

## **Comments of the Citizens Trade Campaign to the Committee of Government Representatives on the Participation of Civil Society in the Free Trade Area of the Americas -- May 1, 2003**

The undersigned members of the Citizens Trade Campaign (CTC) are appreciative of this opportunity to submit our views to the Committee of Government Representatives on the Participation of Civil Society regarding negotiations of the proposed Free Trade Area of the Americas (FTAA). CTC is a coalition of labor, environmental, religious, family farm, and consumer organizations representing constituencies across the United States.

We believe that increased cooperation between nations of the Western Hemisphere can be a powerful tool to increase prosperity, democracy, sustainable development, and stability within the region. However, by subjugating crucial social concerns such as public health, equity, environmental protection, and human and worker rights to the goal of increased international investment and trade, the FTAA as currently constructed, promises to bring about the opposite results for the people of North, Central, and South America.

Sound international trade policy must be based on respect for core social values of human dignity, environmental protection, and democracy and work toward their promotion. Many of the provisions proposed in the FTAA text have already been tried and have failed in other contexts. We must learn from these mistakes. If we fail to heed these examples, the FTAA is sure to impede rather than advance progress within the Hemisphere.

To a large extent, FTAA provisions build on those of the North American Free Trade Agreement (NAFTA), an agreement which has a clear nine-year track record. Rather than delivering on promises of growth and prosperity, NAFTA has granted investors broad new rights while pitting communities, workers and farmers from all three countries against each other, resulting in decreased wages and benefits, declining unionization, increased environmental degradation, and commodity prices at 30-year lows.

Rather than producing equitable development, the export-driven policies of NAFTA have only delivered benefits to a privileged few at the expense of the vast majority of North Americans. Income inequality within and among NAFTA member countries has grown. Poverty levels in Mexico are higher than before NAFTA took effect, while the US has lost 750,000 actual and potential jobs due to NAFTA. Within the U.S., over 73% of the nation's farms share only 6.8% of the market value of agricultural products while 7.2% of farms receive 72.1% of the market value of products sold. In Mexico, an increase of corn imports by over 200% has resulted in massive dislocation of rural farmers. Women in the Mexican export processing zone suffer from discrimination and violence, and women in the US are disproportionately impacted by trade-related lay-offs.

In other areas, FTAA provisions replicate liberalization policies that have wreaked economic havoc on Latin American economies, demonstrated by the recent upheavals in Argentina and Venezuela. The FTAA also threatens to repeat the documented failure of services privatization and deregulation. Through structural adjustment policies imposed on the developing world, and corporate driven liberalization policies within the United States, we have seen time and again that the loss of accountability through the deregulation and privatization of essential services results in a dangerous loss of access and quality control.

If the FTAA continues in this direction, it will only repeat and exacerbate the failures of the liberal economic model, posing a serious threat to global security and stability.

**With regard to the FTAA text and process, we would like to comment on some critical areas:**

### Labor and Environmental protections:

- Sound trade policy must respect the rights and obligations of countries under multilateral environmental, labor, and human rights agreements.

Instead, investment provisions in NAFTA have allowed corporations to challenge policy measures taken in an effort to be in compliance with international environmental protocols such as the Basel Convention on the export of hazardous waste. The proposed FTAA would similarly allow corporations to challenge efforts taken in compliance with important international agreements.

- All trade agreements must include enforceable workers rights and environmental protections including adherence to core labor standards as established by the International Labor Organization - freedom of association, the right to organize and bargain collectively, a minimum age for employment of children, and prohibitions on forced labor and employment discrimination. Trade policy must also include binding non-derogation from existing domestic labor and environmental laws.

Despite hundreds of pages of protections for corporations, the proposed FTAA fails to grant even a line to effective labor or environmental protections. The full extent of language on either of these topics is one completely unenforceable “strive to ensure” clause relating to the maintenance of existing domestic labor and environmental laws. As proposed, in contrast to the rights afforded to multinational investors to file legal challenges to governmental regulations, the FTAA includes no mechanism for private citizens and NGOs to bring forward formal complaints for labor and environmental abuses.

In addition, the FTAA proposes new commitments on the temporary entry of workers. Not only does this issue not belong in the purview of international trade agreements, but the current proposal for temporary entry fails to include adequate protection for migrant and resident workers and mechanisms to ensure that temporary entry programs aren't used to promote mobile sweatshops.

NAFTA has been a disaster for the environment in the border regions as factories flocked to areas with weak environmental protections. NAFTA's own commission on Environmental Cooperation has identified links between the agreement and: increased levels of air and water pollution; new and growing pathways for invasive species that damage agriculture and the environment; and elevated cross-border trade in hazardous waste and materials. The FTAA with its lack of environmental protections would continue this environmental degradation.

### Investment:

- Investment provisions must not empower investors to file legal challenges to domestic public interest standards or policies. Sound investment policy must allow governments to regulate corporations in the pursuit of economic, environmental, social, and public health goals.

Instead, the proposed FTAA expands NAFTA's Pandora's Box of investor-to-state lawsuits in closed, unaccountable tribunals. These special rights for foreign investors go far beyond those provided in the US constitution for foreign or domestic corporations by allowing compensation for loss of potential and perceived profits rather than only tangible property loss due to government regulation deemed to be discriminatory. Cases filed under NAFTA's Chapter 11 include a successful suit filed by a US company, Metalclad, for a Mexican state's refusal to grant that company a permit to establish a toxic waste facility in an ecologically sensitive area. Another suit has been filed by a Canadian company, Methanex, over a US state law banning an environmental pollutant produced by Methanex. Moreover, the impact of these investor-to-state lawsuit provisions goes far beyond specific cases filed, in their chilling effect on future regulation in the public interest.

### Services:

- Sound trade policy must include a carve-out for essential public services such as public benefits programs, healthcare, education, water, sanitation, and utilities.

The so-called exclusion for public services within the proposed FTAA is actually only for “services supplied in the exercise of government authority,” defined as services which are supplied neither on a commercial basis, nor in competition with one or more service suppliers. This very limited definition does not include services that are provided by the government in tandem with private providers, or services provided by the government with partial contracting out. Under this limited definition, most of the public services in the United States would not be excluded from FTAA services rules. Including essential services under FTAA rules would lead to forced deregulation and could enable privatization, threatening the quality, affordability, and accessibility of vital services including our social safety net.

- An exclusion must also be made for services which require extensive regulation or have an inherently social component including maritime, air, surface, and other transportation, postal services, energy utilities, corrections, and childcare.

The FTAA’s proposed “negative list” approach of implicating all service sectors and regulations unless explicitly excluded creates a dangerous situation in which rules are being imposed on services in perpetuity, including services which may not yet exist or services whose full impact has not yet been anticipated. Deregulation of energy, mining and extractive services poses great environmental threats, yet it is unclear that the FTAA would contain a carveout for measures taken in conservation of exhaustible natural resources or habitat protection.

### Public Interest Regulations:

- All parties to the FTAA must be guaranteed the right to regulate foreign investors in services and other service providers in order to protect public health and safety, consumers, the environment, and workers’ rights without requiring that governments establish their regulations to be the least burdensome option for foreign service providers.

Instead the proposed FTAA prohibits domestic regulations which are deemed “more burdensome than necessary” to investors. The decision of what is considered “necessary” is left to unelected trade bureaucrats. While the proposed FTAA includes an exemption for protections to human, plant, and animal life, the same exemption within the GATT has failed to provide sufficient leeway for countries to determine and effectively protect their own public interest priorities.

- Sound trade policy must not restrict the ability of governments to ensure that food products entering their borders are rigorously inspected and meet domestic food safety standards. Governments must be allowed to develop and maintain necessary sanitary and phytosanitary standards to prevent the introduction of pathogens or other potentially invasive species, which may adversely affect agriculture, human health or the environment. Governments must be allowed to enact policies to guarantee the right of consumers to know where and how food and other goods are produced, including labeling for country of origin, forest certification, and genetically modified foods.

The FTAA could limit the rights of governments and even non-governmental organizations to adopt laws and other programs designed to promote social goals including food safety, forest and habitat protection, biodiversity, local development, and public health by subjecting these regulations to a “no more burdensome than necessary” test.

- Sound trade policy must allow nations to follow public interest standards adopted in reliance on the precautionary principle.

The precautionary principle is the internationally recognized legal principle which holds that, when there is scientific uncertainty regarding the potential adverse effects of an action, product or technology, governments should act in a way that minimizes the risk of harm to human health and the environment. The proposed FTAA, however, continues the policies of NAFTA and the WTO, which undermine the use of regulatory approaches that prioritize avoiding risk to the environment and public health.

Government procurement, loans, and subsidies:

- Trade policy must preserve the right of national, state, and local governments to maintain or establish procurement policies to promote social goals such as equity and sustainable local development.

Instead, the proposed FTAA would repeat NAFTA's prohibition on including so-called non-trade related criteria in government purchasing decisions. In addition, it has been proposed within the FTAA that these prohibitions extend to state, regional, and local government purchasing decisions, threatening purchasing preferences for women and minority-owned businesses, project labor agreements, anti-sweatshop procurement laws, living wage laws, buy local laws and more.

Trade Remedy Protections:

- Sound trade policy must allow governments recourse to transparent and effective trade remedy laws which provide workers, businesses, and farmers safeguards from import surges, dumping, and unfair foreign trade practices.

Instead the FTAA proposes to impose strict restrictions and prohibitions on trade remedy processes including antidumping and countervailing duty cases. Trade remedy laws are an important tool in protecting domestic industries from economic attacks.

Agriculture:

- Sound trade policy must allow governments to ensure competitive markets for family farmers. In such it must not prevent countries from establishing domestic and global food reserves, managing supply, enforcing antidumping disciplines, ensuring fair market prices, or vigorously enforcing antitrust laws.

It is clear that the draft FTAA text reflects multinational agribusiness' ambitions to remove all agricultural tariffs despite the clear and inevitable adverse impacts such a move would have on the hemisphere's farmers and peasants given the adverse impacts Mexican, U.S. and Canadian farmers have already experienced under NAFTA. When corn tariffs were lowered under NAFTA, hundreds of thousands of corn farmers were forced to seek other means of sustaining themselves. The FTAA currently fails to address issues of price and concentration with regard to agriculture. This combination will lead to decreased market prices for producers, increased concentration of marketing and distribution by existing oligopolies, thus continuing to undermine national, regional and global food security.

Transparency:

- Prompt and regular disclosure of full negotiating texts including indication of which countries are putting forth the various proposals.

While we applaud the release of negotiating texts during the 2000 Summit of the Americas in Quebec and last year's Ministerial in Ecuador, the "scrubbed" condition of these texts- devoid of country sponsorship for the various competing proposals- makes them unusable for meaningful analysis and comment.

- The broad array of constituencies representing the majority of the peoples of the Hemisphere including labor unions, environmental organizations, farm and campesino organizations, public health advocates, faith-based organizations, and civil and human rights advocates must be accorded at least the same access to trade negotiators and the negotiation process as those constituencies representing commercial interests. Procedures for public comment on negotiations must include public hearings as well as mechanisms to ensure full disclosure to and input from state and local governments.

Instead, the FTAA process affords special privileged access to members of the Business Forum, access which is not available to the Labor Forum or other members of civil society. The FTAA process fails to involve state and local governments in informed participation despite the fact that these governments would bear a great deal of the FTAA's impacts.

- Any dispute resolution mechanisms established by the FTAA must be open and transparent, including public disclosure of documents and access to hearings. In addition, submission of amicus briefs must be permitted, and standing for state, regional, and local governments as intervenors must be accorded.

The FTAA text proposes to follow the NAFTA model of closed and undemocratic dispute resolution.

#### Intellectual Property

- Sound trade policy must allow governments to take actions to protect public health by ensuring access to medicines. It must not constrain the rights of farmers to save, use, exchange, or sell farm-saved seeds and other publicly available seed varieties. Intellectual property protections must allow for the respect and protection of traditional knowledge of indigenous peoples and local communities, and must not require the issuance of patents on living organisms or their genetic parts and components.

Instead, the proposed FTAA would limit compulsory licensing to the public sector, prohibiting companies from manufacturing cheaper drugs under a government-obtained license. The proposed FTAA would also prohibit the export of compulsorily licensed goods, impose obstacles to timely compulsory licensing, and require harsh penalties, including criminal enforcement, for intellectual property violations. In addition, the proposed FTAA intellectual property rules fail to protect against bioprospecting, a crucial issue for an area that is host to over half of the world's biodiversity.

#### Development

- Sound trade policy requires additional assistance and respect for diversity of development paths. Special and differential treatment must be granted for developing countries with regard to the timeframe for implementation of the agreement as well as local development and public health concerns. In addition, debt relief is essential for successful economic integration.

While the FTAA text currently includes a provision for special and differential treatment, the language is hortatory and unenforceable against competing provisions such as investment, intellectual property rights, and market access. The proposed FTAA also rules out the establishment of performance requirements for domestic investment including capital controls which have been essential to sustainable economic development in many countries in both the developed and developing world. The proposed FTAA is silent on the crucial issue of debt relief and would continue to expand inequities between developing and developed countries and between the rich and poor in all countries.

#### Conclusion

Despite the fact that much of the above commentary has already been made available to trade negotiators by our member organizations and many others, the current FTAA and negotiating process continues to proceed on a path which threatens workers, the environment, public health, sustainable development, and democracy. The corporate-managed free trade model has suffered a dramatic loss of credibility in recent years. Unless the US shows leadership in the FTAA negotiations to reverse direction and pursue the above policy prescriptions that improve human and economic development, the FTAA will meet with strong opposition from civil society throughout the Americas, including from the CTC.

**Alliance for Sustainable Jobs and the Environment; American Lands Alliance;  
Communications Workers of America; Defenders of Wildlife; Friends of the Earth; Institute for  
Agriculture and Trade Policy; International Brotherhood of Teamsters;  
Minnesota Fair Trade Coalition; National Family Farm Coalition; Public Citizen;  
United Steelworkers of America**