

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Testimony on the Free Trade Area of the Americas
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Name of Witness

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Summary of Testimony

The AFL-CIO welcomes closer economic ties with the rest of the hemisphere, but believes that economic integration must be based on respect for human and workers' rights and a shared plan for sustainable, democratic and equitable development. Integration has to be about more than just protecting corporate rights and raising profits. Trade agreements must include, in their core, enforceable protections for fundamental workers' rights, human rights and the environment. Agreements must not undermine public services or public health, nor allow individual investors to challenge state laws in secret. In order to develop, countries must be allowed to regulate financial speculation and must have access to generous debt relief and development aid. Unfortunately, everything we know about the Free Trade Area of the Americas (FTAA) tells us it does not meet any of these requirements. Instead, it repeats the mistakes of the past trade agreements, like the North American Free trade Agreement (NAFTA), that have destroyed jobs at home and have failed to promote broad-based economic development abroad.

Testimony

Expanded trade and investment can provide opportunities for growth and development in Latin America, but this expansion must be accompanied by rules to help ensure that growth will be stable and sustainable, that the benefits of growth will be shared, and that it will contribute to, rather than detract from, social cohesion and human development. Over the last 20 years Latin America has embraced many of the market liberalization policies embodied in trade agreements like NAFTA, but these policies have failed to produce the shared, sustainable, and democratic growth the region requires. Inequality has stayed the same or increased in every Latin American country in the 1990s. These increases in inequality prevented the region from reducing poverty as much as its growth would have permitted, and some countries – El Salvador, Mexico, Nicaragua, Peru and Venezuela – have actually seen their rate of poverty increase during the 1990s. Unemployment and informal employment are still unacceptably high, and financial crises have thrown people out of work, families into poverty, and entire economies into deep recession. Finally, egregious violations of workers' rights – abuse of child labor, gender discrimination, repression of independent union organizing, and murders of trade union leaders – continue to mark much of the region. If the FTAA is going to stimulate development in our hemisphere, it must contain policies specifically designed to address these challenges. Simply repeating the

policies of past agreements like NAFTA is a recipe for failure.

Since 1995, the AFL-CIO has been meeting regularly with trade unions from around the hemisphere to share information and find common ground on the FTAA. Since 1997, we also have participated in a much broader network of citizens' groups from the hemisphere called the Hemispheric Social Alliance. In addition to trade unions, the Alliance includes women's groups, farmers, peasants, environmentalists, human rights activists and many other organizations that do not want to see NAFTA expanded wholesale throughout the Americas. The Alliance has developed proposals for alternatives to the FTAA that provide guarantees for workers' rights and the environment, preserve the ability of governments to regulate in the public interest, and promote broad-based economic development.

These proposals, along with others from civil society, have been presented to the FTAA negotiators throughout the FTAA process. The AFL-CIO has submitted comments to the FTAA Committee of Government Representatives on the Participation of Civil Society and made our proposals known to our own FTAA negotiators. Unfortunately, these recommendations are completely absent from the current draft text of the FTAA. Despite this frustrating record, we welcome this additional opportunity to offer recommendations on the FTAA and hope that the Trade Policy Staff Committee will seriously consider these comments presented on behalf of the 13 million working women and men of the AFL-CIO.

Workers' Rights: The FTAA's rules governing international trade and investment will affect the living standards and communities of working people all over the hemisphere. As the San Jose Ministerial Declaration states, "the negotiation of the FTAA shall take into account the broad social and economic agenda contained in the Miami Declaration of Principles and Plan of Action *with a view to contributing to raising living standards, to improving the working condition of all people in the Americas and better protecting the environment*" (emphasis added). This goal should be at the center of the FTAA negotiations.

Unfortunately, we see few signs that the FTAA process has fulfilled this mandate. There is no chapter on labor issues in the draft FTAA text. No negotiating group, no study group, not even an official discussion on labor issues has occurred within the FTAA negotiating process. Only one provision relating to labor has even been proposed in the FTAA, and even this provision would be non-binding.¹ Unless the FTAA includes enforceable protections for core workers' rights, we are likely to see the same kinds of job loss, wage depression, and rights violations under the FTAA that have characterized NAFTA.

¹ Only one proposal relating to labor has been included in the draft FTAA text. This proposal, part of the draft chapter on investment, calls for countries to "strive to ensure" that labor laws are not waived or derogated from in order to attract an investment. This proposal is unacceptably weak. A similar provision on the relaxation of environmental standards in the NAFTA investment chapter is non-binding, and the only remedy it provides is Party-to-Party consultations, not regular dispute resolution procedures.

NAFTA has not raised living standards or improved working conditions in the U.S., Mexico and Canada as its promoters promised. Trade between the NAFTA countries grew dramatically in the past eight years, but this growth has been very unbalanced. U.S. workers lost hundreds of thousands of good jobs under NAFTA, as our companies relocated to Mexico to take advantage of lower wages, weaker worker and environmental protections and improved access to the U.S. market. NAFTA rules allow companies to pit worker against worker and drive down wages and working conditions, and companies increasingly use the threat of leaving to break union organizing drives and get concessions at the bargaining table. Though Mexico now exports much more to the United States, Mexican workers have not gotten their fair share of the benefits; their wages actually have dropped about 10 percent in inflation-adjusted pesos since NAFTA was implemented in 1994. Canadian workers also have seen their wages fall below U.S. levels.

The NAFTA labor side agreement has not protected workers' rights. In Canada, Mexico and the United States, fundamental workers' rights continue to be abused with impunity. The North American Agreement on Labor Cooperation (NAALC) has very limited enforcement powers, especially when contrasted to the commercial provisions of NAFTA. Although NAALC cases have led to many hearings and reports on labor issues, virtually no concrete changes have been made to countries' laws or practices to improve workers' rights. Even in a case where the National Administrative Office responsible for enforcing the NAALC found that Mexico persistently failed to enforce its own laws in the key area of freedom of association, the only remedy was a ministerial consultation, not any form of sanctions on the government or company responsible for the violations.

In order to truly promote growing employment and better working conditions, the FTAA must include enforceable worker rights standards in its core. The internationally recognized core labor rights include the freedom of association, right to organize and bargain collectively, a minimum age for the employment of children, and prohibitions on forced labor and employment discrimination. Commitment to observing these core labor rights, in addition to adequate enforcement of each country's own labor laws, should be a condition of entry into the FTAA, and appropriate enforcement mechanisms must be established to ensure that countries continue to adhere to core labor standards and effectively enforce their own labor laws. Non-compliance must be remedied, as would be the case for violation of any other portion of the agreement.

The inclusion of enforceable workers' rights provisions is necessary to make the FTAA a successful model for economic integration, but it is not sufficient. Commercial provisions must also be reformed to promote equitable economic development. NAFTA-style provisions that protect corporate rights at the expense of public health and safety, the environment, and essential human services must not be included in the FTAA. Some of these provisions are outlined below.

Investment: NAFTA gives corporations the right to challenge our laws in secret tribunals and to demand compensation from governments. Companies have used NAFTA to challenge laws protecting the environment, public health and consumers, arguing that these laws hurt their profits. For example, when a Mexican state did not allow the Metalclad Corp. to build on a local

ecological preserve, Metalclad used NAFTA to successfully demand more than \$16 million in compensation from the Mexican government. In another case, a company called Methanex is demanding almost one billion dollars from the United States because California passed a law banning a harmful fuel additive that Methanex produces. The draft FTAA contains language identical to NAFTA's investment provisions, and would extend these rights to even more investors throughout the hemisphere.

FTAA investment rules should not grant investors any rights greater than those rights that investors already enjoy under U.S. law. The FTAA should contain a broad carve-out allowing governments to regulate corporate behavior to protect the economic, social, and health and safety interests of their citizens. The FTAA should rely on government-to-government rather than investor-to-state dispute resolution, and all dispute resolution mechanisms should be fully transparent and accessible to interested members of the public.

Services: NAFTA restricts the ability of governments to regulate services – even public services. Increased pressure to deregulate and privatize services could raise the cost and reduce the quality of such basic services as health care and education. A NAFTA dispute panel decided the United States will have to let Mexican truck companies provide their services throughout this country, even though we do not have enough inspectors to ensure these trucks meet our safety and labor standards. The U.S. company UPS is arguing that Canada's public postal service violates NAFTA, because governmental support for the postal service is an unfair subsidy. The FTAA should contain a broad, explicit carve-out for all public services. Services rules should be negotiated sector by sector, and should preserve the ability of governments to regulate services in the public interest. The FTAA should not include commitments on temporary work visas until these visa programs are revised to protect the rights of all workers.

Procurement: NAFTA does not allow governments to include social, environmental or workers' rights criteria in their purchasing decisions. When President Clinton ordered the federal government to stop using taxpayer dollars to buy goods made with the worst forms of child labor in 1999, he had to exclude Mexico and Canada from the order because these kinds of protections are not allowed under NAFTA rules. If these rules are extended to state and local governments, as is now being proposed in the FTAA negotiations, responsible contracting requirements, project labor agreements and living wage laws could all be challenged. FTAA government procurement rules should allow federal, state and local preferences for domestic purchases to continue and should give governments scope to serve important public policy aims such as environmental protection, economic development and social justice, and respect for human rights and worker rights through their purchasing decisions.

Development: NAFTA has not created a healthy economy in Mexico. Because of its large external debts and inability to control financial speculation, the Mexican government had to devalue its currency in 1995 when panicky investors pulled billions of their dollars out of the country. This created a severe economic crisis, and Mexico still has not recovered despite growing trade and investment under NAFTA. Wages are lower than they were before NAFTA

came into effect, and poverty levels actually are higher. Regional and economic inequality persist, and many workers from rural areas have migrated to work in the *maquiladora* zones or in the United States, where their rights are not protected fully. Pollution levels also are up in Mexico and the border region poses a severe environmental challenge. If the FTAA does not do more to help countries pursue sustainable and equitable development, instability and inequality in the region will continue to increase.

The FTAA should allow countries to regulate the flow of speculative capital in order to protect their economies from the kind of excessive volatility that has led to financial crises in Mexico and Argentina and now threatens Brazil. In addition, the agreement must address the possibility of massive currency devaluations and the impact these devaluations have on fair competition in the hemisphere. The FTAA should include debt relief measures that will allow developing countries to adequately fund education, health care, and infrastructure needs, thereby contributing to closing the gap between rich and poor nations, reducing inequality within nations, and diminishing the financial instability caused by mounting debt burdens. The FTAA also must include equitable and transparent market access rules that allow for effective protection against import surges or other trade law violations, and must include enforceable protections for the environment.

Democracy: The FTAA negotiators made a significant step forward before the 2000 Summit of the Americas in Quebec by releasing the first draft text of the FTAA. We commend the U.S.'s leadership in pushing for this release, and look forward to the release of another updated draft at the trade ministers' meeting this October in Quito, Ecuador. Unfortunately, much more could be done to make FTAA negotiations more open and transparent. Citizens in every country have a right to know not only what the draft FTAA proposals are, but which ones their government is supporting and opposing. Once the agreement is concluded, dispute resolution measures should also be open to the public. A transparent, inclusive, and democratic process, both for the negotiation of the FTAA and for its eventual implementation, is essential to ensure the legitimacy of the FTAA process.

The FTAA must not simply replicate the failed trade policies of the past. If the negotiations continue along their current path, they will yield an agreement that undermines workers' rights and the environment, exacerbates inequality in the hemisphere, and constrains the ability of governments to regulate in the interest of public health and the environment. Such an agreement will face fierce public opposition in many countries.

A different kind of hemispheric integration agreement – one that upholds workers' rights, protects the environment, and stimulates real development – is needed. The labor movement and other members of civil society have presented reasonable and coherent proposals for what such an agreement should look like. In our view, the success or failure of the FTAA will hinge on our government's willingness to adopt these proposals and carry them forward in the FTAA process.