

TRADING AWAY OUR ENVIRONMENT: THE FREE TRADE AREA OF THE AMERICAS

MARKET "LIBERALIZATION" WITHOUT RESPONSIBILITY

IN 1994, HEADS OF STATE from 34 countries in the Western Hemisphere convened in the first Summit of the Americas. They laid the foundations for a process of economic integration within the Western Hemisphere that would lead to the creation of a Free Trade Area of the Americas (FTAA).

In April 2001, after almost seven years of preparatory work, heads of state met again in Quebec City, Canada, for the 3rd Summit of the Americas. While there, the final



push for the FTAA was launched, with the aim of concluding negotiations in 2005.

THE FTAA WILL BE A COMMON market removing most limits on the movement of capital, goods, and services. As a regional trade and investment agreement, the FTAA will set common policies and regulations on issues such as market access, intellectual property rights, government

procurement, services, customs procedures and dispute settlement. The FTAA will also provide broad new rights to multinational corporations investing and operating throughout the hemisphere.



This vast FTAA project of liberalization will affect almost every sector of the economy and will have significant environmental and social impacts.

Yet – unless there is a dramatic change in negotiating stances – the FTAA will not include any clear and strong provisions for environmental protection. Nor it will include any corresponding responsibilities for multinational investors.

Meanwhile, if the agreement includes NAFTA-like and WTO-like trade rules, it will directly undermine and challenge national and international laws and regulations protecting the environment.

A FRIENDS OF THE EARTH POLICY BRIEF

INVESTMENT: CORPORATE SUITS AGAINST ENVIRONMENTAL PROTECTION

MULTINATIONAL INVESTMENT has already produced significant environmental impacts in the Americas.



Extensive privatization programs, market deregulation and economic and regulatory incentives for investments have in some cases left trails of ecological destruction. The “maquiladora” area along the

U.S.-Mexican border offers an egregious example of the environmental disaster created by deregulated free trade and investment zones.

The FTAA’s investment rules would in no way improve the environmental impact of investment in the Americas—and would likely make it substantially worse. The agreement’s investment provisions are modeled on those in NAFTA’s rules on investment (Chapter 11), and for every country in the hemisphere will be the potentially most harmful part of the agreement.

The FTAA investment rules will grant multinational investors far-reaching rights to challenge domestic environmental laws and regulations before international tribunals. Most significantly, the investment provisions will allow private foreign investors to sue governments for compensation for any profits lost due to governmental actions to protect the environment.

Such rules give investors far greater rights than those found in domestic law in the United States and other countries. Moreover, these cases would be heard before international tribunals that meet in secret sessions behind closed doors and are not accountable to any appeals process.

NAFTA’s Chapter 11 investment rules have spawned a series of cases challenging environmental laws and regulations. Mexico and Canada have both lost suits involving environmental protections – in the case of Mexico, local limitations on a hazardous

waste treatment site, and, in the case of Canada, a prohibition on exports of PCBs.

The U.S. has faced a suit by a Canadian firm, Methanex, for \$1 billion in lost profits due to a ban imposed by California on a gasoline additive, MTBE, that has been shown to pose serious health risks in the water supply. If such cases continue to be filed, there could be a substantial chilling effect on the efforts of governments – including local and state ones – to adopt critical new environmental protections.

The FTAA will extend this chilling effect throughout the hemisphere, and much of the impact will be felt in developing countries. If these countries attempt to raise their pollution control standards, or to protect sensitive forest areas or indigenous peoples’ lands where forestry or mining concessions have been granted, they could face suits from multinational companies. But, as the Methanex case demonstrates, the impact could be profound in the United States as well, with new environmental protection measures subject to potential challenge by foreign investors.

FREE TRADE IN FORESTS

FROM THE TEMPERATE RAINFORESTS OF CHILE to the northern boreal of Canada, our hemisphere’s forests are under threat. Mature, native forests are threatened by conversion to tree farms, unsustainable logging practices, weak environmental laws, and forest product trade that does not take environmental or social concerns

into account. As a result of these policies, Latin America lost over 140 million acres of forest during the period 1980-95 and logging threatens as much as 70% of the region’s ecologically intact natural forests.



The FTAA would exacerbate this ongoing forest destruction by completely opening trade in timber products throughout the hemisphere. Combined with subsidies for the timber industry in many countries, unlimited trade will increase the incentive to log vulnerable forests for sale in export markets.

The FTAA will also limit the rights of governments and even non-governmental organizations to adopt laws and other programs designed to protect forests. For instance, certification codes and labeling programs that support responsible forestry practices standards could be subject to challenge. In addition, the FTAA will place constraints on government procurement programs to purchase sustainably harvested wood products.

Market liberalization in service sectors such as fossil fuel extraction and mining – among the greatest contributors to deforestation in the Americas — will also increase pressure on our hemisphere’s vulnerable forests (see below on services).

Meanwhile, the FTAA will do nothing to address the vast trade in illegal logging in the hemisphere. Some observers report that more than half the timber logged in the Americas is logged illegally. Yet no countries have proposed that the FTAA include rules that would discourage trade in these products. In sum, the FTAA will make it increasingly difficult to protect our hemisphere’s forests and will do nothing to make this critical task any easier.

SERVICES: A DISSERVICE TO THE EARTH

MULTINATIONAL SERVICE OPERATIONS – including the activities involved in oil drilling and pipeline transport, mining, water collection and extraction, hotel and tourist facility construction, transport and travel, and waste incineration – are already causing substantial environmental impacts in every country in the hemisphere.



The FTAA rules on services will make it increasingly difficult for governments to limit multinational investment in these activities or regulate them to protect the environment. The FTAA will require that governments open their markets to foreign service operators and will impose restrictions on the laws and regulations that governments can use to ensure environmental protection in these industries. Because the services

provisions of the FTAA could include operations that actually take place within a foreign country, these rules will give rights to multinational service operators very much like those in an investment agreement (such as that in NAFTA’s Chapter 11).

Moreover, if it follows the lead of the WTO services agreement (GATS), the FTAA will lack any provision allowing countries an exception for the conservation of exhaustible natural resources. But the FTAA will be even more problematic than the WTO services agreement. Instead of a system in which countries have some options about which service sectors they will liberalize, the FTAA will likely require that all countries open their markets in all covered sectors.

The result is likely to be a substantial increase in environmental damage as problematic service operations expand. Fossil fuel extraction and mining are already among the leading causes of forest destruction throughout the Americas, a process that will be exacerbated under the FTAA. Hotel construction and tourism activities that already create great pressure on many ecologically sensitive areas, including beach areas and coral reefs, will also likely be expanded. Meanwhile, water extraction and supply services will be increasingly privatized throughout the hemisphere, even in areas where private operators may deplete scarce water supplies.



UNSAFE, UNSUSTAINABLE FOOD AND AGRICULTURE

FOOD AND AGRICULTURE ARE AMONG the largest sectors economically in the Western Hemisphere and their impacts on the environment are widespread. In Latin America, for example, almost half of the soils in grazing lands have lost their fertility. Meanwhile, forest destruction has increased substantially due to the encroachment of agricultural production such as beef farming. It is also increasingly evident that genetically modified organisms (GMOs) cannot be contained once they are introduced into the environment or the food supply.

The FTAA will exacerbate these serious problems by reinforcing WTO and NAFTA rules that have made it difficult – and sometimes impossible – for countries to protect health and the environment. Most importantly, countries would lack the clear right to use precautionary standards in establishing guidelines for food and agriculture. For instance, as the potential risks of genetically modified organisms (GMOs) become more widely understood, it may be difficult for countries to use precaution in regulating these products.

Yet the FTAA will also go much further than the WTO and NAFTA. The FTAA’s agriculture provisions will benefit large-scale agriculture corporations in the hemisphere at the expense of sustainable small-scale farming. The agreement will primarily encourage a trade-oriented type of agriculture that major agriculture businesses, such as ADM, Cargill and Monsanto, can most successfully exploit.



Meanwhile, family farmers and peasants – who often use the most environmentally sound agricultural practices – will encounter serious financial pressure if their markets are dominated by imports. The agricultural impact of NAFTA provides an important example. When corn markets were opened, many traditional corn farmers were either unable to maintain their businesses or had to employ greater levels of pesticides.

In addition, the FTAA will include a set of intellectual property rules that will give major agriculture corporations the right to take traditional farming knowledge and make it their own property through patent rules. Moreover, these intellectual property rules would assist corporations seeking to promote GMO food seeds and products in the Americas. In essence, the FTAA will displace locally oriented, sustainable forms of farming with mass market and high technology agriculture.

FREE RIDE FOR SHIPPING: POLLUTION AND ECOLOGICAL DAMAGE

AS TRADE INCREASES IN THE WESTERN HEMISPHERE, so will the severe air and marine pollution and ecological damage from ocean-going ships. Shipping worldwide already contributes up to one-sixth of global nitrogen and sulfur air pollution from petroleum sources. Meanwhile, ship traffic is a prime cause of damage to coral reefs, including in the Caribbean. In addition, ships carry harmful species across ecological zones.

Despite these environmental dangers, however, the FTAA has no provisions to deal with the impact of the increased shipping transport that will inevitably accompany expanded trade.

DEMOCRACY AND ACCOUNTABILITY

TRADE INSTITUTIONS SUCH AS THE WTO have been subject to intense criticism in recent years because of the secretive nature of their proceedings. In many cases, trade negotiations and dispute settlement processes have been entirely closed observation or participation by the public. Critics have often noted that international trade bodies have instituted what amounts to an anti-democratic process for deciding critical issues of public policy.

The FTAA negotiations seem poised to replicate the mistakes of other trade negotiations and institutions. Negotiations are entirely closed to the public, and the FTAA currently provides no mechanism for the participation of citizens or non-governmental organizations when brought before tribunals under the agreement.



Unlike domestic courts, no opportunity will even be granted for NGOs to file friend of the court briefs to express citizen viewpoints. In sum, the FTAA is being negotiated behind closed doors, without any real opportunity for the public to influence the direction the agreement will take.

