Inside the Fortress:
What's Going on at the FTAA Negotiations

By Marc Lee

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Preface

The Free Trade Area of the Americas, first envisioned by former US President George Bush in 1990, and now the central foreign policy plank of his son, is becoming a lightning rod for popular discontent after a decade of globalization and élite worship of free markets. The FTAA represents an ambitious new attempt to push the envelope of trade and investment liberalization in the Americas, and is seen as a stepping stone to further agreements at the global level through the World Trade Organization.

The good news is that there are many cracks in the armour of the FTAA. The process surrounding it, and the political will of the nations involved, are not nearly as fortified as the walls of Quebec City. And as the rising tide of protest swells, it will become increasingly difficult for leaders and trade bureaucrats to hide behind barricades, while making bold statements about the benefits of trade for the world's poor, the environment, and whatever else ails the planet.

This briefing paper was written to enhance the understanding of citizens throughout the hemisphere of what the FTAA is all about. The intent of this paper is to provide an overview of the FTAA process to date, to highlight the broader strategic dynamics of the Americas, and to outline the specific issues that are on the table in the FTAA process. While much of the paper comes from a Canadian perspective, the author has tried to make the content relevant to readers from across the Americas. In more and more ways, our struggles are the same as a result of globalization.

Summary

When leaders from 34 nations in the Americas (Cuba is not invited) meet in Quebec City in April, it will be more of a photo-op than a serious negotiation. But this *Summit of the Americas* will provide a high-level endorsement of the progress made so far towards a Free Trade Area of the Americas, and will provide a push towards completing the deal.

The Summit will also be attended by thousands of protesters who oppose this bold new attempt to push the envelope of trade liberalization. Quebec will likely set a new high- water mark for irony when, surrounded by protesters, insulated by the fortified walls of the old town, and guarded by a massive police presence, leaders will make speeches about the benefits of trade, and will reaffirm their commitment to democracy.

Quebec will actually be the third Summit of the Americas. The Free Trade Area of the Americas (FTAA) was launched at the first Summit in Miami, in December 1994. But the process was delayed due to the "peso crisis" that hit Mexico shortly afterward, and spilled over onto the rest of Latin America during 1995. It was not until the dust settled that the FTAA negotiations were officially launched at the second Summit of the Americas in Santiago, Chile, in April 1998.

In the three years since Santiago, trade negotiators have been working away in nine negotiating groups, overseen by a Trade Negotiations Committee (with the fitting acronym of TNC). The TNC has compiled a draft text that will be given the green light in Quebec and that will form the basis of the "hard-ball" negotiations that will attempt to pull together a final deal by the end of 2004.

The FTAA process has been gaining momentum since the collapse of the Seattle WTO Ministerial in December 1999, and the failure to launch a new round of multilateral trade talks. The business community has been well represented through the Hemispheric Business Forum, which meets to develop recommendations for Trade Ministers. Canada, through the ideological zeal of our trade negotiators, has been a lead country in keeping the process moving forward.

The Strategic Context of the Americas

In Latin America, globalization is nothing new. For the past two decades, many Latin American countries have been saddled with high levels of foreign debt. In order to gain access to the financial and economic system of the North, they have required the seal of approval of the International Monetary Fund. As a condition of receiving this approval, these countries have had to implement numerous economic reforms known as Structural Adjustment Programs (SAPs).

IMF policies have required that countries:

- Reduce the public sector by cutting back on public services like health care and education, privatizing state enterprises, and deregulating the economy;
- Reorient the domestic economy towards export production; and
- Maintain high interest rates in order to control inflation and stimulate the confidence of foreign investors.

As a result, almost anyone on the street can give you an earful about the impact of the IMF. However, trade agreements have not been on the public radar screen, something that Latin American activists are in the process of changing. While the IMF has been the battering ram that has forcibly liberalized Latin America, trade agreements like the WTO and the proposed FTAA serve to lock this economic model in place. Unfortunately, it is a model based more on faith than hard evidence.

The legacy of SAPs in Latin America is that, having geared their economies to export, many countries have become dependent on the US market. Some see enhanced access to the US as the main outcome of the negotiations. The US knows this and will try to trade off market access for concessions in intellectual property, investment and services.

In the FTAA negotiations, as well as at the WTO, Latin Americans have been grappling with how to deal with US power. One response has been to develop regional trade blocs. On one hand, this merely mimics the globalization process on a smaller scale; on the other hand, it offers the opportunity to strengthen economic capabilities through a larger regional market, while enhancing bargaining power at the negotiating table.

Perhaps the most dynamic regional bloc is Mercosur, the Common Market of the Southern Cone, which includes Brazil, Argentina, Uruguay and Paraguay. Mercosur countries are less reliant on the US market, trading more with Europe. Last Fall, Mercosur agreed to join with the Andean Community (representing most of the remaining South American countries) into a South American Free Trade Agreement by January 2002. While this raises important issues, many activists in South America see greater potential for building on regional agreements as an alternative project to casting their lot with an FTAA dominated by the US.

While the US is the biggest power in the negotiations, completing an FTAA deal depends a great deal on Brazil, the largest Latin American economy. Brazil has a lot to lose in the negotiations and has been lukewarm to the FTAA, instead favouring Mercosur as an alternative. Trade tensions between Brazil and Canada include ongoing skirmishes over jet aircraft subsidies, and more recently, accusations over mad cow disease in Brazilian cattle. Brazil has also had major disagreements with the US over intellectual property.

Other factors could affect the FTAA negotiations as well. The US "Plan Colombia" has upset many people in Latin America, and could undermine support for a deal. Political instability is also a factor in Bolivia, Peru and Ecuador. And Venezuela, under President Hugo Chavez, has been a thorn in the US side. Finally, trade tensions between Canada and the US could heat up with the end of the Softwood Lumber Agreement, and threats from the US to impose punitive duties on Canadian lumber exports.

The FTAA Negotiations

The two most relevant agreements for understanding the FTAA negotiations are the WTO and NAFTA. With few exceptions, the NAFTA goes deeper in terms of liberalization than the WTO. Indeed, the NAFTA text has been highly influential in entrenching similar language in the Agreements of the World Trade Organization.

The WTO permits member countries to enter regional economic integration agreements, provided that these regional pacts have "substantial sectoral coverage" and liberalize further than the WTO agreements. What this means for the FTAA is that it must be "WTO-plus," i.e., the sections of the agreement must at least meet the WTO benchmarks for liberalization. Like the NAFTA, the FTAA may also cover areas not currently in (or not fully covered by) the WTO, such as common rules on investment, government procurement and competition policy.

From the perspective of Canadian and US negotiators, a NAFTA-like agreement is the objective for the FTAA. The US would like an agreement that makes it the hub economy to everyone else's spokes. The US also views the FTAA negotiations as part of a broader strategic context with regard to influencing negotiations in other arenas that involve big players such as the EU and Japan. The US can use positions agreed to in the FTAA to leverage gains on a multilateral basis at the WTO. In this way, bilateral, regional and global trade initiatives reinforce one another.

The tenor of the FTAA negotiations may also be affected if a new round of WTO negotiations is successfully launched, and if so, by how expansive the round will be. The next WTO Ministerial is now scheduled for November 2001 in the desert kingdom of Qatar, far away from pesky protesters.

Currently, the FTAA negotiations are caught up in procedural issues. Some countries, like the US and Chile, want to accelerate the timeline for completion of the deal, but this is being resisted by many South American and Caribbean countries.

There are disputes over when the "real negotiations" will start, with some countries favouring a start date as late as June 2002. And negotiators are still coming to grips with issues around how the negotiating process will be structured.

A potential deal-breaker is the ability of new US President Bush to get Fast Track negotiating authority from Congress. Fast Track means that deals negotiated by the president are subject to a straight Yes or No vote in Congress. Without Fast Track, domestic political considerations would mean that Congress would pick apart a deal and demand additional concessions before approval. Other countries would effectively need to negotiate twice with the US, something no one is inclined to do.

Nonetheless, a draft "bracketed text" has been compiled (brackets indicate areas of disagreement) from the many different proposals that have been put forward to date. This text has not been publicly released. Both Canada and the US have posted information about their positions on the web, although their usefulness is questionable. Despite taking a leadership role in the FTAA process, Canada has not submitted official positions (or has not made them public) on services, investment, and dispute settlement—the most controversial areas of the FTAA.

Perhaps the biggest danger in the FTAA is an expansion of the NAFTA investor-state dispute settlement process, which enables foreign corporations to directly sue national governments through a "kangaroo court" that bypasses national judicial systems. Claims can be made for any action by government that is deemed to "expropriate" the corporation's current or future profits. Numerous cases to date under the NAFTA have targeted Canadian laws and regulations in the public interest. Trade Minister Pierre Pettigrew has repeatedly stated that he will not sign on to a NAFTA-style investor-state mechanism, but his careful choice of words suggests that he and Canada's trade bureaucrats still support investor-state in principle.

The FTAA Services negotiations pose challenges to public services and domestic regulation. The issues in this area parallel the WTO's GATS negotiations, and will be influenced by the "progress" made there. The US is pushing for a "top-down" formulation, meaning all sectors are covered except for those explicitly negotiated off the table. Other countries are resisting this approach, but it is possible that the FTAA services chapter could go much deeper than the GATS.

There are other areas of importance to Canadians that have not been addressed by Canadian negotiators. In agriculture, the US is targeting state trading enterprises, like the Canadian Wheat Board, and supply management programs in dairy, eggs and poultry. Both are institutional structures designed to ensure stable incomes for farmers. Yet, in spite of the crisis on Canadian farms in recent years, Canada does not even mention these in its public negotiating positions.

In the area of competition policy, the US is recommending rules that attack the viability of Crown corporations. Again, Canada is silent on this issue.

Also on the table are proposals to open up government procurement practices across the hemisphere, new rules to strengthen intellectual property protection, and a new forum for the settlement of trade disputes.

At this point in time, it is impossible to know what the full implications of a completed FTAA would be. But the broad range of issues being discussed, and the failure of Canadian negotiators to look beyond "export opportunities for Canadian companies," is definitely cause for concern.

The bottom line is that the FTAA embodies the worst aspects of the WTO and NAFTA. It deepens a globalization process that is fundamentally about enhancing the rights of corporations, while disarming governments and citizens. The FTAA is anti-democratic, and should be rejected by the people of the hemisphere.

I. Introduction: The Road to Quebec

"We must build on the trend we see toward free markets and make our ultimate aim a free trade system that links all of the Americas: North, Central, and South. And we look forward to the day when not only are the Americas the first fully free, democratic hemisphere, but when all are equal partners in a free trade zone stretching from the port of Anchorage to the Tierra del Fuego."
—Former US President George Bush, June 27, 1990

"I was recently on a tour of Latin America, and the only regret I have was that I didn't study Latin harder in school so I could converse with those people."
—Former US Vice-President Dan Quayle

Leaders of 34 nations in the Americas (Cuba is not invited) will be meeting in April 2001 behind the fortified walls of the old town in Quebec City for the third Summit of the Americas. The meeting will be more of a photo-op than serious negotiation, but will likely provide a high-level endorsement of the progress of the Free Trade Area of the Americas, and will provide a push towards completing the deal.

The Free Trade Area of the Americas (FTAA) was launched at the first Summit of the Americas in Miami, December 9-11, 1994. This Summit came at the high-water mark of free trade deal-making in the 1990s: the North American Free Trade Agreement (NAFTA), which extended the Canada-US Free Trade Agreement to Mexico, came into effect on January 1, 1994, and the World Trade Organization was on the verge of being launched on January 1, 1995.

The Miami Summit ended with a Declaration that approved a set of principles and actions. In addition to a free trade agreement, the Summit set out a wide range of social issues beyond trade, such as strengthening democracy, sustainable development, and the elimination of poverty and discrimination. However, the underlying belief was that a boom in economic growth as a result of trade liberalization would be the force by which these other goals are realized.

The euphoria of Miami was not to last. Just after the Summit of the Americas, Mexico was hit by major outflows of capital which destabilized its economy and led to the "peso crisis." This reversed the large capital inflows that accompanied the implementation of the NAFTA in 1994. Through 1995, Mexico suffered its worst crisis since the 1930s. And the rest of Latin America did not escape the waves of the Mexican tsunami, which almost brought down Argentina's banking system.

The FTAA project was effectively put on the backburner until recovery set in and memories of the crisis faded. At the second Summit of the Americas, held in Santiago in April 1998, negotiations were officially launched for the FTAA, with conclusion of an agreement to be achieved by 2005. In the Santiago Declaration, the lofty social goals of Miami were subsumed under the real agenda of hammering out a trade deal (although social rhetoric is still used to legitimize the trade negotiations).

While high-level Summits provide the most flash and are key decision-forcing events, the FTAA

process is driven by the more frequent meetings of Trade Ministers, which set out the overall work plan. There have been five meetings to date, the most recent of which was in Toronto in November 1999. One more Ministerial is taking place in Buenos Aires in early April shortly before the Quebec Summit.

The detailed work of making specific proposals has been done in nine negotiating groups composed of trade officials:

- Agriculture
- Intellectual Property Rights
- Subsidies, Anti-dumping and Countervailing Duties
- Dispute Settlement
- Services
- Market Access
- Investment
- Government Procurement
- Competition Policy

A Trade Negotiations Committee (with the fitting acronym of TNC), composed of Vice-Ministers, coordinates the work of these negotiating groups. The TNC has been meeting regularly since the summer of 1998.

The business community is, of course, well represented in these discussions. Out in front of the negotiators is the Hemispheric Business Forum, which meets regularly and develops recommendations for Ministerial meetings. One of the outcomes of the FTAA process thus far is an agreement on Customs-related Business Facilitation Measures (these are ways to streamline customs and border clearance for business people). This was agreed to at the Toronto Ministerial in November 1999, and is currently being implemented through the TNC.

The FTAA process has been gaining momentum in the wake of the Seattle WTO Ministerial, which failed to launch a new round of multilateral negotiations. A draft text for the FTAA has now been completed, albeit one that is "heavily bracketed" (bracketed text indicates areas of disagreement). The draft text sets out the various national or regional positions in each negotiating area, and is a significant step toward the more serious negotiations that will follow Quebec.

Despite the democratic rhetoric that launched the process, there has been no public release of the draft text. And when leaders meet in Quebec, it will be under extremely fortified conditions. This seems to be a trend, as leaders talk of democratic traditions and consensus decision-making increasingly from behind barbed wire fences guarded by heavily-armed riot police.

Across the Americas, opponents of the FTAA are organizing in the lead-up to Quebec. This is a response to the wide-ranging implications of the FTAA for nations North and South, at all development levels. Key concerns include the consequences of the FTAA for:

- Public services, such as health care, education and social services;
- Regulations to protect the environment, set labour standards and ensure consumer protection;
- State enterprises, such as Crown corporations and marketing boards;
- The viability of independent cultural policies;
- The ability of poor countries to set a development path in the interests of their citizens; and
- First Nations communities across the Americas, especially in cases where treaties have not been signed.

In a nutshell, what is at stake is the ability of citizens to make democratic choices about how they want to structure their economy and society. Democracy is being curbed to give more power to corporations and investors, while governments, far from sitting on the sidelines, use the power of the state to protect and privilege the property rights of those corporate actors.

The good news for activists is that an FTAA is not a sure thing. To date, it has been more of a donkey cart than a locomotive. While the potential ramifications of the FTAA are significant, there are numerous fault-lines that could undermine a final deal:

- Despite the enthusiasm of Canada and the US, several key Latin American countries, such as Brazil and Mexico, are lukewarm to the process.
- Trade disputes, between Brazil and Canada over aircraft subsidies and mad-cow disease, and between Brazil and the US over intellectual property, have escalated in recent months.
- The US must secure Fast Track negotiating authority, which would allow the Bush administration to negotiate a deal without fear of Congressional amendment.
- There are some major disagreements on key issues, such as intellectual property, anti-dumping and countervailing duties, and services, as well as over how the process will move ahead.
- It remains to be seen whether a new WTO round of negotiations can be launched in Qatar later in 2001.
- And the tide of protest has only begun to rise, particularly in Latin America where public awareness of trade issues has been low.

The rest of this paper surveys the issues and dynamics of the FTAA. In the next section, the broad strategic context of the Americas is examined. Section III provides much more detail on the FTAA negotiation process and the issues that are on the table.

II. The Strategic Context of the Americas

Because of the large number of countries involved, with differing levels of development and a great deal of common history, the broader context of the negotiations is complex. Historically, there have been tensions between desires to create a more unified Latin American space versus a pan-hemispheric vision of the Americas dominated by the US. This dynamic is still playing out in the imposition of structural adjustment programs through the International Monetary Fund (IMF), in South American regional integration projects, and in national strategies that attempt to deal with US power. In addition, there are several other regional dynamics of a political nature, such as US intervention in Colombia, that may affect the negotiations.

Two Visions: Bolivar and Monroe

The nations of the Americas are all products of European colonialization, stretching back to the early 16th century. In most countries, wars of independence against overseas monarchies created the conditions for the emergence of new nation-states.[1] Integration among these states has been a recurring theme, particularly in Latin America, in the years following independence. Two conflicting visions of integration in the Americas have predominated.

The first is a vision of a unified Latin American confederation put forward in the early 19th Century by Simon Bolivar, "the Liberator" of the South American independence movements. Bolivar dreamed of, and advocated for, a unified Latin America from Mexico to Argentina in the Congress of Panama in 1826, a few years after the final battle that drove the Spanish out of the Americas.

This vision of a unified Latin America did not sit well with the United States or Britain, the latter of which provided much of the financing for the independence movements. Neither the US nor Britain wanted to see the creation of a new stronger power in the Americas. Instead, they preferred, and agitated for, smaller nations, divided and more easily controlled. Regional oligarchies also played a role in undermining a Bolivarian vision. However, the idea of greater regional integration and cooperation has continued to resurface from time to time, and in the context of the FTAA seems to have taken on a greater sense of urgency.

The second vision is that of US President James Monroe, expressed in the 1823 Monroe doctrine of "America for Americans." This doctrine was ostensibly about opposition to European imperialism in the Americas. But the Monroe doctrine is more widely known as a basis for US expansionism and intervention throughout the hemisphere, with Latin America seen as an essential part of the US's sphere of influence.

These visions have continued to play out over the decades. While Pan-Americanism is reflected in institutions such as the Organization of American States (OAS) and the Inter-American Development Bank, it has often taken on more direct forms. US intervention in Latin America in defence of its perceived interests has been a constant feature, particularly in Central America. The US has invaded and occupied countries militarily (as in Panama and Nicaragua), has supported coups against democratically-elected governments (as in Chile and Guatemala), and has maintained a significant military and economic presence that continues to this day.

"Bolivarianism" may be on an upswing. As part of a populist constitutional upheaval, Venezuelan President Hugo Chavez renamed the country "the Bolivarian Republic of Venezuela" (Bolivar came from what is now Venezuela). Further south, a South American integration project, led by President Fernando Henrique Cardoso of Brazil, is offering an alternative to a hemispheric trade area dominated by the US. Greater Latin American integration is seen as a means of more effectively dealing with US power and global institutions (more on this to follow).

Structural Adjustment

Latin Americans are no strangers to globalization. For the past two decades, many Latin American countries have been saddled with high levels of foreign debt. In order to gain access to the financial and economic system of the North, Latin American countries have required the seal of approval of the IMF, an international institution dominated by the US. As a condition of receiving this approval, these countries have had to implement numerous economic reforms, known as Structural Adjustment Programs (SAPs).

SAPs became official IMF policy as a result of the "debt crisis" of the early 1980s (the "crisis" was not the hardship caused to people in nations with high debt levels, but the fear that these countries would default and that Northern banks would not get paid back). SAPs require that countries:

- reduce the public sector by cutting back on public services like health care and education, privatizing state enterprises, deregulating the economy, and eliminating government supports and subsidies;
- reorient the domestic economy towards export production, and remove constraints on trade and capital flows; and
- maintain high interest rates in order to control inflation and stimulate the confidence of foreign investors.

This set of policy measures has been called "neoliberalism" in academia, and "the Washington Consensus" in policy circles. Ostensibly, these measures were designed to improve the economic performance of countries and thus enable them to meet their debt payments. But in practice their purpose is to integrate these economies into the Northern-controlled global economy and financial system.

The evidence to date shows that around the world these policies have failed quite badly, and have been detrimental to economic growth. During the 1980-to-1998 period of structural adjustment, the total growth of GDP per capita in Latin America was just 6% (not per year, but total). In contrast, during the 1960-to-1980 period, characterized by state intervention through import-substitution policies (designed to encourage industrialization and economic development), Latin American countries grew by 75%.[2] That is, structural adjustment policies have not delivered even on their own terms (more economic growth), never mind by any more meaningful measures of standard of living.

Under structural adjustment, exports have grown a great deal for Latin American countries. However, this has not been such a great bargain. These countries have faced declining "terms of trade" for their exports—they have to export relatively more to purchase the same amount of imports due to falling prices on world markets—because many countries from around the world have been pushed to pursue the same export-oriented economic strategies. Wide price fluctuations for export commodities in world markets also undermine developing countries. In other words, increased exports do not necessarily translate into a higher standard of living.

The overall economic climate in Latin America remains weak, with lingering effects of the global financial crisis that played out from mid-1997 into 1999. This period destabilized Latin American countries as short-term capital flows dried up due to investor jitters. In the aftermath, Latin American countries have had to pay a large interest rate premium to attract foreign capital, in the process slowing the domestic economy.

In 2000, economic growth in Latin America recovered somewhat, driven by gains in Brazil and Mexico. But, despite the boom in the global economy (driven by the US), growth has stabilized at levels below those prior to the 1980s debt crisis. More importantly, official unemployment has remained persistently high, at around 9%, and there has been little progress fighting poverty.[3] These broad figures also gloss over issues such as resource depletion, the large informal economy in most countries (people selling anything they can on the street just to get by), and the fact that Latin America and the Caribbean have the worst income distribution of any region in the world.

Trade and investment agreements, in particular the WTO, lock in place this neoliberal model of development. Provisions of the WTO agreements inhibit the capacity of nations to engage in industrial development. Many tactics that have been vital for the development of the most developed countries in North America, Europe and East Asia have been made illegal. Instead, these agreements enforce a model of liberalized trade that inherently favours the already strong over those trying to catch up.

Unfortunately, while many in Latin America are aware of forced globalization through the IMF, knowledge about the WTO and the FTAA negotiations is far less widespread. NGOs in Latin America are still at the early stages of raising public awareness about the FTAA. If they are successful in making a connection in the public mind between the IMF and the FTAA, Latin American resistance could be a very significant force in derailing the FTAA.

Regional Trade Blocs

In the Americas, there are around 80 bilateral and multilateral trade agreements among the 34 nations. For the US, the FTAA offers an opportunity to streamline the complexity of these numerous agreements in a manner that positions the US as the hub economy for other countries' spokes.

However, even as Latin American and Caribbean countries are at the FTAA negotiating table, many are also pursuing regional trade and integration strategies. It is unclear to what extent this represents new potentially progressive formulations based on mutual economic development, or just replicates the familiar dynamics of the global economy on a smaller scale.

Nonetheless, the most interesting regional deals are based on building capabilities through a larger internal market. Perhaps more importantly, greater unity and cooperation provides a measure of strength at the bargaining table in international fora that would not be possible for individual countries. Through regional blocs, joint proposals have been made as part of the FTAA negotiations.

Apart from numerous institutional bodies in Latin America and the Caribbean, there are four major trade groupings: Mercosur, the Andean Community, the Caribbean Community (Caricom), and the Central American Common Market (CACM). The extent to which these are coherent entities varies greatly.

The Common Market of the South American Cone, or Mercosur, is the largest and most dynamic regional block in the FTAA negotiations (other than NAFTA). With a population of over 200 million and a total GDP slightly larger than Canada and Mexico combined, market access to Mercosur is the "prize" of the negotiations.

Mercosur was established out of the Treaty of Asuncion in 1991, which built on efforts towards greater integration on the part of the two major players, Argentina and Brazil, beginning in the mid-1980s, by adding Uruguay and Paraguay to the new club. Mercosur countries created a customs union (common external tariffs and border controls) uniting the four countries, beginning in 1995.

Mercosur is a process of integration on both economic and political fronts. The creation of a common market involves new supra-national institutions, including a Parliamentary Assembly, an Economic and Social Council, and ten Working Groups. A Social and Labour Commission was launched in 1999, with representation from national labour federations. Mercosur nations have also been working towards greater macroeconomic policy coordination. Overall, the Mercosur approach has more in common with the European Union than with NAFTA; indeed, the Treaty of Rome that launched the EU was a source of inspiration for Mercosur.

Intra-regional trade flows as a result of Mercosur have increased rapidly, although integration creates its own problems and tensions among members. Mercosur is also pursuing a balanced trade position internationally, and is currently in trade talks with the EU and South Africa.

All the same, Mercosur is in the same mould as other trade agreements with regard to favouring

CANADA
UNITED STATES
MEXICO
CUBA
BAHAMAS
DOMINICAN REPUBLIC
HAITI
JAMAICA
PUERTO RICO
BELIZE
GUATEMALA
HONDURAS
EL SALVADOR
NICARAGUA
COSTA RICA
PANAMA
TRINIDAD and TOBAGO
VENEZUELA
GUYANA
SURINAME
FRENCH GUYANA
COLOMBIA
EQUADOR
PERU
BRAZIL
BOLIVIA
PARAGUAY
CHILE
ARGENTINA
URUGUAY
Figure 1:
Regional Trade Blocks
in the Americas
NAFTA
Mercosur
Andean Community
Central American
Common Market

corporate interests, only in this case the big players are based in Argentina and Brazil. Foreign interests also play a role in these countries. Still, many hold out hope that Mercosur could serve as the foundation for something better, as partners can negotiate more among equals, complement each other's economies, and strengthen industrial development processes. Many Southern Cone NGOs feel that, while Mercosur has its problems, these opportunities would be lost if subsumed within an FTAA.

The Andean Community (CAN) groups together most of the non-Mercosur countries in South America: Bolivia, Colombia, Ecuador, Peru and Venezuela. The CAN has a common external tariff, with an internal free trade regime. However, intra-regional trade makes up a relatively small share of total trade (although this has grown to about 14% in 1998), and most of this is Colombia-Venezuela trade. Venezuela is a major oil producer, with large exports to the US that amount to about half of the CAN's total exports.

Mercosur nations agreed in September 2000 to join with the Andean Community in a free trade zone by January 2002. This push for a South American Free Trade Agreement is being led by Brazilian President Cardoso, and has been put on a fast track to bolster the influence of a larger South American bloc within both FTAA and WTO negotiations.

Chile is the odd-country out in this South American integration game, although it has had flirtations with both CAN and Mercosur. In the mid-1990s, it was expected that Chile would be brought within the fold of NAFTA. Chile concluded trade agreements with Canada and Mexico, but was unable to complete a deal with the US.

In the intervening years, Chile has leaned more towards joining Mercosur, with accession seeming imminent. However, in the fall of 2000 Chile announced that it would again be seeking a free trade deal with the US. This angered Brazil and led it to suspend moves toward Chilean accession to Mercosur. Some Latin American observers see the US-Chile negotiations as a means of legitimizing a NAFTA-like formulation for the broader FTAA process. By breaking Chile off from Mercosur and promising Chile preferential access to the US market, these negotiations are also a means for the US to corral other nations in the FTAA process.[4]

The Central American Common Market (CACM) is composed of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Once a united entity in the 19th century, these nations have swung back and forth in terms of attitudes to regional integration. Recent attempts have emphasized developing a greater level of internal integration to create domestic economic capabilities prior to deeper liberalization. In practice, however, Central American nations do little trade with one another, and are more like spokes on a US hub.

The Caribbean Community (Caricom) is composed of 14 nations, of which Jamaica and Trinidad and Tobago are the largest, producing 75% of the region's GDP. Most of these countries are English-speaking former British colonies. They each have limited economic bases, and many depend on tourism and commodity exports (with preferential access to the US, EU, and other markets). Intra-regional trade is quite small.

Both the Central American Common Market and the Caribbean Community are made up of small countries with little economic and political weight. Even taken as a group, they are still small players in the FTAA negotiations. Caricom has repeatedly expressed major concerns about the FTAA's potential to damage the region's economies and public sectors (for many, tariffs are the primary source of government revenues).

Wrestling with the Elephant

The 34 nations engaged in the FTAA negotiations represent a wide spectrum of development levels. At one end are two members of the planetary economic élite, the US and Canada. At the other end of the scale are Haiti and Nicaragua, among the poorest countries in the world. And in between are middle-income countries like Chile, Argentina and Brazil that have achieved a reasonable level of economic development.

Table 1: Indicators for Selected FTAA Countries

	Population (millions)	GNP (billions of US dollars)	GNP per capita (US dollars)	Gini index (1)
	1999	**1999**	**1999**	
Argentina	36.6	277.9	7,600	n/a
Brazil	168.1	742.8	4,420	60.0
Bolivia	8.1	8.2	1,010	42.0
Canada	30.6	591.4	19,320	31.5
Chile	15.0	71.1	4,740	56.5
Colombia	41.5	93.6	2,250	57.1
Costa Rica	3.6	9.8	2,740	47.0
Haiti	7.8	3.6	460	n/a
Honduras	6.3	4.8	760	53.7
Jamaica	2.6	6.0	2,330	36.4
Mexico	97.4	428.8	4,400	53.7
Nicaragua	4.9	2.1	430	50.3
Peru	25.2	60.3	2,390	46.2
United States	272.9	8351	30,600	40.8
Venezuela	23.7	87.0	3,670	48.8
Latin America and Carribean	509.2	1954.9	3,840	50.0

Notes:
(1) Survey years differ by country, and are generally between 1993 and 1997. The gini index measures income distribution based on fifths of the population, and ranges from 0 (absolute equality) to 100 (absolute inequality).

Source: World Bank, Selected World Development Indicators, World Development Report, 2000/01; GDP growth data from ECLAC; gini total figure from IMF

Economic weight is perhaps the single biggest determinant of bargaining strength in multilateral negotiations. Arguably, the basis for an agreement to create a "level playing field" amid such a disparity in development levels is problematic, particularly for the smallest countries.

The negotiations are heavily skewed because of the massive economic and political weight of the United States. Indeed, the GDP of the US alone is greater than the combined GDP of every other country in the negotiations. For the US, the FTAA process is seen as an opportunity to deepen commitments in trade and investment liberalization made by Latin American countries at the WTO, and to push hard to ensure that existing WTO commitments are implemented. The US Trade Representative has been quite frank about its mandate to negotiate an agreement that furthers the interests of US corporations in Latin America.

For many nations, the key dynamic is how to deal with US power. Regional agreements are seen as one way of gaining strength. But this is impaired by the degree of dependence on the US market. Due to NAFTA, both Canada and Mexico are more integrated into the US economy than ever before. This means that Canada and Mexico benefit when the US economy is hot, but at the price of lost political and economic sovereignty in many areas.

In some respects, Mexico is the "poster boy" for the rest of Latin America with regard to the supposed benefits of joining the NAFTA club. But the Mexican experience should offer a warning. As noted before, Mexico was severely weakened by the "peso crisis" less than a year after joining NAFTA, when capital inflows became outflows due to an investor panic. Since then, Mexico has experienced a renewed boom in foreign invest-

ment, largely in search of cheap labour and an export platform to the US: some 85% of Mexican exports head north. This has provided little in the way of income to workers, and can hardly be called an ideal development model.

Interestingly, Mexico has not been enthusiastic about the FTAA. Already a member of the NAFTA bloc, Mexico also has bilateral trade agreements with almost every country in Latin America, with the exceptions of Brazil and Argentina. Mexico fears that gains in trade and investment for other Latin American countries through an FTAA will come at its expense.

Many smaller Latin American and Caribbean countries, having geared their economies toward export, are also highly dependent on the US market. They see enhanced access to the US as the key outcome of the negotiations. Many US market access concessions made in the Uruguay Round (that led to the creation of the WTO) have not materialized thus far, a point of contention for Latin American nations.

South American countries, on the other hand, are less reliant on the US market. In 1998, 46% of exports from Central America were destined for NAFTA countries, compared to only 17% for Mercosur.[5] Most of Mercosur's external trade is with Europe, an important factor behind trade negotiations between the EU and Mercosur.

In this context, the key bipolar dynamic revolves around the US and Brazil, which is the dominant economic power in South America and the eighth largest economy in the world. Brazil has a larger industrial base than any other Latin American country, and has a large domestic market less dominated by foreign companies than others in Latin America. This is the legacy of a highly regulated economy protected by considerable trade and investment barriers up to the 1990s (although this has been changing rapidly over the past decade).

Given this economic picture, Brazil has potentially a lot to lose from the FTAA, and is concerned about consolidating its existing industrial base before exposing it to further external pressures. Overall, Brazil has been lukewarm to the FTAA process, and is large enough that it can resist bullying tactics from the US. Because Brazil strongly supports the regional integration initiatives under Mercosur, if it is dissatisfied with the terms of any proposed FTAA it has less to lose from a collapse of negotiations.

While Brazil is the most powerful country in South America, Argentina and Chile are by comparison much smaller. Both have a high average standard of living, although they rely largely on a primary commodity economic base, with less industry than Brazil. Chile is already a very open economy, and is perhaps the most conservative of the South American countries (even in spite of the transition to a "socialist" government under Ricardo Lagos). This is the legacy of the Pinochet dictatorship, which lowered barriers to trade and investment and privatized natural resources and social services.

Trade Tensions and Other Factors

Escalating trade tensions between Brazil and both the US and Canada could also jeopardize the negotiations. The US has been aggressive over intellectual property issues at the behest of major pharmaceutical companies (more on this in the Intellectual Property section).

Canada and Brazil have recently been on the verge of a full-scale trade war. At the WTO, Canada attacked Pro-Ex, a financing program put in place by Brazil to assist Embraer, a jet manufacturer that is the main competitor to Bombardier, a favourite son of the Canadian government. Brazil retaliated by attacking Technology Partnerships Canada, a federal program that provided interest-free loans to Bombardier and other aerospace and defence companies. Both industrial support programs were ruled illegal by the WTO, and, while both countries now claim that changes have brought them into compliance with WTO rules, the dispute continues to simmer.

Trade tensions rose noticeably in February 2001 when the Canadian government banned the import of Brazilian beef due to suspicions of mad cow disease. Via NAFTA, this ban was extended

to the US and Mexico. Most commentators, and several health scientists, believed the ban was politically motivated. The result was a major strategic error for Canada, as Brazilians responded by boycotting Canadian products and have turned Canada into a national villain. The ban was lifted in late February, three weeks after it was imposed.

There are some other dynamics of a more political nature that may pose challenges for the FTAA negotiations. Peru, Bolivia, Ecuador and Colombia are all undergoing significant political turmoil. Indeed, the dire situation in Colombia is a potential deal-breaker. Many in Latin America are very upset about US intervention under the "Plan Colombia," which is providing $1.3 billion in military aid. This aid is under the pretense of the "war on drugs" but many observers feel that the true intent is to crush the Marxist guerilla movement FARC, which controls some 40% of the country's territory.

Venezuela is a wild card in the negotiations. President Hugo Chavez has been preoccupied with domestic matters, but has made foreign overtures around Venezuela's strong point: oil. While supporting the tightening of oil supplies through OPEC, which has increased world prices, Chavez has cut deals with Caribbean and Central American nations to provide cheap oil, thus enhancing Venezuela's influence in the region. The US is deeply concerned about Chavez. They may want some kind of negotiated provisions that would prohibit such preferential oil price schemes in the future.

Overall, the two largest Latin American economies, Mexico and Brazil, are lukewarm to the FTAA process. Smaller nations may anticipate better market access to the US market, but it is unclear what the price for this will be. Most countries seem in no rush to sign a deal, and few show the same level of enthusiasm for the FTAA as the governments of Canada and the US.

Canada and the Americas

Canada has championed the FTAA since its inception at the Miami Summit of the Americas. After a nasty fight over free trade with the US in the late 1980s, and the election of a Liberal government in 1993 allegedly opposed to free trade, Canada is now one of the biggest promoters of all things to do with trade and investment liberalization.

The Canadian government's enthusiasm for the FTAA borders on boasting. As the government notes:

> The Government has played an active and important leadership role in the FTAA negotiations, reflecting the importance it places on concluding an agreement. Canada was selected to serve as the initial chair of the negotiations and the Government is confident that the progress achieved under Canadian stewardship paves the way for the next steps in the negotiating process. [6]

Given the priority placed on the FTAA negotiations, it is striking how little trade Canada actually does with Latin America and the Caribbean. In 1999, just 1.1% of total Canadian merchandise exports went to Latin America, and, if Mexico is not counted, this falls to 0.7%. The share of total exports to Mexico has remained flat from pre-NAFTA levels, while the share of total exports to the rest of Latin America has actually declined from the start of the 1990s.[7]

In spite of talk about global market opportunities for Canadian companies, Canada is more dependent than ever on the US market. Some 85.9% of Canadian merchandise exports in 1999 headed to the US, up from an average of 73.7% in the 1980s, and 68.6% in the 1970s.

The Canadian government's rhetoric about trade in the Americas seems more steeped in ideology than anything practical. The numbers suggest that the downside risks for Canada in an FTAA heavily outweigh any potential gains from trade as a result of the agreement.

The government has been highly dismissive of those who denounce ever greater restrictions on democratic governance in the name of trade and investment liberalization. However, it may be the political realities of trade that undercut a Cana-

dian attitude that has been more than a little smug. The recent blowout with Brazil illustrates that other countries do not necessarily share the image of "honest broker" that Canada likes to paint for itself. Canada has been very aggressive at the WTO in pushing a trade policy agenda (in areas such as services, agriculture, investment and intellectual property) that is opposed by large numbers of developing countries.

Canada is also facing some major trade problems with the US. Since the fall of 2000, PEI potatoes have been banned from the US market due to perceived disease problems. Moreover, the Canada-US Softwood Lumber Agreement is set to expire at the end of March 2001, and the US is threatening punitive duties on Canadian lumber imports, arguing that the Canadian forestry regime subsidizes exports (see the section on Subsidies, Anti-dumping and Countervailing Duties for more on this issue). The very existence of this agreement testifies to the failure of the Canada-US FTA and NAFTA to ensure market access for Canadian exports. This is an important lesson for developing countries seeking more secure access to the US market through the FTAA.

While the Canadian government has been one of the most vocal supporters of trade and investment liberalization, non-governmental organizations (NGOs) in Canada have been among the biggest critics of such goals. The coming confrontation in Quebec will be just the latest skirmish in a long line of battles that go back to the negotiations of the original Canada-US FTA.

III. The FTAA Negotiations

This section examines the relationship between the FTAA and other trade and investment agreements, such as NAFTA and the WTO. It then reviews the state of the negotiations, and analyzes the issues that are on the table in the nine FTAA negotiating groups (plus labour and the environment).

Interlocking Trade Agreements

The process of trade liberalization takes place in a variety of bilateral, regional and multilateral fora. While keeping track of the "alphabet soup" of trade-related acronyms can be a challenge, at their core they are all variations on the same theme. By emphasizing the rights of traders and investors, they stress deregulation, privatization and commercialization, while limiting the authority of governments (and therefore the ability of citizens) to democratically set priorities and make choices.

Trade deals steadily erode local decision-making and control. Bit by bit, public programs may be deregulated or privatized so as to comply with trade rules and decisions by trade dispute panels. Similarly, government measures to protect the public interest may be attacked in the crossfire of different trade agreements. More insidiously, national or sub-national governments contemplating new regulations or new public services may be deterred by the "chilling effect" of potential litigation.

The two most relevant parallel agreements for the FTAA negotiations are the WTO and NAFTA. With few exceptions, NAFTA goes deeper in terms of liberalization than the WTO. Indeed, the NAFTA text was a highly influential prototype of legal obligations later incorporated into the agreements of the World Trade Organization.

The WTO permits member countries to enter regional economic integration agreements, provided that these regional pacts have "substantial sectoral coverage" and liberalize further than the WTO agreements. What this means for the FTAA is that it must be "WTO-plus"—the agreement must at least meet the WTO benchmarks for liberalization. Like NAFTA, the FTAA may also cover areas not currently in (or not fully covered by) the WTO, such as common rules on investment, government procurement and competition policy.

From the perspective of Canadian and US negotiators, a NAFTA-like agreement is the objective for the FTAA. NAFTA is a very comprehensive trade agreement. It contains numerous chapters that restrict the ability of governments to regulate cross-border movements of goods, services and investment. It sets out timetables for the elimination of tariffs and sets out restrictions on other "barriers to trade" such as standards, regulations, licenses and permits. And it addresses areas of benefit to corporations not traditionally considered to be trade matters, such as government procurement and intellectual property rights.

Although it is not a foregone conclusion, the FTAA will almost certainly include "NAFTA-plus" features. It is worth recalling that NAFTA was "sold" as merely extending the Canada-US FTA to Mexico, but the final package incorporated many new features, most notably the investor-state dispute settlement mechanism. It is very likely that the proposed FTAA will not merely expand NAFTA southward, but will actually be broader and deeper than NAFTA in its scope and coverage.

The US views the FTAA negotiations as part of a global strategic context with regard to influencing negotiations in other arenas that involve big players such as the EU and Japan. The US can use the FTAA to leverage gains on a multilateral basis at the WTO. For example, the US negotiating position for the FTAA on agriculture is explicitly attempting to lay the groundwork to challenge the EU's export subsidy regime. Or, if the US is able to achieve much stronger intellectual property protection through the FTAA, then this would become the new benchmark for negotiations at the WTO. In this way, bilateral, regional and global trade initiatives reinforce one another.

The tenor of the FTAA negotiations may also be affected if a new round of WTO negotiations is successfully launched, and if so, how expansive in scope the round will be. The next WTO Ministerial is now scheduled for November 2001 in the desert kingdom of Qatar, far away from protesters. With a date now set, smaller countries may seek to slow down movement at the FTAA in favour of seeing how the lead-up to Qatar takes shape.

Timeframes

Some countries, such as the US and Chile, are pushing for a faster timeline for completion of an FTAA deal. With US President Bush making the FTAA a major plank of his foreign policy, his administration would likely want something concluded by the end of 2003, prior to the election in 2004. Canada is agreeable to an accelerated timeline, but has not been actively lobbying for it.

Other countries are not so anxious. Brazil is not keen on moving the timeline forward, as President Cardoso will be facing the electorate in 2002, and because they want more time for a South American bloc to consolidate. Other smaller countries feel little need to rush, if only to buy more time for their economies. At this point, there seems to be enough opposition to accelerating the timeframe that the deadline will not be brought forward. Barring some strenuous arm-twisting on the part of the US, the original timeline to conclude negotiations by 2005 (i.e., by December 31, 2004) will remain.

Apart from the broad timelines, even at a procedural level there are other important areas of disagreement. At a Trade Negotiations Committee (TNC) meeting in Lima in late January, nations could not agree on when the full negotiations would commence. The US and Chile have proposed that they begin on November 1, 2001, while Caribbean and Andean nations want to wait until June 2002. There are also disputes over "negotiating modalities"—exactly how the full negotiations will be structured—for example, by what process countries are going to negotiate and from what starting point.[8]

A potential deal-breaker is the ability of US President Bush to get Fast Track negotiating authority from Congress. Fast Track means that deals negotiated by the President are subject to a straight Yes or No vote in Congress. Without Fast Track, domestic political considerations would mean that Congress would pick apart a deal and demand amendments or additional concessions before approval. This would mean that other countries would effectively need to negotiate twice with the US, something no one is inclined to do. In the US, to assist Bush in getting Fast Track, several key business lobbies are now shifting their positions in favour of including in the FTAA some reference to labour and environmental standards, which are favoured by many Democrats (for arguments why such clauses would be ineffective, see the discussion below).

Negotiating Areas

Despite all the attention it has attracted, it is important to recognize that Quebec is just a way station on the FTAA journey. Nothing will be signed there; indeed, it will be more of a photo-op for the leaders than a significant milestone in terms of negotiations. Most of the action will take place in pre-Quebec meetings that will approve the draft bracketed text. The real "hardball" negotiations will follow the Quebec Summit, and will involve trade-offs and arm-twisting over the wording of particular sections and clauses of the text, and demands to eliminate real and perceived barriers to market access.

In the absence of a draft text or publicly revealed positions, it is difficult to assess what the key objectives are for particular countries (or regional groupings) in any particular section of the draft agreement. Bargaining games are also important, in that countries can ride along on the language proposed by others without needing to put their own position forward. Also, positions may be put forward, but only as "bargaining chips," with the expectation that they will be removed in exchange for a concession elsewhere. In the overall negotiating process, trade-offs will be made across the lines of the nine negotiating groups. For example, the US may give ground on access to its mar-

ket in exchange for stronger language on intellectual property rights.

Canada and the US have posted information about their negotiating positions on the web, although their usefulness is questionable. The US has only posted a public summary of its position, which is somewhat vague. The Canadian position is an incoherent jumble of documents that provide little in the way of useful information. Of note, Canada has not submitted an official position in the key negotiating areas of investment, intellectual property, services and dispute settlement, and is silent on institutions that are important to Canadians such as Crown corporations, supply management practices, and the Canadian Wheat Board.

The current negotiating draft is a composite "bracketed text," a compilation of the different proposals that have emerged from the nine negotiating groups, with brackets indicating areas of disagreement. This draft was reviewed by the TNC in January, and will be reviewed by Trade Ministers in early April prior to the Quebec Summit.[9]

The terms of the FTAA are that it will be a *single undertaking*, meaning that countries must either accept or reject the final package in its entirety, rather than being able to sign onto some parts of the deal but not others. This means that at the end of the negotiations, Canada and other countries will be faced with a "take-it-or-leave-it" proposition.

In Canada, this will be a decision of the federal government alone, with no requirement for a debate or vote in Parliament. In an ironic contrast to the Canadian ratification process, there has been some discussion of inclusion of a "democracy clause" that would limit accession to the FTAA to democratic countries, although it is unclear what this would really mean in practice.

Investment

While the NAFTA is a "trade agreement," it is the rights conferred to investors that are most significant. As trade lawyer Steven Shrybman notes: "The single most pernicious element of the entire free trade edifice is rooted in the investment chapter of NAFTA and literally hundreds of other international investment treaties that have been quietly negotiated over the past decade."[10]

Investment has come to be as important as trade because of global corporations that increasingly have production facilities dispersed around the world. Transnational corporations account for two-thirds of all global trade, and the combined sales of the top 200 transnationals are equivalent to 27.5% of world GDP.[11] Investment is the means by which they move their operations around. In fact, sales of US-owned affiliates totalled $1,983 billion in 1997, more than double the total amount of US cross-border exports of $928 billion.[12] The enhanced ability to invest in a country, or to withdraw from a country, has given global corporations immense bargaining power vis-à-vis governments and labour.

Multilateral investment rules are a kind of "holy grail" for liberalization ideologues, and to this end NAFTA is an ideal template. Key provisions of NAFTA are about conferring new rights on investors:[13]

- National treatment and most-favoured nation treatment of foreign investors, which combined mean that a government must extend the best type of treatment it provides to *any* investor, domestic or foreign, to *all* investors.
- Very broad definition of "investment," covering virtually all types of ownership interests. Because the definition is so broad, the NAFTA contains a provision that states what investment does *not* mean.
- Preventing governments from regulating in- and out-flows of capital.
- Limiting governments' ability to use performance requirements—such as requirements for investors to purchase inputs from local sources, to meet minimum levels of domestic content, to transfer technology, or to meet employment targets.

Due to objections from developing countries, attempts to establish global investment rules along these lines during the Uruguay Round led to the much watered-down Trade-Related Investment

Measures Agreement (TRIMs). The TRIMs Agreement is still controversial among developing countries because it "bans any laws, policies or administrative regulations favouring domestic products."[14] This includes several performance requirements that have successfully been used in the past by industrialized nations to spur industrial development.

The failed Multilateral Agreement on Investment was a response by industrialized countries to this setback, and indeed, to go even deeper than the investment provisions of NAFTA.[15] The push for comprehensive investment rules at the WTO is ongoing, and will likely be on the table if governments are successful in launching a new round of WTO negotiations. In the interim, investor rights are being pursued at every opportunity, including in the current negotiations to expand the General Agreement on Trade in Services (GATS), which explicitly covers investment. [16]

Bilateral investment treaties are another avenue for the protection of investor rights. As of 1998, Canada had signed 24 Foreign Investment Protection and Promotion Agreements (FIPAs). Many of the more recent of these (for example, with Costa Rica, Ecuador, Panama, Trinidad and Tobago, Uruguay and Venezuela) are based on the NAFTA model. However, the precise provisions of these bilateral treaties vary and they are easier to renegotiate or withdraw from. A consolidated multilateral framework, which locks countries in to strong investment rules, remains the ultimate objective.

The draft FTAA text reportedly contains most of the key features of the NAFTA's Investment Chapter (Chapter 11). Because of the continuing controversy within Canada over the investor-state process, the Canadian government has not submitted a formal proposal to the investment negotiating group. The US is proposing to remove restrictions on in- and out-flows of capital, a measure that would take away the ability of nations to use capital controls to stem flows of short-term speculative capital. The lesson of the Mexican peso crisis and the global financial turmoil of the late 1990s is that adherence to such a provision can be extremely dangerous to developing economies.

The US proposal would also prohibit a number of performance requirements currently still available to nations under TRIMs. If the US proposal were accepted, it would remove from nations tools that have a proven track record of promoting and encouraging industrial development.

Perhaps the most controversial NAFTA feature included in the draft FTAA is the investor-state dispute settlement mechanism. Investor-state gives foreign corporations the unprecedented right to directly sue national governments for alleged breaches of NAFTA's investment rules, bypassing domestic laws and national judicial systems. These claims are adjudicated, in secret, by commercial arbitration panels which can award substantial money damages.

NAFTA claims have been filed challenging a wide range of government actions (**see text box**). The NAFTA investment guarantees go far beyond traditional concepts of "expropriation" (such as when the government must pay fair compensation to someone when they want to run a highway through their land). In the NAFTA context, any measure by government that reduces the future profitability of a corporation may be deemed to be expropriation. This includes laws and regulations, at all levels of government, regardless of the public interest issues they are intended to address.

The NAFTA investor-state dispute settlement procedure cuts much deeper than the WTO's state-to-state dispute settlement mechanism, which requires that corporations convince their national governments to act on their behalf. In the NAFTA world, dispute settlement has become a new growth industry. Investor-state disputes, even where they have a small chance of success, can be well worth the effort if there is potential for a massive payoff.

In the face of such challenges, governments are liable to succumb to "regulatory chill"; that is, not even putting a new law or regulation on the books for fear that it will be challenged, and at great expense. It is now typical for proposed Canadian laws and regulations to undergo "trade screens" to ensure compliance with NAFTA and the WTO.

THE POWER OF THE NAFTA INVESTOR-STATE MECHANISM IS EVIDENT IN THE CASES TO DATE:

Ethyl—After the federal government banned the gasoline additive MMT as a health hazard, the Ethyl Corporation initiated a NAFTA challenge. The Canadian government settled "out of court" for $20 million, rescinded the law, and made a public statement that was widely interpreted as an apology to the company and an endorsement of the continued use of MMT.

SD Myers—Between 1995 and 1997, the Canadian government banned the export of PCBs. This was challenged by SD Myers, and in November 2000 this challenge was upheld by a NAFTA panel. The Canadian government has asked for a judicial review of the SD Myers award.

Pope and Talbot—A challenge by an American forestry company against the Canadian government's implementation of the 1996 *Softwood Lumber Agreement*. This Agreement itself was the result of the failure of the original Canada-US FTA to prevent discrimination by the US. An interim decision by a NAFTA panel ruled against Pope and Talbot, but the panel did uphold that non-discriminatory regulatory measures can be considered to be expropriation.

Metalclad—In August 2000, US corporation Metalclad won a NAFTA challenge against Mexico, when a local government tried to prevent the opening of a hazardous waste treatment and disposal site due to ecological concerns. This case was under review in a British Colombia court at the time of writing, with Canada intervening on behalf of Mexico.

Methanex—A Vancouver-based corporation is suing the US government for close to $1.5 billion, because the state of California has banned Methanex's product, MTBE, a toxic substance that is leaching into California groundwater.

UPS—The courier corporation is suing the Canadian government, arguing that Canada Post is illegally subsidizing its courier operations from its letter delivery infrastructure. UPS charges that this alleged cross-subsidization violates NAFTA's national treatment and monopoly provisions.

SunBelt—This case is still at the threat stage, with SunBelt seeking a whopping $15 billion in compensation after BC banned bulk water exports from the province.

There are at least half a dozen more investor-state suits under way. Many of these push the envelope in defining new forms of property rights for foreign investors. Strict secrecy rules may mean that there are other claims that have not been made public.

Investor-state in the FTAA would significantly increase the ability of corporations to go where and when they want, while further restricting governments' capacity to adopt public interest measures corporations oppose. All of the other investment provisions in the FTAA are made more coercive when linked to investor-state, opening up new paths for corporations to attack regulations and laws that affect their interests throughout the Americas.

In the FTAA negotiations, there is already broad consensus among the parties on including an investor-state mechanism. The US strongly supports investor-state for the FTAA. However, anticipating opposition, the US public summary is careful to mention "health, safety and the environment" as important issues, but the position is vague on how these would relate to investor rights in practice, since the US position also supports "classic expropriation disciplines."

Canadian Trade Minister Pettigrew has stated publicly that he does not support the incorporation of the NAFTA-style investor-state provision into the FTAA or any other agreement.[17] Canada has been trying to convince the Mexican and US governments to limit the scope of the meaning of "expropriation" in the NAFTA investment chapter, although to date this effort has not met with any success.

In recent developments, both Canada and Mexico have asked Canadian courts to review investor-state awards (the Metalclad and SD Myers cases) on the procedural grounds that the tribunals overstepped their authority. Under Canada's commercial arbitration legislation, decisions of arbitral tribunals, such as NAFTA Chapter 11 tribunals, are subject to statutory review on limited grounds, including excess of jurisdiction.

These reviews will increase the length of time required and the uncertainty for investors pursuing these cases. They might also result in the awards being set aside as conflicting with Canadian public policy.[18] But the reviews, while a significant development, cannot address the underlying problems stemming from investor-state and NAFTA's broadly-worded investor protections. It is only by eliminating these provisions in NAFTA, bilateral investment agreements, and the proposed FTAA that the public can be protected from such abusive claims.

The Minister's carefully worded statements should not be interpreted as suggesting that the Canadian government will reject any agreement that incorporates the investor-state mechanism. Minister Pettigrew and Canadian trade officials continue to support investor-state. They are not proposing any changes to the actual text of NAFTA, only interpretive language "to clarify the intent of NAFTA's original drafters."[19] This, they insist, would protect legitimate government regulatory actions from NAFTA challenge. Even such modest (and clearly inadequate) changes will be strongly resisted by North American corporate lobbies and by key US agencies such as the State Department and the US Trade Representative.

It is almost certain that the proposed FTAA will incorporate investor-state, essentially unchanged, from NAFTA and that Canada, together with every other FTAA government, is currently willing to accept this provision. Significantly, even if other nations were willing and able to negotiate a watered-down version of investor-state in the FTAA, Canada would still be locked into the more stringent NAFTA model with the US and Mexico.

Services

The area of services is expansive, so the impact of hemispheric rules on services is bound to be far-reaching. Service industries account for some two-thirds of GDP and three-quarters of employment in Canada. In addition, most goods also have some type of service attached to them (such as distribution, finance and marketing). Service industries—for example, broadcasting, waste disposal, energy and banking—tend to be more heavily regulated than goods industries. Moreover, many critical services—such as health, education, water and municipal services—are provided or supported, either directly or indirectly, by governments. This means that almost every aspect of the economy and society is affected by trade rules on services.

The push for trade liberalization in services stems mainly from corporate interests in countries with highly advanced service industries. Over the opposition of developing countries, services talks were part of the Uruguay Round, and led to the WTO's General Agreement on Trade in Services (GATS). The GATS is currently being renegotiated at the WTO, with the intent of broadening and deepening the current agreement.

Services are also covered by NAFTA, the prototype for what Canada and the US would like to see in the FTAA. NAFTA's Services chapter follows a "top-down" approach, meaning all sectors are covered except for those that are explicitly negotiated off the table (Canada has reservations for social services, Aboriginal affairs, and aspects of the communications and transportation industries, but these reservations are limited in scope). The GATS uses a hybrid approach: some aspects are "top-down," but the strongest commitments apply only to sectors that countries agree to put forward (a so-called "bottom-up" approach).

Expanded liberalization through the GATS negotiations has raised a host of issues that are coming under greater public scrutiny due to their huge potential for limiting the scope of democratically-elected governments to act in the public interest.

Services liberalization poses challenges to public services, with a bias in the direction of privatization and commercialization. And governments, at the insistence of a well-organized services industry, are contemplating new disciplines that would limit the capacity for governments to regulate for environmental, labour and consumer protection, or for any other public purpose.[20]

A leaked report to the Trade Negotiations Committee in October 1999 suggests a consensus that, in principle, all service sectors would be covered by the FTAA Services chapter (a top-down approach). The current draft FTAA text, however, reportedly contains elements of both the top-down approach of NAFTA and the hybrid bottom-up/top-down approach of the GATS. So at this point it is unclear which overall framework will prevail for the FTAA. Canada has not submitted an official position in this area. The US has the most to gain from this part of the FTAA, and is pushing for a top-down formulation. Developing countries appear much more interested in a bottom-up approach.

Depending on the approach and negotiations, an FTAA Services chapter could go deeper than NAFTA and is legally required to be at least as strict as the existing GATS. In the GATS, Canada and the EU are seeking to further subject domestic regulation to a "necessity test" that would require that even non-discriminatory regulations be the "least burdensome possible." This kind of language could make its way into the FTAA Services chapter, and would establish a difficult test for domestic regulations to meet.

The Services chapter will also likely have language on transparency—the requirement to publish information about any government measures that affect trade in services. These types of requirements are directly linked to domestic regulation at all levels of government. There are, of course, no parallel requirements that would require transparency on the part of service corporations operating in foreign markets.

The proposed text reportedly adopts the existing GATS exemption for services "delivered in the exercise of governmental authority." The exemption is ostensibly to protect public services, but is highly contentious because it is defined very narrowly. Any service provided on a commercial basis—presumably where money changes hands—is not protected, nor are services provided in competition with other suppliers. So, to take the case of education, because university students pay tuition fees, post-secondary education may not be protected by the exemption. Or, because private schools coexist with public schools, K-12 education may not be fully protected either. The definition of what constitutes "commercial" has not yet been tested before a WTO dispute panel. Many analysts feel that this exemption is insufficient to fully protect mixed public service systems.

If a NAFTA-style top-down approach were to be used for the FTAA, Canada would have to explicitly negotiate public services off the table to gain protection from the Services chapter. Despite strong assurances from the Minister and Canadian trade officials that health care is off the table, there is good reason to be skeptical.

For example, a recent CCPA analysis discovered that, despite similar assurances, the Canadian government has already made GATS commitments covering Canadian health insurance.[21] Moreover, requirements for "progressive liberalization" in the GATS can be expected to lead eventually to greater privatization in these areas. The combined effect of NAFTA, GATS and FTAA rules will ensure that any privatization that does occur is "locked-in" and very difficult for future governments to reverse.

A Canadian government priority has been to promote exports in telemedicine and distance education through the GATS. The government argues that it can do this without making any commitments itself in the Canadian market (except health insurance). It remains to be seen whether other countries will demand access to Canadian markets as a trade-off, and, if push comes to shove, which set of priorities (corporate or public) will command the greatest attention from our negotiators. [22]

Because the negotiating text is still secret, the potential impact on specific sectors is unknown at this time. Of note, the US wants energy to be fully covered by the FTAA, a measure that might lock-in California-style deregulation wherever it occurs in the hemisphere. In financial services, there is pressure that would eliminate the offshore banking centres that are the bread and butter of several Caribbean nations, such as the Cayman Islands. These centres have been much criticized as tax havens and money laundering locales. Canada reportedly supports the Caribbean "hands-off" position that decisions over taxation and financial rules be left to sovereign states.

Ultimately, the FTAA negotiations in this area will dovetail with the concurrent GATS negotiations in Geneva. Moves to accelerate the FTAA timeline would bring it closer to the tentative timeline of end-2002 for completion of the GATS negotiations (although progress here depends on whether a new round is launched and what issues are included). And to the extent that further liberalization is agreed to in the GATS, the FTAA Services chapter must keep pace.

Market Access

Traditionally, market access has been the "bread and butter" of trade agreements. Market access provisions relate mainly to conditions affecting the import and export of goods (although, as discussed previously, these treaties have increasingly been expanded and transformed to encompass services and investment). These conditions include: border measures (such as tariffs and import or export quotas); other measures taken by governments that might affect trade (called "technical barriers to trade"); and, emergency safeguard provisions. Other trade remedy laws, including anti-dumping and countervailing duty rules, are being dealt with by a separate negotiating group (**see below**).

The many small economies in the Americas, having been structurally adjusted into export-oriented economies, see advantages in gaining better access to US and Canadian markets, particularly in areas like clothing, textiles and footwear, where tariffs are high. They realize that this might be only a short-run benefit depending on further liberalization in other arenas. From a development perspective, this would probably only encourage the further development of sweatshops on the **maquiladora** model throughout the hemisphere.

The US will likely give up market access opportunities in exchange for concessions in other areas, such as intellectual property and services. However, this may be a tough sell for the Bush administration in seeking Fast Track approval from Congress, due to a slowing economy and a massive trade deficit of US$400 billion per year.

The draft market access chapter is reported to be heavily bracketed. Consistent with a move towards a free trade area, market access negotiations are about setting a timetable for eliminating tariffs, the number of stages, and the specific dates for tariff cuts. One of the issues yet to be resolved is whether negotiations on tariff cuts should be based on actual tariff levels at present, or based on the WTO benchmarks. This is contentious because many countries have lowered tariffs more than they agreed to at the WTO, and would like to get credit for this in the FTAA negotiations. The US, on the other hand, has not liberalized more than WTO levels, and would gain from having existing levels as the starting point. In addition, the US and Canada are seeking more access to key Southern markets, in particular the Mercosur countries, which have high tariffs is certain areas, such as automobiles and machinery. [23]

Brazil is seeking market access in agricultural and industrial products as a condition for liberalizing its service sector. In particular, orange juice, shoes, sugar and textiles are major export sectors where Brazil has been vocal about access to the US market. According to a report from the Brazilian embassy in Washington, the average tariff levied by Brazil on the 15 most important US exports was 14.3%, compared to an average tariff of 45.6% levied by the US on the 15 most important US exports.[24]

Canada is seeking a separate chapter on technical barriers to trade. These include environmental and safety standards taken by governments, which in some way affect trade. This area repre-

sents yet another way to restrict the ability of governments to protect the public interest. While such chapters pay lip service to the rights of governments to regulate, the imperative of trade liberalization tends to get priority when decisions are made by trade panels. In only one case at the WTO has a public interest measure been supported—when Canada lost its challenge to a French ban on asbestos, a well-known carcinogen.

There is disagreement in the FTAA negotiations around the issue of "safeguards." These are temporary measures that governments are permitted to take to protect domestic industries that are seriously injured or threatened by import surges. The US is proposing a 10-year timeframe under which countries could impose tariffs (but not quotas) for safeguard purposes. Other countries have suggested there be no safeguards at all, whereas small countries want to retain some measure of protection as they can easily be overwhelmed by imports from big countries like the US.

Despite initial rhetoric that smaller countries would play a constructive role in the negotiations, Caribbean nations have expressed concern about being left out of the FTAA process, and feel that their interests are being ignored. Many of these nations derive a large portion of government revenues from duties on imported goods, so a phasing-out of tariffs would entail a big revenue loss. In the market access discussions, they are seeking language that would provide for delays in implementing the FTAA's disciplines.

Subsidies, Anti-dumping and Countervailing Duties

The theory behind trade agreements is to create a "level playing field." To this end, WTO rules specify that countries cannot unfairly subsidize their industries in a way that affects trade, and that, if they do, other nations are allowed to impose countervailing duties against imports equivalent to the amount of the subsidy. Countervailing duties are also allowed in the case of dumping, where a company is selling goods abroad at prices lower than the price in the exporting country (for example, to gain market share).

These issues take on importance in international trade because they often have a political character. All countries, including Canada, have long had concerns over the unilateral application of US trade law. In sensitive areas, countries that have been successful in exporting products to the US have often been accused of illegal subsidization or dumping, and have had their products hit with punitive duties. For the affected country, this has meant insecure access, long delays and legal battles, which consume time, money and resources. Thus, even with the so-called "rules-based system," power politics plays its role, and the strong hold significant advantages.

This was one of the principal reasons that the Mulroney government gave for entering into negotiations with the US in the original Canada-US FTA. Despite making massive concessions in energy, natural resources, investment and intellectual property, Canada was only able to negotiate a bi-national process that was confined to reviewing whether US trade laws had been applied properly. The US retained the right to change or toughen these laws as it pleased. The worthlessness of this process became apparent almost immediately when the US amended its laws to make it easier to countervail Canadian lumber exports. This eventually forced Canada into the 1996 Softwood Lumber Accord. Despite "free trade" with the US, trade skirmishes persist, often as a result of political pressures. In this way, the Canada-US FTA was a colossal failure even in terms of achieving its own stated objectives.[25]

Brazil has also been hurt by US actions on steel and citrus products, and has linked this issue with US demands that Brazil make concessions on intellectual property. However, the US very strongly opposes any changes to its trade laws, and resisted attempts by Japan and developing countries to put anti-dumping on the agenda at the Seattle WTO Ministerial. Jeffrey Schott of the Institute for International Economics comments that "anti-dumping is a sacred cow on Capitol Hill."[26]

Another aspect of US trade law that has angered other countries is Section 301 of the Trade Act of 1974, which, in response to complaints by domestic interests, empowers the US Trade Representa-

tive to slap import duties or fees against countries that are perceived to be affecting US exports of goods and services. One of the most prevalent areas for Section 301 actions has been in intellectual property rights. In the late-1990s, most countries in the Americas have faced some kind of pressure from the US due to perceived weaknesses in their national intellectual property rights regimes.

As noted before, better access to the US market is a key objective for developing countries in the FTAA negotiations. One aspect of this has to do with the high tariffs in place in certain sectors. But, while an FTAA may indeed lower tariffs for developing country exports, if they are too successful in exporting for US tastes they are likely to run into US trade actions. Thus, the carrot of market access may not be worth the cost to nations of giving up ground on the use of industrial policies or on intellectual property rights once the unilateral application of countervailing duties is taken into account.

Agriculture

The model of agriculture enshrined in commercial treaties such as NAFTA or the WTO Agreement on Agriculture is based on countries specializing in what they are best at producing, exporting this product, and relying on foreign exchange in order to purchase other food for local consumption. This model contrasts sharply with a self-sufficiency model that tries to ensure that domestic food requirements are met first from local production.

Corporate farming has taken on much greater prominence in this export-oriented model. Family farms have become more and more marginal, squeezed by corporate domination of the major links in the food supply chain, from farm inputs (such as fuel, fertilizer and seeds) to the large supermarket chains that dominate food distribution.

FTAA Agriculture negotiations are closely linked to the negotiating group on Market Access. The US hopes to use enhanced market access to its large domestic market to gain concessions from countries in other areas, such as intellectual property and services. This tactic will be most effective with countries that have a high dependence on the US market.

The FTAA agriculture negotiations dovetail with the ongoing agriculture negotiations at the WTO (like services, agriculture is part of the "built-in agenda"). Many of the proposals at the FTAA table in this area have some link to the WTO, whether in terms of pursuing a geopolitical objective, or by facilitating agreement to cooperate in WTO negotiations.

One of the most significant international issues with respect to agriculture is around subsidies provided by the biggest countries for export-oriented agriculture. These export subsidies lead to food being exported to developing country markets at prices that greatly undermine local food production. Export subsidies also undercut other nations lacking the deep pockets to play this game.

Canada and the US have been adamantly opposed to export subsidies in the WTO context, particularly with regard to the EU's Common Agricultural Policy. One of the difficulties in addressing this issue, however, is that the definition of what constitutes an export subsidy is seldom universally agreed upon. For example, while the US is opposing export subsidies in Europe, it is estimated that in 2000 the US government provided farmers with $28 billion of income support, or about half of net farm income for the year, mostly to large land-owners.[27] This comes through "export credit guarantees," a practice of extending favourable financing to countries in exchange for purchasing agricultural commodities and products.

Canada has cut deeply its supports to farmers, which has led to an extremely precarious position for Canadian farmers in the context of global subsidized agriculture. The Canadian proposal to the FTAA is to level the playing field, and targets all export subsidies, including subsidies by any other name (such as export credit guarantees). Other nations are also opposed to US subsidies in agriculture.

That said, there will be little movement on US subsidies in FTAA negotiations. If the US were to eliminate its income supports for farmers in the

FTAA negotiations, this would greatly affect the global picture with regard to agriculture. From the US negotiating viewpoint (even assuming that the US would support such a move), this would benefit the EU without the US getting anything in return. To the extent that this game will play out, it will be at the WTO, not the FTAA.

Instead, the US is using the FTAA negotiations to push its agenda at the global level. In a move aimed squarely at the EU, the US has proposed that FTAA countries refuse to import subsidized agricultural products from non-FTAA countries. There may be support for such a position in the FTAA negotiations, as other big agricultural exporters such as Brazil and Argentina are members of the Cairns group that has been championing agricultural liberalization at the WTO.

At the FTAA table, the US is also targeting state trading enterprises, such as the Canadian Wheat Board, which are collective entities that attempt to extract the greatest price on behalf of Canadian farmers in the international market (thereby ensuring stable incomes for farmers). In their absence, farmers would lose their market power to private interests. The US is proposing that exclusive export rights for such agencies be eliminated, and would open this up to corporate players.

Canadian supply management practices in eggs, dairy and poultry will be under similar pressure from the US. Supply management enables small farmers to earn higher incomes by selling specified quotas through a marketing board. Supply management programs are currently protected by very high tariffs, and will require strong political will in the future if they are to survive attacks from the US.

While Canada's position on agriculture does not directly mention either state trading enterprises or marketing boards, it does recommend restrictions on domestic support for agriculture. The US takes a similar view. Both nations are seeking agreement in the FTAA for countries to work together at the WTO for this purpose. The biggest losers from such a deal would be small-scale peasant farmers throughout the Americas, who require some measure of government support or intervention in order to survive. While eliminating export subsidies is sensible, eliminating supports for domestic purposes will only serve to undermine food security around the world.

Another issue on the table is what is known as Sanitary and Phytosanitary Standards (SPS), or measures taken by governments with regard to food safety and plant and animal health. This includes the use of pesticides and fertilizers, and genetically-engineered foods and seeds, both key aspects of the corporate-driven model of agriculture. Despite the technical and boring-sounding name, SPS covers sensitive and controversial issues around food safety, food security and nutrition that concern everyone, not just farmers and the agriculture industry.

The Canadian FTAA position is to reaffirm the WTO's SPS agreement, and to ensure that the WTO is the forum used for disputes in this area. This is problematic, as the WTO approach has stressed removing the discretion of national governments over food health and safety in favour of international standards-setting through the Codex Alimentarius, a Geneva-based organization heavily influenced by corporate interests. The WTO's SPS Agreement is biased against the use of the "precautionary principle," the bedrock principle of environmental law, which allows action to be taken where warranted by risks, even without incontrovertible scientific evidence. Given the high-level risks involved in the introduction of genetically-modified organisms into agriculture, it is vital that citizens are able to make decisions about the nature of the food they eat.

Ultimately, it is the model of agriculture being pushed worldwide that is cause for the greatest concern. There is nothing on the FTAA negotiating table that directly addresses important concerns for the people of the Americas around food security, nutrition and hunger.

Intellectual Property Rights

Intellectual property rights (IPRs) are about the protection of "creations of the mind," such as a technological innovation, a song, or a piece of software. Historically, there has been a balance struck

between the ability of creators to make a living from their inventions and the interests of the public to benefit from those creations. In recent years, however, driven by corporate interests, the balance has moved much more forcefully towards protecting the owners of intellectual property. This was given a big push by the inclusion of intellectual property in the NAFTA and WTO Agreements.

As the only exporter of patents and trademarks in the Americas, the US has by far the most to gain in this area. The US is pushing for tough intellectual property laws in the FTAA. The US views the WTO agreement on Trade-related Intellectual Property Rights (TRIPs) as insufficient to protect the interests of its corporations, even though TRIPs was pushed on the WTO agenda against the wishes of most developing countries. TRIPs is still the subject of controversy at the WTO, and many developing countries have yet to change their laws to comply with the Agreement. [28]

In the area of pharmaceutical drugs, deeper intellectual property commitments are troublesome. At issue is what is known as "compulsory licensing," which is allowed only under certain conditions by the WTO's TRIPs Agreement (and under very onerous conditions by the NAFTA). Compulsory licensing lets governments issue licenses to domestic producers to use a patent without the authorization of the patent holder in cases of protecting public health and nutrition, promoting the public interest, for socioeconomic and technological development, and in cases of abuse of intellectual property rights. Licensees must pay royalties to the original patent holder, but the monopoly is ended.

The public health implications of excessive protection for IPRs are staggering. This issue has taken on worldwide significance in recent years, particularly in South Africa, India and Brazil. Brazil delivers, and in many cases manufactures, free anti-AIDS drugs for its population. The result has been one of the most successful AIDS programs in the world, but one which has infuriated US drug companies. American pharmaceutical corporations have vehemently demanded that they be able to exercise monopoly rights over their patents (i.e. to restrict access to such drugs to those who can afford their excessively high prices). The US government is going to bat for them. Recently, it initiated WTO dispute settlement proceedings against Brazil for alleged infringements of the TRIPs. If the US is successful in pushing for stronger intellectual property protection in the FTAA, the Brazilian system of generic drugs would be dealt a severe blow.

Other areas of patent protection are also contentious. Brazil has been vocal about foreign companies that have patented drugs based on plants in the Amazon that have been known to indigenous peoples for thousands of years (called "traditional knowledge"). Another highly controversial issue is the patenting of life-forms. Currently, the TRIPS Agreement requires governments to allow the patenting of microorganisms, but allows them to excludeplants and animals from patenting. Many developing countries are fighting to retain, and even to expand, these exclusions of lifeforms from patenting at the WTO. However, a strong push by the US may make them part of an FTAA Intellectual Property chapter that then promotes similar terms at the global level.

In the area of copyright, the muscle of the entertainment industry is likely to come to bear in the negotiations, especially given the much enhanced capabilities for sharing electronic information over the Internet through technologies such as Napster. Copyright is also the domain of the software industry, which has been vigorous in its attempts to stop unauthorized reproduction and use of software in developing countries.

Competition Policy

Competition policy has traditionally referred to the capacity of governments to prevent price-fixing and concentrations of market power (such as monopolies and oligopolies). Interestingly, while the US pushes for the interests of its corporations abroad, it has from time to time challenged large agglomerations of corporate power at home. Ex-

amples include breaking up Standard Oil and AT&T, and more recently, the ongoing Department of Justice challenge to Microsoft.

The US position on this issue for the FTAA is supportive of the development of competition policy regimes in other nations. However, it is unclear how the US would react should a country actually try to enforce competition policy if a major US corporation were to be affected. The US has instigated coups in the past for lesser offenses (for example, in 1954 the US helped topple the Arbenz government in Guatemala that sought to expropriate unused land owned by the United Fruit Company). The interaction between competition policy and investor-state dispute resolution might also imply that enforcing competition policy would be extremely expensive.

Some Caribbean nations have raised the issue of competition policy in the context of tourism services and the Sabre electronic airline reservation system. When big package deals for tourists, including drinks, food and accommodation, are bundled with airfare, small recipient countries lose foreign exchange. Thus, rules on competition policy could, in theory, challenge concentrations of corporate power and anti-competitive business practices that adversely affect developing countries.

One danger from competition policy rules in the FTAA is its consequences for state enterprises and monopolies (Crown corporations in Canada). The US is recommending rules on state enterprises to ensure that they do not discriminate against trading partners. This could mean preventing new state enterprises, privatizing existing ones, or opening up state monopolies such as electrical utilities or post offices to private competition. A related objective could be to prevent governments from using state enterprises in certain ways (such as providing universal access) that adversely affect private competitors.

Under NAFTA, for example, US courier company UPS is using the investor-state dispute process to challenge Canada Post, arguing that the Crown corporation is subsidizing its express delivery service through its regular letter infrastructure. Such challenges undermine Crown corporations by trying to separate profitable operations (such as express delivery in cities) from unprofitable operations (such as serving rural and remote areas). One possibility is that this could force the break-up of Canada Post, which would undermine universal service schemes based on a single-rate price for delivery anywhere in the country.[29]

While privatization has been forced on many countries in the Americas since the 1980s, some state ownership does remain. Canada has many Crown corporations at the federal and provincial levels. Yet the Canadian position in support of competition policy is silent on the issue of state enterprises and monopolies. The FTAA negotiations should be watched closely for their potentially large impacts on Crown corporations.

Government Procurement

Governments around the world spend billions of dollars a year purchasing (and renting/leasing) goods and services. Government procurement has been traditionally linked with economic development, as large purchase orders from government can help develop domestic industrial capabilities.

Corporations are now very keen to get access to the procurement opportunities offered by foreign governments. The rationale is that the benefits of purchasing from the lowest-cost supplier lead to cost savings for governments. However, this analysis typically disregards both the benefits of having greater government discretion over procurement and the administrative costs imposed by an inflexible, rules-based system with formal dispute settlement. Notably, most private sector companies do not operate this way in their own purchasing policies, often preferring long-term relationships with a small number of suppliers.

Nonetheless, government procurement is on the international trade agenda, even though it has little to do with trade. NAFTA covers procurements at the federal level (but not yet at the provincial/state or municipal levels). Signing the WTO's Agreement on Government Procurement is optional for WTO members (it is a so-called

"plurilateral" agreement). Currently there are 27 signatories to the Agreement including Canada and the United States. Within Canada, only federal government procurement is covered.

Canadian and US corporations probably have the most to gain from a wide-open procurement regime in the Americas. Canada and the US are seeking an elimination of "offsets"—measures that ensure local development in the procurement process, or that require domestic content, investment or licensing of technology. Both Canada and the US are also pushing for greater transparency of the procurement process, with regards to awarded contracts and any government measures affecting procurement.

It is unclear whether these new procurement rules would also apply to sub-national governments. Presumably, Canada and the US would like tendering opportunities to be as broad as possible.

Rather than savings, procurement rules may impose additional costs on the public sector. This process can lead to more cumbersome administration, as governments have to review large volumes of bids and justify their choices based on narrow cost criteria. This conflicts with other factors, such as quality considerations, that necessitate discretion on the part of governments to ensure that the best bid is chosen. Additional costs may arise from appeals and litigation over awarded contracts.

More significantly, expanded government procurement restrictions in the context of the FTAA will reduce the capabilities of national and subnational governments to use procurement for economic development purposes. Even if procurement costs are higher when purchasing from local firms, the economic spin-offs from the use of procurement as a public policy tool to benefit the local economy, or to ensure high quality, good wages and environmental protection, are significant and must be taken into account.

Rules on government procurement might also affect "selective purchasing policies". These policies have been used in the past by municipalities and provinces/states, for example to oppose apartheid in South Africa and the military dictatorship in Burma, by banning purchases from those regions. This might also include recent bans by public universities on the purchase of school merchandise made in sweatshops.

Dispute Settlement

This negotiating group is contemplating government-to- government dispute settlement procedures. An additional element in dispute settlement is the investor-state dispute settlement mechanism described above in the section on Investment.

Canada has not put forward a position to the dispute settlement negotiating group. The US proposal appears to mimic the dispute resolution process of the WTO. While less dangerous than investor-state, the WTO dispute settlement process has been used successfully to attack environmental regulations, health and food safety standards, as well as industrial and cultural development programs. It is a powerful mechanism because a losing country must either change the applicable law or regulation and pay compensation to the challenger, or face trade sanctions.

The US proposal would make a challenger choose between either the FTAA and the WTO to resolve a dispute, and once one is chosen, the challenger would not have recourse to the other forum. In terms of compensation, the US proposal is also similar to the WTO, with trade sanctions as a final recourse.

The US proposal does enhance the transparency of the process relative to WTO standards. It would publicly release submissions by governments to dispute panels, and would open up dispute panel hearings to the public. It would also allow submissions to panels from private parties, organizations and corporations. However, this proposal does not meaningfully address democratic and due process issues, and may only help to sanitize the FTAA's image. The US proposal could also be a double-edged sword. Giving corporations direct access to state-to-state dispute settlement hearings will considerably increase their influence, while most NGOs and citizens will not have

the resources or the expertise to participate effectively. Nor does it address the underlying problem that the substantive rules are stacked to favour corporate interests.

The tragic flaw in discussions of dispute settlement is that, while the interests of corporations are addressed in either government-to-government or investor-to-government formats, there is no flipside that enables citizens to make complaints against corporations. Very strong coercive measures are put in place to protect investors and traders, yet measures to protect the environment, workers or consumers—to the extent that these areas are considered at all—are weak and do not have the benefit of strong dispute settlement and enforcement.

Labour and the Environment

Labour and the environment are not explicitly addressed by any of the FTAA negotiating groups, despite the fundamental impact that this treaty, like its predecessors, would have on workers, the natural environment, and a broad range of government measures to improve labour standards and protect the environment. As the adverse implications of these quasi-constitutional agreements for labour and the environment have become clearer, many others have joined unions and environmentalists in voicing concerns. The resulting domestic political pressures in Canada and the US have led to a push for language on labour and the environment to be included in trade agreements.

Supporters often promote NAFTA as the first international trade agreement to address labour and the environment. The NAFTA's Investment chapter includes cosmetic statements that countries can adopt measures to protect the environment, while exposing such measures to the full force of investor-state claims. The Investment chapter also states that it is "inappropriate to encourage investment by relaxing domestic health, safety or environmental measures." However, the only recourse for violations is consultations between governments. This is in stark contrast to the very powerful investor-state provisions in the same chapter; at the same time as greater security and predictability are accorded to investors, environmental and other regulations become less secure and less predictable.

NAFTA was also accompanied by "side agreements" on labour and the environment. These side agreements are limited to ensuring that a country upholds its own laws and regulations. A national government can be challenged by another government for failure to do so. These side agreements are a triumph of spin over substance. Both labour and the environment are defined narrowly, so, for example, the labour side agreement applies to occupational health and safety but not to child labour or collective bargaining rights, and the environmental side agreement applies to toxic substances and pollutants, but not to natural resource management or conservation of flora and fauna. After a long, drawn-out process, the maximum penalty for violations is very small (capped at 7 one-thousandths of a percent of total trade in goods between the parties).

Neither the provisions in the Investment chapter of NAFTA nor the side agreements require the introduction of new laws or the raising of standards over time. If anything, there is a disincentive to do so, because another country could initiate a challenge for not upholding a law or regulation. In addition, there is no possibility of a penalty against a corporation for either labour or environmental violations. Even considering the limited recourse available under the NAFTA side agreements, their track record is very weak and the side agreements have not had any measurable effect.

The US language on labour and the environment in the FTAA is part of its public position in the Investment negotiating group, suggesting something along the lines of the NAFTA Investment chapter but not the side agreements. In other words, the US position on labour and the environment for the FTAA is actually a step backwards from NAFTA. The recent US-Jordan Free Trade Agreement, signed in October 2000 (but not yet ratified by Congress), suggests what this language might look like. The US and Jordan commit to avoid relaxing labour and environmental standards to encourage trade, to strive to improve labour standards and environmental laws, and to

strive to maintain high levels of environmental protection. No means of enforcement is mentioned.

While Canada has not made any concrete proposals with regard to labour and the environment, Prime Minister Jean Chrétien, in an address to the Organization of American States in February 2001, stated that the FTAA must have labour and environmental protections. This probably indicates that Canada supports the US position.

It is highly unlikely that any meaningful improvements in labour standards or the environment will emerge out of the FTAA process. Most developing countries are opposed to the inclusion of labour and environmental standards in trade agreements for fear that they will be used as protectionist measures by more powerful nations. In addition, it is unlikely that the Bush administration will continue to support such language as the process moves ahead (although keeping these issues on the table may be used as a bargaining chip). If anything, the push for deregulation and the stronger bargaining power of corporations vis-à-vis the state will lead to lower standards.

Conclusion

The FTAA is the latest in the new "alphabet soup" of trade agreements. It is important to keep in mind that all of these agreements are branches of the same tree, in that they all place commercial imperatives above democratic decision-making. Corporations and investors are the biggest beneficiaries of trade agreements, but have no accompanying obligations or responsibilities to the societies in which they operate.

The Canadian government takes a view that more trade and investment are always a good thing. Many government actions are seen as barriers to trade, and, moreover, many aspects of government regulation, until established otherwise, are seen as unnecessary barriers to trade which should be eliminated. This world-view poses risks for Canada and other nations in terms of the ability to regulate in the public interest, to maintain adequate public services, and to preserve Crown corporations. But these concerns all too frequently get pushed aside by Canadian trade negotiators who see their mandate as "opening markets for Canadian companies."

Ideology is certainly a big factor, as corporate interests are equated with the national interest. For the Canadian government, signing trade deals has become something of a growth industry. The Department of Foreign Affairs and International Trade (DFAIT) now has a huge staff to deal with the ongoing negotiations and trade disputes in bilateral, regional and global fora. Trade and investment have become ends in themselves in the federal government's vision of the world, even though there is surprisingly little hard evidence that liberalization is beneficial.[30]

More fundamentally, the push for the FTAA and similar agreements represent a wedge, a Trojan horse, for delivering the rest of the neoliberal agenda. These agreements increase the bargaining power of investors and corporations vis-à-vis nations, and set up a conditioning framework that makes other unpalatable policies—tax cuts, social spending cuts, privatization and deregulation—nearly inevitable.

There are alternative formulations of what might be discussed in hemispheric meetings. The Council of Canadians has developed a *Citizen's Agenda* process that is looking at alternatives to trade and investment liberalization. The Hemispheric Social Alliance's *Alternatives for the Americas* document is an example of what a civil society agenda for the hemisphere might look like, and is aimed at improving the lives of people and prospects for development (a new version of the document will be released in time for Quebec).

As an alternative to the FTAA, South American countries would likely be better off building on Mercosur and the Andean Pact in a manner that ensures mutual economic development, and that can give them much greater strength as a bloc on the international stage. While these regional agreements have their problems, they offer a much greater potential for meaningful development than becoming satellites of the US economy.

In addition to the potential dangers of the FTAA to Canadian society, Canadians should oppose the FTAA as an act of solidarity with Latin American and Caribbean peoples. Measures that would give free rein to US and Canadian companies in Latin America would also foreclose on the ability of Latin American countries to set out their own development path. Canadians have learned many lessons from the Canada-US FTA and NAFTA that need to be shared with colleagues in Latin America. Our history, economic structure, and policy needs suggest that Canada has much in common with Latin American and Caribbean nations. We need to establish a negotiating position based on a development model that serves their needs and ours, not those of the US government and US and Canadian corporations.

The bottom line is that the FTAA embodies the worst aspects of the WTO and NAFTA. It deepens a globalization process that is fundamentally about enhancing the rights of corporations, while disarming governments and citizens. No side agreement built on this rotten foundation would be acceptable because of the fundamental nature of what the agreement is trying to achieve. The FTAA is anti-democratic, and should be rejected by the people of the hemisphere.

Endnotes

1. Notably, these wars were waged by native-born elites of European ancestry, not Aboriginal peoples who fared just as poorly, if not worse, after independence.

2. Weisbrot, Mark, Robert Naiman and Joyce Kim. *The Emperor has no Growth: Declining Economic Growth Rates in the Era of Globalization*. Center for Economic and Policy Research, 2000.

3. ECLAC, *Preliminary Overview of the Economies of Latin America and the Caribbean, 2000*.

4. The situation was also complicated by the fact that Chile had an average external tariff of 9.5%, lower than the common Mercosur average external tariff of 14%.

5. Latin American Economic System, *Guide to Latin American and Caribbean Integration*.

6. *The Free Trade Area of the Americas: Towards a Hemispheric Agreement in the Canadian Interest*, Government Response to the Report of the Standing Committee on Foreign Affairs and International Trade.

7. Department of Foreign Affairs and International Trade, *Trade Update 2000: First Annual Report on Canada's State of Trade*, 2000.

8. Inside US Trade, February 2, 2001.

9. The author has not seen the draft text, as it has not been made public. Comments on the substance of the text that follow are based on positions posted on-line by individual countries, media reports and interviews. The US Trade Representative has commented to some NGOs that the text would be released after the Buenos Aires Ministerial meeting in early April.

10. Steven Shrybman, *"Because we say so!": Investor-State Litigation comes of Age*. 2001.

11. Anderson and Cavanagh, *Top 200*. Institute for Policy Studies, 2000.

12. *Examination of US Inbound and Outbound Direct Investment*, Staff Research Study No. 26, US International Trade Commission, Publication 3383, January 2001.

13. For a good overview, see Barry Appleton, *Navigating NAFTA.*

14. Gerald Greenfield, *The WTO Agreement on Trade-Related Investment Measures.*

15. See the *First Report of the Special Committee on the Multilateral Agreement on Investment*, Legislative Assembly of British Columbia, 1998.

16. Scott Sinclair, *GATS*, pp. 33-35.

17. Mark MacKinnon, *Globe and Mail*, December 13, 2000.

18. Ironically, since NAFTA was signed, the Department of Foreign Affairs and International Trade has been pressing for Canada's commercial arbitration legislation to be changed to provide for the automatic enforcement of arbitral awards. Fortunately, it was unable to get the approval of all the provinces to enact these changes.

19. Inside US Trade, March 2, 2001

20. For an examination of these issues related to the GATS, see Sinclair, 2000.

21. Matt Sanger, *Reckless Abandon*, 2001.

22. Sanger, 2001.

23. Testimony from Sergio Marchi to the Sub-Committee on International Trade, Trade Disputes and Investment of the Standing Committee on Foreign Affairs and International Trade.

24. Brazilian embassy in Washington, *US Barriers on Brazilian Goods and Services*.

25. See Gordon Ritchie's *Wrestling with the Elephant* for more on this case and on the trials and tribulations of trading with the US.

26. Evelyn Iritani, "Payback time as countries protest US Trade Policies," *LA Times*, Jan. 25, 2001.

27. Anderson and Hansen-Kuhn, *America's Plan for the Americas*, 2001.

28. See Sinclair, *The GATS Negotiations: State of Play*, Feb. 2001.

29. See Sinclair, *The GATS and Canadian Postal Services*, 2001

30. See Lee 2001.

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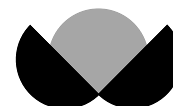
Canadian Centre for Policy Alternatives  **Think again.**