadian content quotas, such as content regulations in radio and television; and investment policies, such as investment controls limiting non-Canadian investment in broadcasting, telecommunications and cable companies.

Under a regime that allowed the direct challenge of government programs, all three could be deemed trade illegal. Just as in social programs, any government support of a Canadian "service" – in this case, cultural services – would have to be applied in a non-discriminatory manner; American and other corporations of the hemisphere in the entertainment industry could demand equal rights to compete and receive government funding. As with social programs, any government that continued to favour the Canadian cultural sector could be sued for compensation under Chapter 11 by transnational industry corporations, from big-box retailers to movie networks.

If the proposed FTAA is adopted unchanged, Canadian cultural diversity and Canada's cultural industries will become a relic of a past time.

Agriculture and Food Security

Canada's farmers have already felt the full blast of global competition, as the Canadian government has slashed farm subsidies and farm income support far more and far faster than have its major trading partners. As a result, 1999 and 2000 were the worst years for Canadian farmers since 1926, the year that the Canadian government began to keep such records.

By choosing the WTO agreements on agriculture (AOA) and standards (SPS and TBT), the FTAA negotiators plan to give new powers through this pact to curtail the traditional rights of Canada's farmers and to downgrade Canada's food safety laws. Under WTO disciplines, farmers can no longer collectively negotiate prices for products with both domestic and foreign buyers. And the elimination of domestic agriculture price supports to protect farmers has left them at the mercy of international prices.

Because the WTO prohibits import and export controls, only the big – big farms, big countries, big corporations – can survive. As a result, the WTO's Agreement on Agriculture has almost exclusively benefited large agribusiness corporations around the world no matter what their country of origin.

Furthermore, the WTO AOA assault on non-tariff measures, such as environmental standards and supply management programs, has been used to downgrade safeguards to public health and protection for farmers. For example, through the WTO, the U.S. has successfully challenged Japan's health-related pesticide residue testing requirements for agricultural imports. Countries can no longer maintain emergency food stocks in anticipation of drought or crop failure; they must now buy what they need on the open market. "Food self sufficiency" now means having enough money to buy food, not the domestic ability to produce it.

The WTO SPS agreement has had a terrible impact on the right of the world's citizens to safe food. Canada and the United States successfully used the SPS agreement to strike down a European ban on North American beef containing harmful, possibly cancer-causing hormones. The EU, deeply sensitive to lingering concerns about mad-cow disease, implemented a ban on the non-therapeutic use of hormones in its food industry, citing many studies linking them to illness. The WTO panel demanded "scientific certainty" that these hormones cause cancer or other adverse health affects, thus eviscerating the precautionary principle as a basis for food safety regulations.

The FTAA appears poised to promote a model of agriculture to the hemisphere where food is not grown by farmers for domestic consumers, but by corporations for global markets. The results will be far-reaching indeed.

What Impact Will the FTAA Have on the Countries of Latin America?

The countries of Central and South America and the Caribbean are being given all sorts of promises about the FTAA: more liberalized trade and investment will create the biggest trade powerhouse in

history, thereby spreading prosperity to the many millions of the region currently without work or hope, they are told.

Latin Americans should examine these promises very carefully before jumping into this pact.

The reality is that Latin America has been living under this FTAA model for over a decade. It is based on the Structural Adjustment programs of the World Bank and the IMF that Latin Americans know well. It was the deregulation and privatization imperatives of structural adjustment that forced most to dismantle their public infrastructures in the first place. In order to be eligible for debt relief, many dozens of the countries of the Americas were forced to abandon public social programs, allowing for-profit foreign corporations to come in and sell their health and education "products" to "consumers" who can afford them.

Now these countries are allowed to maintain the most basic of public services only for the poor; but these services are so inadequate that the corporations aren't interested in them, and many millions of people in the hemisphere go without the most basic of education and health services. Not surprisingly, Latin American countries are experiencing an invasion of U.S. health care corporations, like Aetna International and American International, who report a 20 percent growth in the region per year.

Under the FTAA, this process will accelerate, wiping out traditional medicine, education and cultural diversity. In fact, worldwide economic and cultural harmonization is the goal, says one top U.S. WTO official, who adds, "Basically, it won't stop until foreigners finally start to think like Americans, act like Americans and – most of all – shop like Americans."

The last decade of trade and investment liberalization has already caused great suffering in Latin America. Interest rates on debt payments have soared from 3 percent in 1980 to over 20 percent today. Latin America, as a region, has the highest rate of inequitable income distribution in the world. After swallowing its free market medicine, it now has a poverty rate higher than it was in 1980 and the buying power of Latin American workers is 27 percent lower. Eighty-five percent of all job growth has been in the precarious sector with no benefits or protections.

Mexico, eight years into NAFTA, now has record-high poverty rates of 70 percent; the average minimum wage lost more than three quarters of its purchasing power in those years. Ninety million Latin Americans are now indigent and 105 million have no access to health care whatsoever. Child labour has grown dramatically; there are now at least 19 million children working in terrible conditions. Massive environmental degradation has resulted from the region's desperate rush to exploit its natural resources and the use of pesticides and fertilizers has tripled since 1996; there are now 80,000 chemical substances produced and used in the Americas.

The exploitation of Latin America's natural resources by Canadian and U.S. corporations now taking place would dramatically increase under a hemispheric pact. Transnational mining, energy, water, engineering, forestry and fisheries corporations would have new access to the precious resource base of every country and the investor-state right to challenge any government that tried to

limit their access to them. The ability of governments to protect the ecology or set environmental standards regarding the extraction of natural resources would be greatly reduced, as would the right to ensure local jobs from any activity of foreign corporations.

Joining the FTAA under these circumstances would be "tantamount to suicide," says the coalition of trade unions of the Southern Cone countries. In December 2000, the major unions of Argentina, Brazil, Paraguay and Uruguay held the MERCOSUR Trade Union Summit where they called upon their governments to submit the FTAA to national plebiscites, which they believe would result in its defeat. The FTAA process is deepening the already growing poverty of the region, the union leaders said, putting "limits on national institutions that should decide the future of each country, while pushing aside the mechanisms that allow society to ensure a democratic administration of the state."

Conclusion

If the terms and recommendations of the FTAA Negotiating Groups are the substantive basis for a hemisphere trade pact, the whole process is totally unacceptable and the citizens of the Americas must work to defeat it entirely. In spite of government protestations that they have negotiated these new trade and investment rules in full collaboration with their citizens, the proposed FTAA reflects none of the concerns voiced by civil society and contains all of the provisions considered most egregious by environmentalists, human rights and social justice groups, farmers, indigenous peoples, artists, workers and many others. Every single social program, environmental regulation and natural resource is at risk under the proposed FTAA. As it appears to stand now, there is no possible collaboration to make this trade pact acceptable.

That is not to say that the citizens of the Americas are opposed to rules governing the trade and economic links between our countries. In the wake of the failed MAI, Canadian civil society groups held a national inquiry called *Confronting Globalization and Reclaiming Democracy*, in which hundreds of groups participated. The results show clearly that, based on a different set of fundamental assumptions, such as the United Nations Universal Declaration on Human Rights and strong environmental rules, Canadian citizens would be prepared to enter into a process to develop closer ties with other countries in the Americas and around the world. However, it cannot start with the assumptions and goals of this FTAA.

This process must begin by revisiting current international trade agreements like the WTO and NAFTA; it is time for a new international trading system based on the foundations of democracy, sustainability, diversity and development, and much good work is being done on these alternatives. As a beginning, Chapter 11 must be removed from NAFTA; water must be exempted; the energy provisions rewritten with an emphasis on conservation; and culture must be truly exempted.

Most important, the world of international trade can no longer be the exclusive domain of sheltered elites, trade bureaucrats and corporate power brokers. When they understand what is at stake in this hemispheric negotiation, the peoples of the Americas will mobilize to defeat it. That is the fate it deserves.

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