

**5 ENVIRONMENTAL REASONS
TO OPPOSE THE FTAA:**

**5 RAISONS ENVIRONNEMENTAL
POUR OPPOSER LE FTAA:**

**5 RAZONES MEDIO
AMBIENTALES DE
OPONERSE AL ALCA:**

From Swordfish to Services

MATERIALS PREPARED FOR
THE PEOPLE'S SUMMIT OF THE AMERICAS,
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forward

It is easy to feel over-whelmed by the monolithic institutions and globalizing trade deals. With the World Trade Organization hammering away at public services and the threat of expanding the North American Free Trade Agreement to the entire hemisphere of the Americas, I understand the feeling of hopelessness that some of us feel. But we cannot afford to despair! The surest way to turn back the tide of increasing corporate control of our lives is by expanding our own knowledge and trade literacy. It really is like learning another language to break apart the lexicon of trade liberalizers and be able to confidently explain to friends and neighbours why something called an “investor-state” provision is dangerous, or why expanding the “liberalization of services” could threaten environmental regulation.

Knowledge is power. And none of us is powerless. In preparation for the Summit of the Americas and the negotiations of 34 nations, everyone in the hemisphere except Cuba, the Canadian Alliance on Trade and the Environment asked Christine Elwell to pull together a guide to how the FTAA threatens environmental protection. We thank The C.S. Mott Foundation and all of the many contributions to this effort. ***Five Reasons why you should oppose the FTAA*** will ultimately give you more than 5 reasons! It will give you the technical details in a non-threatening format. Please contact us for more information, join the FTAA teach-ins where ever you are. And no matter what — do not despair. We are winning!

ELIZABETH E. MAY
EXECUTIVE DIRECTOR
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Canadian Alliance on Trade and Environment

The Canadian Alliance on Trade and Environment (CATE) represents a coalition of Canadian public interest and labour groups. The mission of CATE is twofold: 1) to represent common interests of its supporting organizations by advocating that governments and other institutions in Canada defend the environment and democratic rights on matters related to trade; 2) to bring about full access and input for civil society at the level of national and multilateral trade policy development.

The work of CATE follows up on that undertaken by the Common Front on the World Trade Organization (CF-WTO) since 1996. The CF-WTO is set to continue its work, focussing on the impacts of trade globalization on social services, labour standards and culture. The Steering Committee of the Canadian Alliance on Trade and Environment consists of representatives from the following organizations: Sierra Club of Canada, Canadian Labour Congress, Council of Canadians and the Polaris Institute.

5 ENVIRONMENTAL REASONS TO OPPOSE THE FTAA

Table of Contents

	FORWARD		
	Elizabeth May, Sierra Club of Canada.....	1	
I	Background to FTAA	3	
	a. Previous Forgotten Promises	3	
	b. The FTAA Negotiations	4	
	c. Lack of Environmental Impact Assessment	5	
	d. Our Continuing Demands	5	
2	ONE: FTAA removes controls to protect Natural Resources and Human Health	6	
	a. Export controls and value adding of natural resources	7	
	b. Import controls to protect human health	8	
	c. What the evidence shows: Fish, Hormones, Asbestos and Water	8	
	i) <i>When Free Trade Means Free Trees</i> by Susan Casey-Lefkowitz, Natural Resources Defense Council and Geoff Quaile, Grand Council of the Crees.....	9	
	ii) <i>There are no jobs on a dead planet!</i> by Cliff Stainsby, Canadian Labour Congress, Environment Committee	12	
3	TWO: FTAA lowers environmental standards	14	
	a. Consumers Right to Know the Process and Production Methods	15	
	b. Threats to the Family Farm and Food Security	16	
	c. Food standards and Genetic Engineering	16	
	i) <i>The Tomato Story</i> by Deborah Barndt, York University	17	
	d. <i>Threats to Animal Welfare</i> by Rick Smith, International Fund for Animal Welfare	17	
4	THREE: FTAA trade rules are Enforceable, MEA's are not ..	19	
	a. Trade Rules Undermine MEA Enforcement ..	21	
	i) <i>EU vs. Chile Conflict over Threatened Swordfish</i>	21	
	b. Trade Rules Undercut MEA Goals and Objectives	23	
	ii) <i>Climate Change and the FTAA,</i> by Yuill Herbert, Sierra Youth Coalition	23	
5	FOUR: FTAA Investor Rights Pay the Polluter	25	
	a. Free Trade in Investment	25	
	i) <i>Investor-State Disputes</i> by Steven Shrybman, Sack, Goldblatt and Mitchell	25	
	b. Free Trade in Services	26	
	ii) <i>Case Study on Hazardous Waste</i>	27	
6	FIVE: FTAA removes public participation and democracy	29	
	a. Making Corporations Accountable	29	
	b. Environmental Justice	29	
7	Sources and Links	30	



5 Environmental Reasons to Oppose the Free Trade Agreement of the Americas

1 Background to FTAA

There is a myth that the concerns for environmental protection are only shared by northern NGOs and other protectionists forces within these economies. Exposing the environmental consequences of undisciplined free trade is seen at best as naïve and at worst as disregard for the aspirations of developing countries and their people. But as our experience with trade agreements and other international financial institutions grows, the evidence is clear that all peoples want clean water to drink and clean air to breathe.

swordfish vs. free trade

Southern NGOs are actively engaged in struggles of environmental protection despite the obstacles imposed in trade agreements. The recent WTO trade dispute between the EU and Chile centring on a regional marine conservation agreement to protect threatened swordfish off the coast of Chile and Peru is the latest example of our common global concern. The EU has brought a trade complaint in an effort to pry open southern ports to land their illegally caught fisheries. The case is all the more interesting, as this will be the first time at the WTO where a developed country questions the trade effects of a developing country's environmental law based on a regional conservation agreement.

A. Previous Forgotten Promises

At the first Miami Summit in 1994 the 34 member states of the Organization of American States (Cuba was suspended in 1962) agreed to work towards creating a Free Trade Area of the Americas ("FTAA"). The FTAA was to provide free market access for goods and services to the entire hemisphere. With a population of 800 million and a GDP of 11 trillion US, the FTAA would be the largest free trade area in the world. The meeting produced a Declaration of Principles that seeks to expand prosperity through economic integration and free trade; to eradicate poverty and discrimination in the Hemisphere; *and to guarantee sustainable development while protecting the environment.*

Another outcome of the Miami Summit was the inclusion of a proposal from the President of Bolivia, Gonzalo Sánchez de Lozada, to call a specialized Summit on Sustainable Development to be held in Santa Cruz de la Sierra, Bolivia in 1996. The objectives of the specialized Summit were to establish a common vision for the future according to the concepts of sustainable development and to ratify the principles subscribed to at the 1992 Earth Summit held in Rio de Janeiro, Brazil.

The Unit for Sustainable Development and Environment was to be the principle arm of the OAS to follow up on Rio 92 mandates and the mandates given to the OAS from the Bolivia Summit. A new political body the OAS Inter-American Committee on Sustainable Development would exchange the relevant information and co-ordinate



activities. But instead of the Unit engaging in a thoughtful Environmental Impact Assessment of the various trade negotiating committees of the FTAA, the main function appears to be preparing projects for loan consideration by bilateral and multilateral agencies such as the Inter-American Development Bank and the World Bank.

The OAS was left with no resources and no momentum to monitor the 65 initiatives that came out of the Bolivia Summit and the so-called Santa Cruz Action Plan. Instead of consolidating environmental protection into a coherent whole, the decision was taken to separate out into two tracks the FTAA trade agenda from everything else around sustainable development. The Santiago Summit of 1998 saw the complete removal of sustainable development from the goals and agenda of the FTAA project.

It is no surprise, therefore, that all of the political energy goes to trade liberalization and environmental protection is hardly on the map, except to be further undermined by the trade rules emerging from the various FTAA working groups. As in the case of the WTO, the traders also hope to see a number of so-called business facilitation measures and early harvest agreements in particular sectors on forestry, on energy, on fisheries before the hard trade-offs need to be made, if at all. But instead of a coherent plan to avoid or mitigate the negative impacts, governments give vague assurances that environmental issues will be dealt with on a case by case basis...so much for Rio!

State members of the Quebec City Summit will review a draft text for an FTAA. While heavily bracketed, this text will reveal the direction Ministers are headed as the basis of further negotiations to be completed by the end of 2004, or sooner. Leaders are billed to address common hemispheric challenges, including economic integration, improved access to education, poverty alleviation, and enhanced respect for human rights and democratic development. But not the environment! The Americas Minister of Environment met in Montreal prior to the Quebec City summit but reportedly could not agree on any joint statement to present to their trade minister counterparts.

The FTAA project continues to deny the connections between trade liberalization and environmental stress. All nations in the hemisphere face common environmental problems. One thing is certain, however, the environmental degradation induced or at least aggravated by free trade is not a "non-trade" issue to be separated out from trade negotiations into discussions later on, if at all. Where will the independent environmental impact assessment of the FTAA project be conducted, at the remote OAS Unit for Sustainable Development? Where will the evidence be found whether FTAA nations are fulfilling their Miami pledge to guarantee environmental protection? Media reports indicate that all Latin American countries oppose a link between trade and environment, except vague suggestions otherwise from the US administration, with the Canadian government also remaining silent on the need for an environmental side agreement.

B. The FTAA Negotiations

The FTAA negotiations will be carried forward under a structure with geographical representation by the participating countries, with a rotating chair, site of negotiations, and responsibility of negotiating groups. Trade Negotiations Committee (TNC) is responsible for the oversight of negotiations. The Chair of the FTAA process holds the Chair of the TNC. The function of Chair of the FTAA process for successive 18-month periods are: Canada; Argentina; Ecuador; and Brazil and the United States (jointly). A Consultative Group on Smaller Economies was created, chaired by Jamaica, and reports to the TNC. Seven of the FTAA countries produce 93% of the GDP.

Unlike big business, the Civil Society of the Americas has not been effectively engaged. A Committee of Government Representatives on Civil Society was established to represent the views of civil society to the TNC. Yet this committee is little more than a mail-in-box. We support the call of Common Frontiers and the Hemispheric Social Alliance for a face to face, summit to summit, consultation at Quebec City.

As Council of Canadians Maude Barlow's analysis of the FTAA reveals: "In the beginning, the big corporations and their associations and lobby groups have been an integral part of the process. In the US, corporate committees advise the American negotiators and, under the Trade Advisory Committee system, over 500 corporate representatives have security clearance and access to FTAA negotiating documents". These corporate efforts have paid off with Ministers of Trade of the Americas agreeing to implement 20 "business facilitation measures" to speed up customs integration. Fast-Track customs clearance is sure to lead to mass increases in hazardous waste and other illegal trade. Yet where are the measures to facilitate environmental protection?



The US resistance to a **value-added system** for determining rules of origin as raising complex issues such as how to account for the cost of environmental and labour inputs remains a barrier to the goal to internalize the costs into production into goods.

Customs Procedures: The goal of this negotiation is “to simplify customs procedures, in order to facilitate trade and reduce administrative costs” while designing “effective systems to detect and combat fraud and other illicit customs activities, without creating unnecessary obstacles to foreign trade.” The stated goal is to promote customs measures that ensure transparency, efficiency, and integrity. US business groups have been pushing for custom reform that could take place in advance of the final FTAA.

fast track custom clearance

Draft language being development by the FTAA negotiators since 1998 would create a stream lined electronic tracking system for customs officials throughout the Americas to use. The system would apply to so-called low value commodities that are less than \$2000 in value. This language could cover most shipments of hazardous and infectious waste; the value of such is often low or even negative in value. These fast track approval systems being put in place risk large quantities of waste being imported into Canada or other countries in the hemisphere without adequate treatment facilities or even the knowledge of environment officials, let alone the general public. There are not even tracking codes for custom officials to follow. USEPA has asked for exemptions from expedited customs rules for wastes but so far Commerce has overruled US EPA.

A. What the evidence shows on **export controls** of natural resources:

salmon and herring

When Canada objected in 1988 to the US exporting UNPROCESSED HERRING AND SALMON from Canadian pacific coast waters, a trade dispute panel was able to rule against Canadian landing requirements as an unacceptable export control and thus a trade barrier. The panel also ruled that the requirement was unrelated to a limited and ineffective GENERAL EXCEPTION to WTO trade disciplines that purports to save government regulations for resource conservation purposes. The trade panel believed that the real purpose of the landing requirement was to protect in-shore employment when the fish resource could be processed more economically offshore. Traders do not understand that local stewardship and value adding to resources is fundamental to sustainable development.

In the Matter of Canada's Landing of Pacific Coast Salmon and Herring, 1989, FTA.



Water

By defining water as just another “good”, the WTO, the NAFTA and likely the FTAA seek to transform water, a critical and exhaustible natural resource into just another commodity for the global marketplace. **National treatment** market access, investor rights and service obligations mean governments must treat non water basin service providers of water and treatment the same as public sector entities with non-commercial mandates of public health, conservation and providing affordable water for Canadians.

These trade obligations also effects the limits a willing government places on its rate of extraction and trade. Trade principles of “**proportionality**” mean that, as in the energy sector, Canadians could never in effect end trade in water regardless of the environmental effects in Canada or the needs of Canadians.

Most alarmingly, **investor rights** in trade agreements, such as in Chapter 11 of NAFTA and in the failed MAI, allow investors from outside Canada to secretly sue the Canadian government should it even consider passing a law that interferes with its ability to make profits out of water development and trade, now or in the future.

The Proposed Federal-Provincial Accord to protect water does not directly address trade deals, and thus fails to be the basis of a comprehensive and effective approach to protecting Canada's water. It would do nothing to actually prohibit water exports. No independent and creditable enforcement mechanisms are envisioned that could prohibit an ill-advised reversal of government policy under a different administration.

Also, because the Accord might allow provinces to develop their own approach to achieving the goals of the Accord, the national treatment obligations in trade agreements mean that the lowest standard of treatment applies, no matter what protections other provinces have put in place. The Accord would likely expose the Canadian government to investor suits, as in the case of the current NAFTA Chapter 11 claim of \$400 million by an American company, **Sun Belt Water Inc**, because British Columbia brought in legislation to stop water exports.

Canadians are in a unique and enviable position in the world. First, we are stewards of an enormous amount of the planet's fresh water and fresh water ecosystems. Second, almost all municipal water and wastewater systems remain within non-profit, public control. However, situated in the Northern Hemisphere, Canada's water resources are predicted to be seriously affected by climate change. As a resource rich country, much of Canadian industry is water intensive and water dependent. Instead of free trade in water, we need to move to a sustainable water management strategy based on community participation.

We must insist that water is a fundamentally different element from anything else, and that affordable public access to it is a **basic human right**. In Canada we will work to ensure the transfer of water recovery technologies to countries and regions in need of fresh water supplies. Also we must ensure that water is no longer wasted, polluted or ecosystems degraded and destroyed by diversions or bulk removals from Canada. We also pledge to oppose international trade agreements that continue to anticipate water as a tradable good, service or investment opportunity requiring national treatment and other trade or investment obligations to restrict its export.

i) When Free Trade Means Free Trees: Making Trade in Forest Products Fair and Green

by Susan Casey-Lefkowitz, Natural Resources Defense Council and Geoff Quaille, Grand Council of the Crees (Eeyou Istchee)

Since 1994, the heads of governments from 34 Western Hemisphere countries have made clear commitments to combat threats to forest ecosystems. In the Summit of the Americas Action Plan, governments committed to integrate conservation and sustainable use of biodiversity in forestry. Still, national actions have fallen well short of tackling the root causes of forest destruction and its associated biodiversity loss in the Hemisphere. Indeed there is a direct connection between forests and trade and the destruction of the Crees Nation lands in Quebec, aggravated by the Softwood Lumber Agreement.



First Nations, Forests, and Trade

Across Canada, First Nations see their treaty and land rights violated so that timber companies may benefit. For example, in 1975, the Crees (and the Inuit further north) entered into a treaty with the government of the province of Quebec and the federal government of Canada. Among many issues addressed, the James Bay and Northern Quebec Agreement primarily serves as a land and environmental treaty. It recognises and safeguards the Crees long standing right to occupy their tradition lands through their traditional subsistence activities and to have a major role in other types of future economic development in the region. The agreement set an environmental protection regime to safeguard the resources necessary for a viable subsistence economy in the context of development. Respecting forestry, neither Quebec nor Canada has honoured this treaty, both governments have giving a substantial financial benefit to timber companies who are allowed to clearcut Cree lands in violation of treaty obligations.

The boreal forest extends around the northern reaches of the earth through Russia (primarily Siberia), Scandinavia, Alaska and across Canada. Canada has enormous importance as home to one-quarter of the world's boreal forest, extending from coast to coast through eight provinces. Quebec contains 10% of Canada's forested lands, the majority being boreal. According to documents submitted by Quebec in court, nearly 60% of Quebec's softwood lumber comes from the boreal forests on Crees traditional lands in the James Bay Territory of Northern Quebec (Eeyou Istchee). The average tree height and diameter of the northern black spruce forest is much less than the southern tree species such as red or white pine. In order to regain their upfront investment, logging companies typically cut as much forest as they can in the shortest time possible. An area equivalent in size to the state of Delaware has been harvested since the 1975 James Bay and Northern Quebec Agreement was signed. The typical logging pattern is that of clear-cut blocks of 150 hectares (370.5 acres) separated by 110 yard-wide buffers of trees.

Quebec's forestry practices are irreversibly damaging wildlife such as moose, marten, beaver, muskrat, and various waterfowl. Clearcuts damage habitat, forestry roads—18,000 km built since 1975—increase accessibility for hunters, and operation of heavy machinery disturbs wildlife. Forestry practices, such as lack of buffers, deposits of contaminants into waterways, interference with stream flow, and erosion are causing deterioration of water quality.

In 1998, the forestry industry in Quebec exported \$10.8 billion CAN in forest products (second only to British Columbia) to the United States. This represents 87% of Quebec forest exports. Over the past five years, the amount of wood harvested in the James Bay territory has risen 45%, while the amount of Quebec exports to the U.S. has increased by approximately 30%. Trade with the United States is driving deforestation of Quebec and of Crees traditional territories.

For the past five years, the United States and Canada had a trade agreement setting mutually agreed upon tariffs on softwood coming into the United States. The United States-Canada Softwood Lumber Agreement allowed 14.7 billion board feet of timber into the United States duty free annually. Above this, duties were added on a sliding scale. The agreement covered lumber from Alberta, British Columbia, Ontario, and Quebec - the four major softwood lumber producing provinces that export to the United States. The agreement expired March 31, 2001, with no new agreement in place. Although the agreement was barely effective at counteracting Canadian government subsidies to its logging industry, the lack of any agreement at all will likely accelerate deforestation in Quebec and elsewhere in Canada.

Canada subsidizes the timber trade in various ways. Provincial governments charge timber companies artificially low logging fees that have no relation to market prices. The Canadian public has no input on this policy, which essentially gives away their precious natural resources. Various provincial governments in Canada have allowed timber companies to fraudulently characterize old growth timber as less valuable wood during the valuation process. For example, estimates of this fraud indicate a net loss to British Columbia of millions since 1993.



Furthermore, Canada helps out the timber industry with weak environmental laws. Canada, for example, does not have strong protections for endangered species. And where environmental laws do exist, Canada often does not enforce them in order to benefit the logging industry. British Columbia, for instance, has refused to require timber companies to leave a buffer of trees along small, fish-bearing streams. Instead, it allows them to clearcut up to the banks in violation of the federal Canadian Fisheries Act.

This suite of subsidies allows these companies to level sensitive old growth and wildlife habitat. If not for the subsidies, it is doubtful that these remote and ecologically precious areas would be economically viable to log. Canadian subsidies encourage over-harvesting and harmful forest practices that degrade soils, wildlife habitat, water quality, forest biodiversity, and long-run viability of ecosystems.

Principles for Trade in Forest Products

Trade in forest products, like all other types of trade, should be governed by several basic principles. If our leaders are to craft trade agreements that meet past and present commitments, they must ensure that trade agreements support, not undermine, environmental protection. Furthermore, trade agreements should not be used to weaken national or international health and environmental standards. Trade agreements should encourage environmental progress and discourage harmful environmental impacts. Finally, trade agreements should be developed and implemented through open and fully democratic procedures.

Since it is impossible to separate social issues from environmental concerns, equal consideration must be given to those people most directly affected by international trade. In the case of forest products, indigenous peoples throughout the Americas must contend with the social impacts associated with the erosion of their local forest environments. Like the Crees in northern Quebec, many indigenous peoples are often placed in direct conflict with trade agreements that are being made without their knowledge or consent. Prior to acceptance, such trade agreements must uphold existing treaty and human rights commitments to indigenous peoples at the national and international level.

Trade should support environmental sustainable forestry. Specifically, trade in forest products needs to allow environmentally-beneficial trade disciplines. Such measures CAN include: logging bans and harvest restrictions; certification and labelling schemes; procurement and usage policies; and protections against exotic pests and diseases.

Moreover, trade rules should raise the environmental bar. As in the case of Canada, weak environmental laws and weak environmental enforcement can function as economic subsidies to companies, creating an uneven playing field for trade, while harming the environment. Whether in the context of defining trade rules or opening investment, trade agreements should promote the evolution and development of best practices in environmental law implementation and enforcement.

At the very least, there should be a trade ban on forest products from illegal logging. Any hemisphere-wide trade agreement should ban any trade or transshipment made illegal under multilateral environmental agreements, particularly including the Convention on Trade in Endangered Species (CITES). Trading partners also should commit not to permit any trade or transshipment in products that are produced, extracted, harvested, or obtained in violation of domestic laws.

The way in which investment has been handled in past trade agreements threatens environmental regulations and must be addressed. Investment liberalization should not mean weaker environmental protection. The forestry sector is one of constantly emerging new environmental regulations and this future enhanced environmental protection should in no way be hindered by a trade agreement or investor-state disputes.



iii) FTAA, Labour and the Environment: There are no jobs on a dead planet!

By Cliff Stainsby, Canadian Labour Congress, Environment Committee.

Proponents of the FTAA would have us believe that free markets and unimpeded investment automatically bring widespread prosperity. We should remember, however, that the relatively free markets of the first decades of the industrial revolution, while they brought prosperity to a few, brought widespread poverty and abhorrent social and working conditions to the many. It was the imposition of social rules that brought relative prosperity. These were rules fought for by trade unions and citizens groups. These included rules on child labour, work hours, minimum wages, vacations, occupational health and safety, environmental conditions, etc. These are the types of rules that had to be imposed on the market to increase the well-being of the average citizen, these are the rules that are threatened by free trade agreements such as the proposed FTAA. And these are the types of rules we will require if we are to advance to sustainability.

For proponents of the FTAA, the primary indicators of social and government success are the rate of growth of GNP and the return on investment. For people who care about people, the primary indicators of success include our levels of health and literacy, the fairness of the distribution of income and wealth, the health of our ecological life support systems, and the number of us actively participating in democratic decision making. In other words, the real indicators of success are sustainability, fairness, and justice. To that end the Canadian Labour Congress has two new initiatives: a Green Job Creation Project and a Just Transition Policy. Each of these, despite their good objectives will be frustrated by free trade rules as found in the NAFTA, the WTO, and likely in the FTAA.

Green Job Creation Project

We live in an unsustainable economy that is already starting to have a devastating effect on nature and human health, well-being and employment. We have to move to a sustainable economy, sustainable communities, and a sustainable environment. When this is done, the result is Green Job Creation. Society has to move to Green Job Creation for positive reasons in their own right: green jobs are secure, stable, quality jobs which are clean, healthy and stress free. Sustainability forms the background and context for green job creation. Green jobs are jobs in a sustainable economy. For example:

- Jobs which reduce our impact on the environment,
- Jobs which protect and restore damaged ecosystems,
- Jobs which produce and disseminate the information needed to be more sustainable, and
- Jobs in the sustainable production of necessary goods and services.

The elements of a Green Jobs Program include:

- **Green Industrial Policy** – to take action – through regulation, financial measures and other incentives – which reduces the overall “throughput” of materials, energy and water, while increasing the quality of life and maintaining the standard of living of all Canadians.
- **Environmental Infrastructure and Public Investment in the Environment** – develop infrastructure, including transport, communications, energy and water supply, sewage and waste management, in ways which substantially decrease their impact on the environment. Establish large public investment funds dedicated to greening the infrastructure.
- **Green Procurement Programs:** Governments purchase immense amounts of goods and services. Government initiatives to green its own activities and the goods and services it purchases would help create markets for green industries as well as directly improving government’s own environmental performance.

- **Green Labour Market Programs:** labour market programs aimed at employing unemployed workers in green projects.
- **Education and Training:** Basic ecology and principles of sustainability should be part of the curriculum at all educational levels.
- **Eco-labelling and Information Programs:** If we are to be able to make real green choices as consumers, and support companies and products which are lighter on the earth, we need good, readily accessible information. Good eco-labelling makes it easier for consumers to choose products that are healthier and more environmentally friendly.
- **Environmental Regulations:** Transition to a sustainable economy will require effective laws and regulations, as well as proper enforcement and compliance procedures. Important regulatory initiatives include:
 - Chemical bans, phase outs and use restrictions
 - Pollutant emission limits
 - Sustainability legislation
 - Just Transition

The need for Just Transition for workers during environmental change is clear. Workers and communities should not bear an unfair share of the burden of change. The key point about Just Transition is continuity of income and alternative employment, with the same or a different employer.

Just Transition is:

- **Fairness:** Just Transition is the fair treatment of workers and their communities when employers close down or run down their facilities, for whatever reason
- **Re-employment or alternative employment:** the prime aim of Just Transition is the continuation of employment without loss of pay, benefits or seniority;
- **Compensation:** where continuation of employment is not possible, just compensation is the next alternative, and
- **Sustainable Production:** Just Transition is essential to the move to more sustainable production methods and the service sector which supports it.

The FTAA is another manifestation of a very profoundly disturbing trend in modern society. It represents one more step in the subsuming of the citizen in the consumer, of the subsuming of society in the economy.

Free trade agreements are not part of a modern drive to create societies that meet the needs of people. Rather, they are part of a modern drive to mould people so that they conform with that misanthropic abstraction 'the rational economic person' (in economics it remains the rational economic man). It is a mould for one-dimensional people – consumers. It is not a mould for people with a sense of and desire for fairness, justice and cooperation - citizens. And thus, in the end, it is a mould for people possessing no conception of democracy.

Fair trade on the other hand is trade that enhances sustainability, fairness, and justice. It is trade governed by rules made by citizens, by people concerned for the public good. Such trade binds economic rules to democratically determined social ends.



According to ART, the U.S. tends to use sanitary and phytosanitary (SPS) inspections to reject about a third of all Latin American agricultural exports inspected. Those standards of quantified risk assessment can be met by few exporters in countries whose SPS budgets have been crippled by **Structural Adjustment Program**-mandated reductions in government budgets, including SPS infrastructure.

The third leading point of discussion involves the elimination of agricultural export subsidies affecting trade throughout the hemisphere. This is a most sensitive issue. Developed nations use subsidies to support the domestic farm industry, while developing nations tend to use tariffs to support theirs (their creditors would probably not let them use direct support even if they could). In addition to subsidies, the negotiation group is to identify all other trade-distorting practices and work to bring them under tighter discipline. This includes ensuring that programs such as **state trading, domestic support, and food aid** do not become a substitute for export subsidies.

B. Threats to the Family Farm and Food Security

“Agri-business”, the practise of growing food for export and profit, has come to replace traditional farming practices. Massive, corporately owned “cropping monocultures” are overrunning family farms, which are dependent on chemical fertilizers, agrochemicals, and genetically engineered seeds. The FTAA promotes this type of farming, especially in Latin America, where most of the farming population (more than 20% of the total population) is small farmers, threatening the family farm and food security.

food security and human rights

Devlin Kuyek of the International Centre for Human Rights and Democratic Development explains that “Export production is highly profitable for the handful of agribusiness TNCs of the North but it runs counter to the aspirations of the millions of small farmers and indigenous peoples of the Americas. Trade liberalization under the FTAA will undermine their struggles for agrarian reform and efforts to pursue sustainable agricultural practices and local food security strategies.” He also states that export production is dangerous for poorer, agrarian economies as reliance on a few export-earning crops increases their vulnerability to market fluctuations as well as crop devastation through disease or pests. Most, if not all of these measures will lead to the destruction of independent farms, the rise of agri-business conglomerates, using the original farmers as indentured labour, leading to an exodus to urban centres and increasing poverty and the labour pool with deflating wages.

C. Food Standards and Genetic Engineering

Of considerable debate is the issue of genetically engineered foods and seeds (GE). Restrictions based on public health and global environmental concerns are seen as offending the WTO SPS Agreement and a technical barrier to trade. But attempts to impose the WTO lowest common harmonized standards is a particularly sensitive issue with Europe and the South tending to adhere to the precautionary principle when discussing GEs and food standards in general.

It is no surprise that the Miami Group, including Canada, the US, Argentina and Chile hope that the FTAA will provide for better market access in GE foods and seeds, benefiting the interests of TNCs at the expense of the poor and environmental protection. It was this group that tried to derail the successful International Biosafety Protocol to the Convention on Biodiversity established in Montreal January 2000 to restrict the transboundary movement of GE products.

i) The Tomato Story

Tomasita the Tomato

By Deborah Barndt, Environmental Studies, York University, Toronto

The story of Tomasita the tomato begins in Mexico on land acquired by US-based agribusinesses when structural adjustment reforms facilitated the take-over of indigenous land by multinational corporations. Indigenous women who once worked the land communally for subsistence are now salaried workers in cash crop production for an agro-export economy.

In globalized food production, the production process jumps back and across the borders. The story perhaps more accurately begins in Davis, California, where transnational corporation Calgene has developed a hybrid seed from a Mexican strain of tomato. Biogenetic intervention has brought us the more packable square tomato, one that will travel over time and space, and ripen after arrival at markets.

Then the story moves to St. Louis, Missouri, where the Monsanto Corporation produces the pesticides used to fumigate the Mexican plantations. And finally, the hazardous waste from the pesticides production is dumped in the world's largest landfill in Emelle, Alabama, an African American community facing environmental injustice. Not coincidentally, women workers in these same regions of the US have lost their jobs due to plants closing and moving to Mexico. At the same time there has been a burgeoning influx of Mexican migrant workers who have come north to work as seasonal labourers harvesting tomatoes.

Back in Mexico, farm workers are paid \$2.40 a day to work the fields. With no gloves or masks, and no access to health care, they have little protection from the pesticides. The practice of mono-agriculture and use of genetic seeds also threaten environmental protection. When the tomatoes are harvested, they're packaged in plastic and cardboard, and transported to northern markets. It is unlikely that women who have produced these tomatoes will consume them, they are exported for or canned in the low-pay maquilas, or free trade zones, to generate foreign exchange to pay off debts.

Whether shipped in cans or packed in ozone depleting refrigerated trucks emitting greenhouse gases, Mexican tomatoes make their way to the markets of Toronto. Tomasita the tomato may end up in a fast food burger, squashed between Central American beef and lettuce imported from California. Women, especially young women make up the greatest portion of the workforce in fast food restaurants. As women and consumers, women also find themselves buying fast food and thus imported tomatoes, for themselves and their children, in response to a variety of pressures including time and cost.

C. The FTAA and the Threat to Animal Welfare

by Dr. Rick Smith, International Fund for Animal Welfare

Founded in Canada in 1969, the International Fund for Animal Welfare (IFAW) is now one of the largest animal welfare organizations in the world, with offices in 12 countries. IFAW works to improve the welfare of wild and domestic animals throughout the world by reducing commercial exploitation of animals, protecting wildlife habitats, and assisting animals in distress. IFAW seeks to motivate the public to prevent cruelty to animals and to promote animal welfare and conservation policies that advance the well being of both animals and people.

IFAW is determined that liberalized trade regimes, such as the FTAA, should not erode existing protections for animals, nor impede the formulation of new protections. In their present form, however, the FTAA and other trade agreements pose an enormous threat to animals and animal habitats worldwide.



GATT, WTO & NAFTA rulings that have impacted on Animal Welfare

The FTAA is continuing a trend whereby the legitimacy of current and future legislation that seeks to protect animals and the environment is questionable in the context of free trade. To date, free trade under the auspices of GATT, the WTO and NAFTA has had a devastating impact on animal and environmental protection legislation.

Whenever a nation has challenged an animal protection regulation, the relevant authority has ruled that regulation to be an illegal trade barrier. The nation that has enacted the offending rules must either change its law or pay a heavy financial penalty. Most of these animal welfare issues affected by free trade relate to the method of production (the processes by which animals are raised, trapped, transported etc.), the so-called production and process methods (PPMs). In the eyes of the WTO, dolphin friendly tuna is indistinguishable from tuna caught by encircling dolphins, and, shrimp caught by boats with turtle excluder devices is the same as shrimp caught without turtle conservation methods. There are many examples ranging from the use of hormones in cattle to cosmetic testing on animals, all with a common thread: animal welfare sacrificed in the name of free trade.

Despite the WTO ruling in the Beef Hormone dispute above, the EU to its credit continues to ban hormone treated beef. The US therefore has been authorized to apply retaliatory trade measures to EU imports. For nearly a decade now, the EU has paid a costly economic price to maintain precautionary health safeguards for its citizens.

STEEL JAW LEGHOLD TRAPS The EU banned the use of the steel-jaw leghold trap in 1995. The United States and other fur-exporting countries were given notice that as of January 1, 1996, furs and fur products from thirteen commonly trapped species would not be accepted for import into the EU unless the exporting country had banned the use of steel-jaw leghold traps or adopted internationally agreed-upon humane trapping methods. The US and Canada, pressured by local commercial interests, threatened a WTO challenge to the EU ban if it was implemented against imports. As the EU did not believe it could successfully defend the ban against a WTO challenge, it considerably weakened the effect of its ban. The EU then tried to negotiate humane trapping standards with the US and Canada. However, the final agreement allowed, for the foreseeable future, the import of fur caught with steel-jaw leghold traps. This is yet another example of how commercial interests have used the WTO to undermine legitimate environmental and animal protection legislation.

DRIFTNET FISHING In December 1991, the United Nations General Assembly passed a resolution calling for a global moratorium on all high-seas driftnet fishing in the world's oceans. To implement this resolution, the US enacted the 1992 High Seas Driftnet Fisheries Enforcement Act, which, among other things, prohibits the import of fish from countries that continue to illegally driftnet. As a result of the US Driftnet Act, several countries ceased high-seas driftnet fishing. Italy, however, did not, and as of 1998 still had nearly 600 driftnet vessels on the high seas. However, Italy continues to export fish into the US. The WTO dispute resolution rules, and the subsequent environmental losses as a result of WTO panel rulings, have all had a chilling effect -- in this case, on the enforcement of US environmental and animal protection legislation. Despite nearly a decade of persistent urging by animal and environmental advocates, two lawsuits, and the fact that the United Nations calls annually for the cessation of high seas driftnet fishing, the US has yet to actively enforce the Driftnet Act.

EGG LABELLING In 1992, the European Commission, fearing a WTO challenge, dropped a proposal to require mandatory labelling of all eggs on the basis of animal welfare criteria. More recently, the European Commission put forward a proposal to modify the conditions in which laying hens are kept in the EU, in particular by increasing the size of cage space for each hen. The proposal recognizes that these improvements in animal welfare will result in higher costs, which will make EU eggs more expensive than eggs from other countries where animal welfare standards are lower. Unfortunately, the WTO does not allow distinction among products based upon methods of production, and forbids the use of trade barriers that favour domestic industry. Thus, the net result of this proposed legislation will be local "humane" egg producers losing market share to foreign "inhumane" egg producers.



It is generally agreed that the relationship between international trade rules and MEAs ought to be mutually supportive. In practice, however, the two regimes often contain incompatible provisions and avoiding clashes remains a controversial ad hoc task. Often regarded as emblematic of the trade-environment debate, the 1991 GATT Tuna-Dolphin Dispute was the first to test the legitimacy of using environmentally-unfavourable process and production methods (PPMs) as justification for trade restrictions. The case revolved around a US embargo on Mexican tuna caught using purse-seine nets that incidentally trapped a high number of dolphins.

Because of the similarities between Tuna-Dolphin, Shrimp-Turtle and now Chilean Swordfish the cases need to be understood together. What is remarkable about the Swordfish dispute, however, is it pits a regional conservation agreement in the Americas against the trade claims of the northern European fishing fleets. The roles and interests of the players are in fact reversed from the Tuna-Dolphin dispute!

tuna and dolphins

In the Tuna – Dolphin dispute, U.S. law on fishing methods in the East Tropical Pacific and the consequent U.S embargo on dolphin-friendly tuna were found inconsistent with GATT rules. This case demonstrated the need to safeguard the effectiveness of current and future MEAs from trade attacks. The task is to ensure that trade rules do not prescribe solutions to environmental problems. Rather MEAs ought to judge the legitimacy of environmental objectives and to select the appropriate means for their achievement. Trade agreements require an irrefutable presumption that trade measures taken pursuant to an MEA are trade compatible, and provisions for cooperation between trade institutions and those related to the MEA in cases of dispute.

US- Restrictions on Imports of Tuna, 1991, GATT (now the WTO)

In addition to undermining MEA enforcement tools, undisciplined free trade also undercuts MEA goals and objectives. For example, current trade rules do not address the issue of traditional/indigenous knowledge. Civil society organizations from the south and north have demanded the primacy of the Convention on Biological Diversity (CBD) over other Intellectual Property Regimes (IRP). The CBD gives national states sovereign rights over their biological resources and allows the protection of indigenous knowledge and rights. Intellectual property rights give TNCs with a patent in one country the monopoly marketing rights to the item throughout the region. Moreover, companies are encouraged to “**bioprospect**” and lock down patents for traditional medicines that are considered “traditional knowledge,” effectively robbing indigenous people of their cultural heritage to fatten corporate wallets.

What the rules would say: In comparison to the WTO TRIPS agreement, the U.S. FTAA proposal would narrow the categories or products for which a country may decide not to issue patents, undercutting the goals of the CBD, for example. According to ART the U.S. proposal does not include a provision permitting countries not to provide patents on plants or animals. Rather the US supports a strict standard in the FTAA of “serious prejudice” to life or health before a country is able to refuse patentability or revoke a patent. There is no statement that refusing a patent can be done to implement CBD obligations or to protect the environment, human, plant or animal life or health.

Relevant FTAA Working Groups

There are no provisions to deal with the relationship between an FTAA and regional or multilateral environmental agreement. The trade rules around market access, the process and production methods of products as well as the current design of intellectual property rights continue to represent fundamentally good green reasons to oppose the FTAA. See Reason # One above.

FTAA Working Group on Intellectual Property Rights (Venezuela). According to the FTAA, the purpose of this group is “to reduce distortions in trade in the Hemisphere and promote and ensure adequate and effective protection to intellectual property rights”.



The case is all the more compelling as this is the first time at the WTO where a developed party will be questioning the trade effects of an environmental law taken as a precaution by a developing member. Will the Galapagos Agreement setting out the process and production methods provide a legitimate basis for discriminating against illegal and unregulated fisheries operating in the high seas to catch straddling stocks near coastal waters? The EU complaint seems to also highlight the lack of swordfish conservation laws in the US similar to those in Chile.

Australia, Canada, Ecuador, India, New Zealand, Norway, Iceland and the US reserved their third-party rights. Is the Canadian government supporting Chile or the EU in this dispute?

The biggest losers in this dispute are of course the swordfish, the marine turtles, the sharks and other threatened species by-caught and discarded, as well as the local fishers dependent on fish protein for food security and livelihoods. Compare the results of the Tuna Dolphin and Unprocessed Salmon and Herring case above to predict the likely outcome of this trade dispute.

shrimp and sea turtles

The WTO ruled against the legitimacy of a partial U.S. import ban under the US Endangered Species Act on shrimp caught in the wild in countries with-out sea turtle conservation measures. The Act required the U.S. government to certify that all shrimp imported to the country were caught with methods that protected marine turtles from incidental drowning in shrimp trawling nets. Under the Act, shrimp-importing countries with sea turtles in their waters must demonstrate that mechanically-harvested marine shrimp are caught by means that allow sea turtles to escape as efficiently as the turtle excluder devices (TEDs) mandatory on all U.S. shrimp nets. According to the National Marine Fisheries Service of the U.S. Department of Commerce, proper use of TEDs reduces the number of turtles caught in shrimp nets by some 90%. Farm-harvested shrimp or shrimp caught by annually-hauled nets may be imported without restrictions. While the law applied to all countries, its enforcement was first (in 1993) limited to the Atlantic coasts of 14 Caribbean and Western Atlantic countries.

Also in 1996 some 40 nations concluded an agreement on the Inter-American Convention for the Protection and Conservation of Sea Turtles (twenty-four countries participated in at least some of the negotiations). The United States signed the treaty, which prohibited the use of WTO-inconsistent trade measures but according to the U.S. State Department; the agreement required the use of TEDs on virtually all shrimp trawling vessels operating in the Western Hemisphere.

Despite the regional environmental agreement, non-parties mostly Asian brought a successful trade complaint at the WTO centering on the US application of a unilateral trade measure, involving the extension of domestic laws and standards beyond national borders (extra-territoriality) to the global commons. In addition, WTO rules again did not allow discrimination on the basis of the methods of production. According to the traders, shrimp caught that kills sea turtles is the same product as shrimp that does not!

United States Import prohibition of certain shrimp and shrimp products, WTO, 1999

Compare the enforcement tools in trade agreements with the experience under MEAs.



5 FOUR: FTAA Investor Rights Pay the Polluter

A. *Free Trade in Investment*

Current NAFTA investor protection rights undermine the sovereign right of nations to take proactive measures to ensure that investment serves national development and environmental sustainability goals. The thrust of these policies is to elevate the rights of investors above other interests, with the ultimate goal of facilitating capital movement.

The U.S. position within the FTAA Investment group is to promote obligating FTAA countries to “strive to ensure that environmental and labour laws are not relaxed to attract an investment.” This position expands the scope of a similar provision in NAFTA Chapter 11, which covers environmental and domestic health laws, but not labour laws. But according to ART, it appears that the USTR is not proposing that there be any type of enforcement mechanism for this provision and is not even asking FTAA countries to ensure that these laws will not be relaxed but only to “strive to ensure.”

Moreover, this type of provision would be virtually meaningless in countries where environmental and labour laws are already weak. It also does nothing to strengthen enforcement of existing labour and environmental standards or to promote a lifting of these standards across the Americas. Again according to ART, the United States has not adopted a clear position in favour of deference to environmental and public health laws similar to the general exceptions listed in the GATT. While GATT Article XX itself is inadequate, the lack of any such across-the-board exceptions for environmental protection in the investment proposal is extremely troubling.

i) **Investor-State Disputes**

by Steven Shrybman, Sack, Goldblatt and Mitchell, Ottawa

The investment Chapter of NAFTA includes enforcement procedures that are in many ways more powerful than any enforcement mechanism ever built into the framework on an international trade agreement. Because foreign investors, i.e. corporations, have the right to invoke these procedures directly - NAFTA investor-state suits have emerged as a powerful new tool to attack environmental and conservation measures that stand in the way of greater corporate profits.

Under these rules foreign corporations can sue NAFTA governments for damages to enforce the exclusive rights the treaty accords them. In most cases these broad investor “rights” have no domestic analogue, and could not be enforced before national courts. Moreover, when claims are made, they are determined by a secretive international arbitral tribunals, which operate entirely outside the framework of domestic law, courts, or constitutional guarantees of fairness, due process, fundamental justice, and equality.

But notwithstanding these profound implications for a democratic society, until efforts to negotiate the Multilateral Agreement on Investment (the MAI) drew public attention to NAFTA and similar investment treaties, few outside of an inner cadre of trade officials and corporate lawyers had any understanding of these international agreements. Indeed, even federal Liberal MPs have described the government’s approach to negotiating these treaties as one of “stealth.” While efforts to establish the MAI were turned back by public opposition, the prototype for that treaty remains firmly entrenched in the NAFTA and may now be expanded if the FTAA initiative proceeds.

What is Wrong with NAFTA Investor-State Procedures?

By allowing countless foreign investors to invoke international binding arbitration to enforce expansive investment rights, NAFTA and other investment treaties represent a dramatic departure from the norms of international law in two important ways. First, by giving corporations the right to directly enforce an international treaty to which they are neither party nor under which they have any obligations - i.e. rights, but



As in the case of goods, free trade in services would presume the necessity of regulation if in conformity with international standards and provided other member’s “equivalent” standards are accepted. Absent provision otherwise, the *necessity* for the governmental measure, the *adequacy* of whatever due notice and process was afforded, and the *rationale* for deviations from international standards or for determinations of non-equivalency would all be “disputable”, i.e., arbitrable by trade panels.

For example a hazardous waste shipper could successfully challenge regulations aimed at:

- illicit shipments of dangerous substances e.g. ozone depleting substances, hazardous and radioactive;
- the extent of liability for damage from transport and disposal of hazardous waste that exceed international standards; and
- the denial of access to a port upon the determination that the pollution reception and/or treatment facilities are inadequate.

Most of these examples are already regulated by established and ratified multilateral environmental agreements. But as the new regime has demonstrated, MEAs are vulnerable to being undermined by panels convened by the dispute settlement mechanisms in trade agreements. Any of these examples could be deemed by trade tribunals to be more burdensome than necessary, thus **“nullifying or impairing”** the benefit of the services national treatment obligation. Another example is a gasoline retailer challenging a local or federal MTBE ban - a toxic gas additive - on its “necessity” given alternative, albeit perhaps more expensive, methods to protect groundwater.

In addition to national treatment and necessity, free trade in services focuses on disciplining **“market access”**. The domestic market is one of the four markets defined by GATS and presumably the FTAA, to which “market access” disciplines apply. The “market access” disciplines are absolute and quantitatively oriented: governments may not, for example, limit the *number of service suppliers* by quota, monopoly or exclusive service rights; limit the *number of service operations or the quantity of service* output by quota; or limit the *number of employees in a sector or needed by a service supplier* by quota.

Given this reading, domestic regulations that effectively limit the number of hazardous waste sites or treatment providers in a market or community would be inconsistent with service market access obligations.

Rules that limit cross-border provision of services —

- require disposal of domestic generated hazardous waste in the domestic jurisdiction rather than exported abroad;
- rules that allow only domestic-based providers to export or import hazardous waste or garbage; and
- rules that require domicile or residence for operation of a waste disposal or storage site

— are all open to trade and investment disputes.

Can you trust governments and corporations to protect the PUBLIC INTEREST in these forums?

6 FIVE: FTAA removes public participation and democracy

What the rules would say: At the 1996 Bolivia Summit on Sustainable Development governments “strongly supported the full integration of civil society into the design and implementation of sustainable development policies and programs at the hemispheric and national levels”. Governments conferred responsibility on the OAS Unit for Sustainable Development to formulate a strategy but left it with no resources and no momentum. Instead the traders offered a FTAA Committee of Government Representatives on Civil Society that turned out to be little more than an electronic mail box.

We know that the NAFTA is as much an investment agreement as it is a trade liberalization agreement. We have the experience under NAFTA Chapter 11 with investor-state dispute settlement behind closed doors that assault environmental and public health laws. And despite the unified voice of Canadians opposed to these investment protection rules in the absence of investor responsibility, the Canadian government continues to seek strong investor protection provisions in an FTAA, despite its vague public comments to the contrary.

Relevant FTAA Working Group

The FTAA Dispute Settlement Group (Chile) is: “to establish a fair, transparent and effective mechanism for dispute settlement among FTAA countries and “to design ways to facilitate and promote the use of arbitration and other alternative dispute settlement mechanisms, to solve private trade controversies in the framework of the FTAA”.

ART advocates for provision to allow public complaints to be brought against private parties who are responsible for substantive rights violation. Currently Multinational firms that are implicated in violations of the labour rights provisions under the NAFTA labour side agreement, for example, do not even bother to appear at the hearings because it is not possible for them to be held responsible. This is a crucial matter if we expect **companies to be accountable**.

We support the call of Common Frontiers and the Hemispheric Social Alliance for a face to face, summit to summit, consultation at Quebec City to review the growing evidence that the current design of undisciplined trade agreements is contrary to notions of conservation, ecological protection and **environmental justice**. To ensure a sustainable future for the planet, we must also attain social justice and human rights at home and around the globe.

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